**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)**