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Mediation, Media and Misunderstanding

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On July 18, 2011, the Attorney General of Ontario began to implement a new program designed to encourage individuals to pursue mediation and avoid lengthy and expensive court battles when getting a divorce. Any couple seeking a divorce will now be required to attend a mandatory mediation information session.

The importance of this new program was marred, however, by the misconceptions which surrounded its announcement.

What is Mediation?

Mediation is an important part of the family law system in Ontario. Two individuals meet with a mediator in an attempt to negotiate a settlement to their issues. A mediator does not give the individuals legal advice, nor is he or she capable of making any binding decisions on the parties.

The purpose of these sessions is to educate the individuals on any legal issues which may have arisen in their dispute, and most importantly, to keep their discussions focused on the problem at hand.

Mediation is a way to avoid the adversarial courtroom setting, and can allow couples to come to an amicable conclusion to their divorce in a far faster and cheaper manner than court.

Mandatory Mediation Misinformation?

On Sunday, July 17, 2011, the media began to disseminate a story indicating that Ontario was implementing a mandatory mediation system that would commence on Monday, July 18, 2011.

As a professional family law mediator and arbitrator, to me this seemed strange immediately. There had been no talk or indications of this move from the Ontario Attorney General. Such a massive change would never have been done without warning or consultations with various stakeholders.

Thanks to the internet, however, a quick tweet was able to clear up everything:



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The screenshot shows a Twitter thread. At the top, Andrew Feldstein (@andrewfeldstein) posts: "I do not believe that Mandatory Mediation is commencing tomorrow as suggested by the media. Perhaps @Chris_Bentley can clarify." 22 hours ago. Below it, Chris Bentley (@Chris_Bentley) replies: "@andrewfeldstein NO-mandatory information is in place now, and access to mediation-not mandatory- in all court sites by end of summer". The tweet includes interaction icons for Favorite, Retweet, and Reply. Below the reply, it says "Mentioned in this Tweet" and lists Andrew Feldstein again with his bio: "Family Law Lawyer in Ontario Canada." At the bottom of the screenshot is the Twitter footer: "About Help Blog Status Jobs Terms Privacy Advertisers Businesses Media Developers Resources © 2011 Twitter".

Mandatory Mediation Information Session:

What is being implemented in Ontario is a mandatory information session that divorcing couples must attend.

The session will focus on educating individuals on the advantages of mediation and warning about the immense amount of time and money which could be wasted if they pursue litigation.

Individuals will need a form which attests to the fact that they have attended the information session. This adds another step that a couple must take before they can enter court.

In addition to the mediation information requirement, Ontario has long required individuals seeking to go to court for a family law issue to attend a case conference, where a judge will informally canvass the issues and encourage the couple to settle outside of court.



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Personally, I am glad to see any program which encourages couples to pursue alternatives to court. A successful mediation will save the clients money, save the courts time, and help reduce the burden of the court system on the taxpayer.

On the other hand, there are many individuals who argue this program does not go far enough. They call for mediation to become mandatory, as the media was so quick to believe. This would be a profound change in Ontario.

Many groups are concerned about mandatory mediation. It could force victims of spousal abuse, for example, to interact with their abuser.

The question of whether or not such a system would be successful is difficult. The only clear thing is that the system in Ontario must change.

While the action by the Attorney General is a heartening sign, mandatory information sessions will not solve the problem; the Ontario Family Court system needs fundamental reforms to make it less costly and more efficient.