**National Family Law Arbitration Course**

**2024 Syllabus (Faculty Version), all times Eastern**

**DAY ONE: Friday, February 9, 2024**

**10:30AM – 10:45AM, 1.1 INTRODUCTION & ADMINISTRATIVE MATTERS LW (Boyd, Pinsky, Wolfson)**

* + Welcome and Registration [materials, texts, receipts, attendance]
  + Introductions of Faculty and Participants
  + Online Process, Troubleshooting

**10:45AM – 11:00AM, 1.2 COURSE OVERVIEW & OBJECTIVES LW (Wolfson)**

* + Course Design and Objectives
  + Review Syllabus, Course Materials (Dropbox and Siegel’s case summaries)
  + Homework
  + Course Credentials, Certificates
  + CPD Credits
  + Other Resources

**1.3 GUEST SPEAKER 11:00AM – 12:00PM (Sinclair – video repeat)**

**12:00PM – 1:00PM, 1.4 FAMILY DISPUTE RESOLUTION ALTERNATIVES LW (Goldhart, Henry, Wolfson)**

* + Family Dispute Resolution – What Options Are Available?
  + Why Do We Care?
  + Range of FDR Options
  + Choosing the Right Dispute Resolution Process
    - What types of parties/disputes work best with each?
    - What cases are not suitable for arbitration?
    - *Horton* – A practical introduction to arbitration
    - *Horton* – Arbitration and the development of the law
    - *Horton* – Don’t view it as an alternative to litigation
    - *Valiuus* – Winning the battle to arbitrate
    - *House/Childs* - When will a business valuator be considered an arbitrator?
  + Arbitration Options
    - Expedited/Summary/Documents Only Arbitration – Pepper
    - Boardroom Procedure – Wilkinson
    - Final Offer Selection – *Yanovski*
    - Auction
    - Appendix to collaborative practise
    - Med/Arb
    - Arb/Med
    - Secondary Arbitration
    - Parenting Co-Ordination
    - Case Management Arbitration
  + Mediation-Arbitration
    - Definition
    - Case Law
    - Key Features
    - Benefits
    - Challenges
    - Core Principles
    - General Duty
  + Med-Arb Standards of Conduct
  + ADRIC – Med-Arb Rules

**1:00PM – 1:30PM,** BREAK

**1:30PM – 2:30PM, 1.5 GETTING TO KNOW YOUR ARBITRATION LEGISLATION LP (Boyd AB, Wolfson ON, Henry BC, Pinsky MB & ?)**

* + Meeting with your provincial colleagues
  + Overview of your provincial arbitration legislation
  + Appointment and removal of Arbitrator
  + The Arbitrator’s Jurisdiction
  + Conduct of the Arbitration

**2:30PM – 3:30PM, 1. 6 BIAS, EQUALITY & FAIRNESS LP (Barkauskas, Ostwald, Pinsky)**

* + Applicable Legislation
  + Thoughts on Procedural Fairness
  + Flexible Yet Fair
  + Natural Justice – 2 Primary Rules
  + Secondary Rules of Natural Justice
  + Additional Rules of Natural Justice
  + Bias – The Test
  + Reasonable Apprehension of Bias
  + Impartiality
  + Check for DV, Power Imbalance Issues
  + First Contact
  + Control But No Interference
  + The Fairness Toolkit
  + Five Pillars of Fairness
  + Differential Weight In Different Settings
  + Mediation/Arbitration
  + Caucusing and Fairness
  + The Pre-Hearing and the Memorandum
  + Fairness and the Hearing
  + Encourage Civility and Respect
  + Basic Fairness in the Context of the Decision
  + The Arbitrator’s Expertise (Casey)

**3:30PM – 3:45PM,** BREAK

**3:45PM – 5:30PM, 1.7 CONDUCTING A FAIR HEARING LW (Goldhart, Moe, Pinsky, Wolfson)**

* + Small Groups – Discussion of Fact Situations (60 minutes)
    - Small Talk
    - The Case of the Familiar Facts
    - *Gordon v. Starr*
  + Plenary Debrief (45 minutes)

**DAY TWO: Saturday, February 10, 2024**

**10:30AM – 12:00PM, 2.1 FAMILY LAW ARBITRATION AGREEMENTS LW (Henry, Wolfson)**

* + What constitutes a Family Arbitration Agreement?
    - Comparison of Arbitration Acts
    - Enforceability and Enforcement
    - What provisions of the Acts can you contract out of?
  + Secondary Arbitration
  + Is there a binding agreement?
    - *Kay* v. *Korakianitis* (Siegel, p.40)
    - *Dormer* v. *McJannet* (Siegel, p.39)
    - *Horowitz v. Nightingale* (Siegel, p.12)
    - *Babcock v. Wilcock*
    - *Owers v. Owers* (Siegel, p.100)
    - *Lopatowski v. Lopatowski* (Siegel, p.32)
    - *Moncur v. Plante*
  + When is a Family Arbitration an Arbitration? (Siegel)
  + Can an Arbitration Agreement Bind Third Parties? – *Seganfreddo*(Siegel, p.115)

- *Farah v Sauvageau* (Ellyn)

* + Review of Precedent Arbitration Agreements (Shields, Wolfson, Henry, Fogelman)
  + Parenting Coordinating Agreement (Fidler)
  + Proposed clause to proceed in absence of a party (Forbes)
  + Negotiating and Drafting the Family Arbitration Agreement
    - Use of standard agreement
    - Whose job? Should Arbitrator be involved? Difference between PC and Non-PC?
  + Role of the Lawyer in Providing ILA
    - ILA certificate
    - Screening for domestic violence and power imbalance
  + Arbitrator’s Certificate
  + Who determines questions of jurisdiction?

**12:00PM – 1:20PM*,* 2.2 SMALL GROUP ROLE PLAY: NEGOTIATING ARBITRATION AGREEMENTS LW (Jamal, Moe, Ostwald, Pinsky, Wolfson)**

* + In small groups, negotiate terms of an arbitration agreement using our fact situation   
    (20 minutes each x3)
  + Debrief (20 minutes)

**1:20PM – 1:50PM,** BREAK

**1:50PM – 3:30PM, 2.3 THE ROLE OF THE COURTS IN ARBITRATION PROCESSES Wolfson (Ostwald, Siegel, Joseph)**

* + The Legislation
    - Limits on Court Intervention
    - Stay of Proceedings
    - Appointment of Arbitrator
    - Challenge of Arbitrator
    - Removal of Arbitrator
    - Appointment of Substitute Arbitrator
    - Review of Ruling on Jurisdiction
    - Extension of Time Limits
    - Appeal
    - Setting Aside Award
    - Clarification of Award
    - Declaration of Invalidity of Arbitration
    - Application for Enforcement of Award
    - Where Arbitrator Grants an Unusual Remedy
    - Assessment of Costs
  + What’s Needed to Properly Constitute an Arbitration

**3:30PM – 3:45PM,** BREAK **3:45PM – 5:30PM, 2.3 THE ROLE OF THE COURTS IN ARBITRATION PROCESSES, CONTINUED Wolfson**

* + Setting Aside an Award for Procedural Unfairness
  + Appeal
    - Rights of Appeal
    - Different Standards for Different Appeals
    - Right to Appeal Interim/Interlocutory Awards?
    - Motion to Stay Pending Appeal

**DAY THREE: Friday, February 23, 2024**

**10:30AM – 1:00PM, 3.1 FAMILY VIOLENCE & POWER DYNAMICS JPB (Barkauskas, Birnbaum, Henry) 🡪 Birnbaum to confirm**

* + Overview and Definitions
  + Statutory Requirements (BCFLA, s.8; MB, SK, ON; *Divorce Act*)
    - Duty
    - Identify-Assess-Manage
  + Why We Screen – Speaker
    - Statistics
    - From the perspective of Arbitrators/Adjudicators
    - Presentation of trauma and impact of FV
    - Real world examples
  + Scope of the Problem
    - Types of FV
    - Risk factors
    - Power Dynamics
    - Screening tools
  + The Interview
    - Who does the screening in arb? Med-arb? PC?
    - How to screen and maintain neutrality
      * Info disclosure; confidentiality
      * Duty to protect/report
    - Screening reports (ON; AB)
  + Process Design
    - Adaptations to DR process
    - One and done??
  + Managing Violence
    - Safety first – clients, DR professional, staff
  + Case Law
    - *Wainright v. Wainright*, 2012 ONSC 2868
    - *E.E. v. F.F. and G.G.* (Dec. 2008) (Czutrin J.) (Ont. S.C.J.)
    - *Z.S. v. B.P.*, 2020 ONSC 885
    - *Jirova v. Benincasa*, 2018 ONSC 534 at 46
    - *Kaplan v. Kaplan*, 2015 ONSC 1277 at 75
    - *Docherty v. Catherwood*, 2013 ONSC 5220

**1:00PM – 1:30PM,** BREAK

**1:30PM – 2:15PM, 3.2 THE PRE-HEARING CONFERENCE LP (Goldhart, Wolfson, Franks)**

* + Commencing the Arbitration - Lautens
    - Arbitration clause in domestic contract
    - Appointment of the Arbitrator
    - Submission to Arbitration
    - Notice Demanding Arbitration
  + Initial Contact Protocol (Who does it? / Conflict checks)
  + An Arbitrator’s Wish List
  + Seven tips (Leon)
  + Keeping Arbitration Easy, Efficient, Economical and User Friendly (Chong)
  + Use of Client Intake Questionnaires
  + Communications with Counsel and Parties
  + The Pre-Hearing Meeting/Conference
    - Conduct of the Hearing (Caskie)
    - ADR Handbook, Tab 5 and checklist
    - Effective Use of Pre-Hearing Conferences (Kirsh)
    - Pre-Arbitration Conference Checklist
    - First Pre-Hearing Conference (Ghikas, Horton et al)
    - Arbitration Scheduling Endorsement Form
    - McCutcheon – How to Avoid Undue Expense in Arbitration

**2:15PM – 2:45PM, 3.3 INTERIM & PRELIMINARY MOTIONS LP (Goldhart, Melamed)**

* + A Procedural Guide (Lautens)
  + Expeditious Handling of Motions
  + Third party disclosure

**2:45PM – 3:45PM, 3.4 SMALL GROUP ROLE PLAY: CONTESTED INTERIM MOTIONS LP (Goldhart, Melamed, Pinsky, Wolfson)**

**3:45PM – 4:00PM,** BREAK

**4:00PM – 5:30PM, 3.5 HEARING THE VOICE OF THE CHILD JPB (Birnbaum, Boyd, Henry) 🡪 Birnbaum to confirm 🡪 consider relocating earlier in the same day**

* Hearing the Voice of the Child in Arbitration
* Complex Legal Issues for Arbitrators (Goldhart)

**DAY FOUR: Saturday, February 24, 2024**

**10:30AM – 11:15AM, 4.1 RULES OF PROCEDURE IN FAMILY LAW ARBITRATIONS JPB (Boyd, Moe)**

* + Conduct of Arbitration
  + ADR Handbook, Tab 7 and checklist
  + ADRIC - National Arbitration Rules
  + ADRIC – Med-Arb Rules
  + Family Law Rules

**11:15AM – 1:00PM, 4.2 EVIDENCE IN ARBITRATION JPB (Dobler, Fogelman)**

* + Horton – Do the Rules of Evidence Apply in Arbitration?
  + Legislative review
  + *Evidence Acts*
  + Hutchinson – A Practical Guide to Evidence
  + Evidence in Arbitration – Lautens
  + Grant – An Evidence Refresher
  + Thompson - Are there any Rules of Evidence in Family Law?
  + *A.P. v. L.K.* – Role of Arbitrator as gate-keeper, judicial notice
  + *Ward v. Swan* (Re Admissibility of Children’s Statements)
  + Goldhart – Complex Legal Issues for Arbitrators
  + Perell – An Evidence Cheat Sheet
  + Sherr’s Synthesis on Hearsay
  + Fuerst – Documentary Evidence
  + Bala – Expert Evidence (Re use of assessments and critiques)
  + Horton – Expert Evidence in Arbitration
  + Fidler – Post-Assessment Activities
  + Res Judicata and Issue Estoppel - *Stone* v. *Pollon*

**1:00PM – 1:30PM,** BREAK

**1:30PM – 3:00PM, 4.3 NUTS & BOLTS OF RUNNING A HEARING JPB (Boyd, Goldhart, Pinsky, Wolfson) 🡪 review for duplication**

* + Method of Hearing - LW
  + Basic Requirements for a Hearing - LW
  + Adjournments - LP
  + Time and Place of Hearing, notice - LP
  + Privacy and Confidentiality - JPB
  + Complex legal issues for Arbitrators - CG
  + Planning and preparing for the hearing - JPB
  + Role as time–keeper – being fair, thorough and on schedule - JPB
  + **Tips for keeping control of the hearing - ALL**
  + **Administering oaths and affirmations (religious and cultural issues) - ALL**
  + Dealing with objections - CG
  + What if a party refuses to participate? - LW
  + What if a party refuses to pay Arbitrator’s fee? (*Seed* v. *Seed*, *Santen v. Tarasenko*) – CG
  + Delays for settlement discussions and role of the Arbitrator – LP
  + Arbitrator’s subpoenas (Kirsh) - LP
  + **Dealing with witnesses including experts - ALL**
  + Dealing with interpreters - LP
  + Keeping a record of evidence - LW, CG
  + Jurisdiction with respect to third parties - JPB, LW
  + Controlling scope and extent of examinations - CG
  + **Active listening vs. judicial detachment - ALL**
  + Impartiality and cultural sensitivity - CG, JPB
  + How proactive can and should you be? - LW
  + **What to do if the parties do not address the issues - ALL**
  + Directing argument – JPB, LW
  + **Hot-tubbing and other ways of dealing with conflicting evidence of experts (Pepper) - ALL**
  + **Terminating the arbitration (end of hearing, terminating hearing for cause, withdrawal as arbitrator, when arbitrator is functus) - ALL**

**3:00PM – 3:15PM,** BREAK

**3:15PM – 4:30PM, 4.4 SMALL GROUPS: PRACTICE TRAINING EXERCISE LP (Barkauskas, Goldhart, Jamal, Moe, Pinsky, Wolfson)**

* + Dealing With the Difficult Advocate
  + Keeping the Hearing Moving
  + What if a party refuses to participate?
  + When and how to terminate the arbitration?

**4:30PM – 5:30PM, 4.5 MANAGING ARBITRATION PROCESSES FOR SELF-REPRESENTED PARTICIPANTS LP (Jamal, Moe)**

* + C.J.C. – Statement of Principles on Self-Represented Litigants
  + *Kainz v. Potter*
  + *Girao v. Cunningham*
  + JP’s article for self-reps

**DAY FIVE: Friday, March 8, 2024**

**10:30AM – 12:30PM, 5.1 ISSUES IN PARENTING CO-ORDINATION LW (Fidler) 🡪 Confirmed to be taped**

**12:30PM – 1:00PM,** BREAK

**1:00PM – 1:45PM, 5.2 MANAGING DISTANCE ARBITRATIONS JPB (Barkauskas, Boyd, Melamed)**

* + Maintaining control
  + Top Ten Technology Tips (Black and Ashbourne)
  + Zoom Instructions for Hosts and Participants (Ringuette)
  + Handout for Witnesses (Joseph)

**1:45PM – 3:15PM, 5.3 MOCK ARBITRATION LW (Fogelman, Franks, Moe, Pinsky, Wolfson 1, Wolfson 2)**

**3:15PM – 3:30PM,** BREAK

**3:30PM – 5:30PM, 5.3 MOCK ARBITRATION, CONTINUED LW**

**HOMEWORK** – Write Your Arbitral Award

**DAY SIX: Saturday, March 9, 2024**

**10:30AM – 12:15PM, 6.1 DRAFTING & DELIVERING AWARDS LW (Fogelman, Jamal, Wolfson)**

* + Mock Arbitration Awards Debrief
  + Arbitration Legislation
  + The Award – ADR Handbook, Tab 8 and checklist
  + Interim/interlocutory awards
  + Gover – Mastering the Fact-Finding Process
  + How to assess credibility in a virtual arbitration
  + Hickman/Wolfson – Family Arbitration Training
  + The Arbitration Award: Getting it Written, Getting it Right (ADRIC)
  + Laskin - Seven Strategies for Writing Persuasive Decisions
  + Elliott - Writing Arbitral Awards in Plain Language
  + Sussman – Decision-making process and Award writing tips
  + Unconscious bias - Sussman

**12:15PM – 1:15PM, 6.2 CRITIQUE OF SAMPLE AWARDS LW (Fogelman, Jamal, Pinsky, Wolfson) 🡪 fresh sample awards**

* + Discussion in small groups

**1:15PM – 1:45PM,** BREAK

**1:45PM – 3:00PM, 6.3 ISSUES AFTER THE AWARD IS DELIVERED LW (Boyd, Dobler, Goldhart, Pinsky, Wolfson)**

* + Costs and Miscellaneous
  + Determining costs
  + Failure to determine costs – (*Gray v. Brusby*)
  + Settlement and Consent Awards
  + Clarifying Award
  + Correcting errors/omissions
  + Arbitrator Functus vs. Continuing Role of Arbitrator
  + Enforcement of Awards

**3:00PM – 5:00PM, 6.4 MANAGING AN ARBITRATION PRACTICE LP (Boyd, Dobler, Goldhart, Pinsky, Wolfson)**

* + How did we get here?
  + Building a market for family law arbitration
  + Marketing Solutions (Brannigan)
  + Marketing Tips for an ADR practice (Fisher)
  + Organizing your practice and your office
  + Retainers and accounts – How to make sure you get paid.
  + File retention
  + ADRIC Code of Ethics
  + Liability and Immunity
  + Insurance
  + Complaints to Discipline Tribunals (ADRIC, FDRIO)
  + Physical and Electronic Security

**5:00PM – 5:15pm, 6.5 Course Evaluation, CertificatES & Farewells JPB (Boyd, Pinsky, Wolfson)**