

COVID-19 RESOURCE CENTER

Arbitration in Family Law Cases – Resolving Disputes When the Courts are Closed

April 8, 2020

In March, the British Columbia Provincial Court, Supreme Court, and Court of Appeal all announced changes to their operations in response to the COVID-19 pandemic. (See our April 2, 2020 update regarding the B.C. Supreme Court [here](#)). Between March 19 and May 1, all three levels of court have restricted hearings in family law cases to urgent matters, with the Provincial Court already extending that restriction to May 16, 2020.

For many parties, the restrictions mean that it may be weeks, or even months, before a judge will hear their case. Not only will they be waiting for the courts to reopen, but they may face additional wait times while the courts deal with the backlog from the current closures. Families may need help with situations that are not deemed urgent by the courts, but are nevertheless urgent within the context of their family circumstances.

One option is to arbitrate. B.C.'s *Family Law Act* allows parties to resolve family law disputes through private arbitration. Arbitrators offer a range of dispute resolution services. Some deal with specific classes of issues, such as parenting arrangements, decisions affecting children, or child support. Others are certified to make decisions about any family law issue, except whether to grant a divorce. Many arbitrators also offer hybrid mediation / arbitration services, allowing parties the option to attempt negotiation before having the arbitrator make a decision.

Although there are up-front costs to hiring an arbitrator, there are significant benefits if you choose to arbitrate your family law dispute, rather than litigate it in front of a judge:

- The arbitration process is flexible. For example, the parties may choose to hold a hearing by telephone conference or Skype, or they may choose to make their application in writing, including via email. If a hearing is required, it can be at any time the parties and the arbitrator are available, such as in the evening or on weekends, and the hearing can be as long (or short) as needed.
- The rules of evidence are also flexible. The arbitrator can receive documents and information from the parties in whatever form the parties and arbitrator agree to, even if the evidence is not sworn. So, for an application where an affidavit is normally needed, the arbitrator may receive no more than a set of documents and a written summary from the party. Similarly, if the parties forego a trial in favour of an arbitration, the parties may choose not to give evidence orally, or can place limits on cross-examination.
- Arbitrations are private. Many families do not want to air their disputes in public, and the protections offered by the *Family Law Act* and the Rules of Court only go so far. Arbitration, on the other hand, is completely private, allowing the parties to choose what is and is not made part of the public record.

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- Arbitration is available now, even while the courts are closed. There are many arbitrators with expertise in family law who continue to provide arbitration services during this time.

Our Family Law Group has experience running arbitrations, and our lawyers maintain excellent working relationships with family law arbitrators throughout the province. If you would like to discuss moving your case into a private arbitration, please contact a member of the Farris Family Law Group.



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