

International family mediation

By **Oren Weinberg**

Law360 Canada (June 19, 2024, 2:47 PM EDT) -- Family disputes are often complicated by complex emotional and financial considerations. The complexities can escalate into particularly stressful ordeals when family issues cross international borders. Fortunately, the flexibility that the mediation process allows can empower parties to resolve challenging international family disputes in an expedient way and at a lower cost than litigation.

Cross-border issues in family law disputes

With a globalized, mobile economy, a family's footprint may extend to one or more countries. This could be through family ties, employment opportunities or business interests. Spouses may reside in and own assets in more than one jurisdiction, complicating their rights on separation.



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Common international issues arising in family law cases include:



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- competing jurisdictions to determine divorce, parenting, support and property issues;
- cross-border parenting arrangements when parents live in different jurisdictions;
- parent relocation with or without child(ren) and the impact that may have on decision-making responsibility, parenting time and family member contact;
- abduction or withholding access or contact between the couple's child(ren) and one parent or extended family members (including Hague Convention issues);
- division of property;
- obtaining disclosure in different jurisdictions; and

- obtaining, varying and enforcing child and spousal support orders in different jurisdictions.

Benefits of mediation to resolve international family law disputes

Under the amended *Divorce Act*, separating couples are required to try to resolve their disputes through an alternative dispute resolution process unless it would be inappropriate to do so. Mediation offers several benefits as an alternative dispute resolution process but is also uniquely situated to help parties untangle cross-border issues.

Flexibility and creativity

International family issues often involve different legal, cultural or religious realities. Litigating in multiple jurisdictions is extremely expensive. Mediation can offer a supportive process by incorporating the appropriate professionals across jurisdictions to create solutions to these complex problems unique to international families.

Mediation offers the parties an opportunity to problem-solve the issues that are created by geographical distance and different legal regimes. The parties have the flexibility to create solutions to their parenting and financial issues that may not otherwise be available to them from one jurisdiction to the next.

Mitigating cost and time

Protracted family litigation can involve substantial expense and time under any circumstances, particularly in international or cross-border disputes. The financial cost to navigating competing legal jurisdictions and court systems, or trying to enforce orders internationally, is prohibitive.

With the benefit of online platforms, the mediation process can accommodate parties no matter where they are located.

Limitations of mediation in international family disputes

Many of the features of mediation that make it an efficient dispute-resolution method are, in other cases, the source of its limitations.

The touchstone of mediation is voluntariness. If parties refuse to participate or will not engage in the process in good faith, with an effort to reach a mutually acceptable solution, the process will fail (or cannot be initiated at all). Mediations involving international or cross-border issues require a spirit of participation, given that the parties may be situated in different countries with varying time zones, availability, resources and court or administrative processes. Further, laws regarding the enforceability of agreements arising from the mediation process may conflict.

As with any mediation, the process will not be beneficial or equitable if there is a power imbalance between the parties. If a spouse is subject to intimidation or there has been a history of family violence or other form of abuse, mediation will not likely be the appropriate avenue. Additionally, if a party has demonstrated a refusal to comply with court orders, mediation may delay the inevitable need for urgent court intervention.

Choosing an international family law mediator

When exploring mediation as an avenue for resolving international issues in family law matters, it's critical to find a mediator familiar with the complexities of cases that cross borders and jurisdictions. Some pertinent considerations include:

- **Experience in international family law:** Mediators who have experience with a variety of international family law issues have the knowledge to provide realistic insight to parties on the reality of their situation and the likely outcome if matters are forced to proceed to court.
- **Cultural and language awareness:** Cultural sensitivity is essential for international family law cases, as conflicting religions, spiritualities, heritage, traditions and customs can lead to

misunderstandings and disputes. Similarly, an adept mediator can enlist the services of other specialists to help navigate language barriers between parties.

- **Credentials and reputation:** Mediators should be accredited by a reputable organization in the jurisdiction where the mediation will take place. A mediator's reputation should be supported by their clients' reviews, testimonials and the contributions the mediator has made to literature and the family mediation community as a whole.
- **Availability, accessibility and flexibility:** Given the various time zones and logistical challenges present in international cases, the mediator must be accessible and able to accommodate the schedules and attendance requirements (especially via the use of technology) for all parties. Fees and disbursements should be clarified early in the process to avoid disputes about cost.
- **Style and approach:** Aside from the universal requirements for fairness and a lack of bias on the mediator's part, individual mediators will have unique, diverse styles. Compatibility is critical to forming a relationship of trust between the parties and the mediator, and parties should consider whether they prefer a facilitative or evaluative approach.

By dedicating time early in the process to considering these factors, parties with international family law issues can reap the benefits of a productive, impactful mediation.

Oren Weinberg is a partner at Boulby Weinberg LLP and is a qualified mediator and arbitrator. Oren has extensive experience mediating issues stemming from international divorce or separation, relocation, abduction/withholding of children, spousal or child support and cross-border property disputes.

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