



# *Family Law Boot Camp*

Calgary, Alberta  
November 2, 9, 23 & 30, 2007

*Chair - Calgary*

***Lonny L. Balbi, Q.C.***

Balbi & Company  
Legal Centre  
Calgary, Alberta

*Panel - Calgary*

***Hon. Barbara E. C. Romaine***  
Court of Queen's Bench of Alberta  
Calgary, Alberta

***Hon. Victor T. Tousignant***  
Provincial Court  
Family & Youth Court  
Calgary, Alberta

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Dunphy Best Blocksom LLP  
Calgary, Alberta

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Laurie Allen & Associates  
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## *Family Law Boot Camp*

Edmonton, Alberta  
January 18 & 25  
and  
February 1 & 8, 2008

*Chair - Edmonton*

**William B. Hogle**  
Cleall  
Edmonton, Alberta

*Panel - Edmonton*

**Hon. Donna C. Read**  
Court of Queen's Bench of  
Alberta  
Edmonton, Alberta

**Hon. Patricia E. Kvill**  
Provincial Court  
Edmonton, Alberta

**W. Steven Andrew, Q.C.**  
Andrew & Company  
Edmonton, Alberta

**Marie L. Gordon, Q.C.**  
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## LEGAL EDUCATION SOCIETY OF ALBERTA

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Calgary – November 9, 2007

Edmonton – January 25, 2008

**Family Law Boot Camp**  
Friday, November 9, 2007

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**Managing Conflict in Family Law  
Guide to Dispute Resolution Choices  
Elaine Seifert, Q.C. and Laurie McMurchie**

The traditional legal response to resolving disputes in the past has been to initiate litigation. The purpose of this article is to help lawyers appreciate the use of alternative methods of dispute resolution and to increase the processes they can offer to their clients to resolve disputes.

Alternate Dispute Resolution (or ADR) is an umbrella term used to describe alternatives to court litigation. It includes negotiation, mediation, mediation/arbitration, arbitration, collaborative practice and court assisted dispute resolution processes such as early neutral evaluation (the Dispute Resolution Office Program in Calgary), judicial dispute resolution and pretrial conferences. This article will describe a variety of dispute resolution processes, that may be available to assist the lawyer to advise their clients on a course of action best suited to their clients' needs and goals.

When advising clients of their options for resolving disputes these processes should not be lumped together. Each is a distinct process with its own characteristics.

Lawyers are required to be familiar with ADR processes, as it is incumbent upon them to advise their clients of these options when representing them. The Divorce Act (Canada)<sup>1</sup> requires all lawyers to discuss the possibility of negotiation with their clients and inform them of mediation facilities that might be available to the clients. The Family Law Act, Alberta<sup>2</sup> requires all family lawyers to discuss alternative methods of resolving matters with their clients and to advise their clients of collaborative processes, mediation facilities and family justice services that may be available to them.

***Divorce Act***

*Duty of  
legal  
adviser*

*9. (1) It is the duty of every barrister, solicitor, lawyer or advocate who undertakes to act on behalf of a spouse in a divorce proceeding*

*(a) to draw to the attention of the spouse the provisions of this Act that have as their object the reconciliation of spouses, and*

*(b) to discuss with the spouse the possibility of the reconciliation of the spouses and to inform the*

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<sup>1</sup> Divorce Act, Canada, 1985, c. 3 (2<sup>nd</sup> Supp.) section 9(2)

<sup>2</sup> Family Law Act, (R.S.A.) 2003, c. F 4.5, section 5

*spouse of the marriage counselling or guidance facilities known to him or her that might be able to assist the spouses to achieve a reconciliation, unless the circumstances of the case are of such a nature that it would clearly not be appropriate to do so.*

*Idem*

*(2) It is the duty of every barrister, solicitor, lawyer or advocate who undertakes to act on behalf of a spouse in a divorce proceeding to discuss with the spouse the advisability of negotiating the matters that may be the subject of a support order or a custody order and to inform the spouse of the mediation facilities known to him or her that might be able to assist the spouses in negotiating those matters.*

*Certification*

*(3) Every document presented to a court by a barrister, solicitor, lawyer or advocate that formally commences a divorce proceeding shall contain a statement by him or her certifying that he or she has complied with this section.*

### **Family Law Act (Alberta)**

*Duty of lawyer*

*5(1) Every lawyer who acts on behalf of a party in an application under this Act has a duty*

- (a) to discuss with the party alternative methods of resolving the matters that are the subject of the application, and*
- (b) to inform the party of collaborative processes, mediation facilities and family justice services known to the lawyer that might assist the parties in resolving those matters.*

*(2) Subject to the regulations, every application presented to the court by a lawyer pursuant to this Act must contain a statement signed by the lawyer certifying that the lawyer has complied with subsection (1)*

The effect of this legislation is that lawyers must extend their focus beyond litigation to a broader based problem solving approach and must be in a position to describe these processes to their clients in a meaningful way.

ADR processes have become institutionalized by the Alberta justice system. The DRO Program was implemented in the Alberta Court of Queen's Bench in 2001 and a Civil Mediation Program was implemented in the Alberta Court of Queen's Bench in 2004. A voluntary mediation program has operated in the Provincial Court of Alberta for a number of years.

Lawyers must realize that there are limits to the judicial process. The costs of proceeding through the judicial system are high and the system is often fraught