

Is alternative dispute resolution better than a day in court?

The Provincial Advisory Council on the Status of Women is concerned about the safety and rights of women using the alternate dispute resolution process introduced by the Courts in March, 2007.

Until that time, couples went to court to resolve disputes when their relationships ended. In the spring of 2007, Family Justice Services (FJS) was introduced as a way to divert those cases from the heavily-burdened court system and to give additional support to families going through a break up.

The Advisory Council is concerned about FJS. First, we do not believe this new service is appropriate for all couples. Second, there are a number of problems with how the service has been rolled out.

Public in the Dark about FJS

The provincial government introduced Family Justice Services without providing the public with any information about the new service. The people being steered towards Family Justice Services have not had access to a website, a help-line or even a brochure. One day, a new system was put in place and the men and women making applications to court were required to go to FJS. They had no information about their rights.

People have the option to refuse the alternative dispute resolution and can take their dispute to court. But most people are under the impression it is mandatory because it is strongly encouraged.

This is particularly troubling in cases where there is a history of abuse, a high level of conflict or a power imbalance. For some couples, mediation can lead to fair and amicable settlements. But for women and children who have fled violent or abusive relationships, mediation is not appropriate.

Women having to Meet Abusers in Mediation

Unfortunately, we are hearing reports that mediators are not screening applicants for a history of abuse and power imbalance. Therefore women have ended up sitting through mediation sessions with their abusers when a restraining order is in place. This is unacceptable. Not only is it potentially dangerous for the women involved, it can seriously jeopardize women's rights.

We are also hearing that many women are proceeding without independent legal advice. This is problematic because once agreements are made, rights can be

lost forever. We feel it is imperative women are provided with legal advice when using the alternative dispute resolution process.

Services Lost not Gained

The introduction of Family Justice Services has also resulted in the loss of services for women pursuing child support. For example, not all women are getting help with child support applications when they go to court or with registration of agreements. FJS is funded by the Poverty Reduction Strategy and surely services which impact children should be a priority. But the list goes on. In some areas, wait time for referral to mediation far exceeds the delay in getting to court. The service is under-resourced and we have concerns about the training provided to the mediators.

The Department of Justice must make changes to this service. FJS needs better resourcing and better management if it is to serve Newfoundlanders and Labradorians. As it stands now, the most vulnerable members of society are at risk of having their safety and rights taken away.

For more information please read our commentary titled *"Family Justice Services in Newfoundland and Labrador: At What Cost to Women and Children?"*

<http://www.pacsw.ca/resources.html>