



Resolution Rather Than Litigation

By Scott Abel

While most people think of the legal system as a forum for people to have their case heard and have their day in court, many initiatives have been undertaken to divert individuals from a day in court. This is especially true in family law matters.

The Province of Manitoba, through the Family Conciliation department, has undertaken a pilot project called First Choice, which is now available in Brandon.

The First Choice Program is a program which at an early stage in the separation proceedings provides a forum for the parents, with their lawyers if necessary, to discuss matters with a team of social workers. The social workers work in pairs, one female and one male.

There is an opportunity for each parent to present their views to the social workers, and for each parent to respond to the concerns raised by the other parent. The social workers have an opportunity to ask questions of each parent, so as to better

understand the issues and the dynamics between the parties.

The social workers then meet between themselves, and return to provide to the parents their thoughts, concerns, and recommendations. The social workers prepare a written report, which is then provided to the Court.

What is significant about this process is the fact that the meetings and discussions take place in one day. The process is expedited so that the parents can move more quickly towards a resolution, without having to litigate the matter in Court.

Rather than waiting several months or years for an assessment by a social worker or decision by the Courts, the parents can within the first few months after separation obtain the advice and recommendations of a team of social workers on issues of custody, care and control, and communication between the parents.

At the other end of the spectrum are settlement opportunities that happen just before a trial is to take place. Often times, the resolution does not or cannot happen until the litigation is well under way and heading for trial.

Judges of the family division in Manitoba are becoming more open and willing to mediate disputes between spouses, whether those disputes relate to parenting issues, support issues, or property issues.

The role of the Judge at a mediation session is not to force a settlement, or impose a resolution. Rather, the Judge listens to the concerns of each spouse, reviews materials provided in advance, and attempts to find common ground as between the spouses. With the finding of that common ground, the framework of an all encompassing resolution can often be reached.

Cases that if they were to proceed to trial would take several days of court time are often settled in one day. While

parents often believe that their position and view is correct, hearing a contrary opinion from a Judge at a mediation session can be sobering moment for those individuals.

The Judge often has the ability to communicate with that parent which allows that parent to consider and see a different point of view. Once that happens, settlement easily becomes attainable.

While the days of people having their disputes resolved by a trial are not gone, more and more efforts are being undertaken to permit the parties themselves to reach a resolution, whether at the beginning of the litigation, or towards the conclusion of the litigation.