

Newsletter # 5

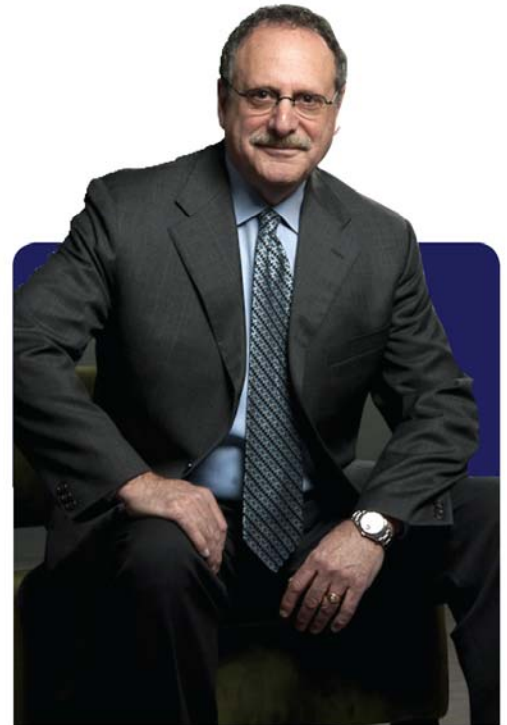
One of the most intriguing requirements of family law arbitration is that of screening for power imbalance. The Arbitration Act provides that every arbitrator who conducts a family law arbitration must certify that a person other than the arbitrator pre-screened the parties to the arbitration for power imbalance. As well, family law arbitrators must take bi-annual screening education.

These requirements are rather unique. Cases go before the courts on a daily basis with no such screening procedure mandated or even available, yet in family arbitration it is required by statute. As well, family law judges are not required to regularly upgrade their screening skills despite the fact that, with few exceptions, they hear far more family law cases than the busiest family law arbitrator.

The purpose of the power imbalance screening is to both ascertain whether the relationship between the parties is so imbalanced that they cannot fairly embark upon arbitration, and also to determine whether steps can be taken by the arbitrator to protect the weaker of the parties so as to make the arbitration process safer for that party. Strangely, power imbalance screeners need take no such training, and need only certify that they are satisfied that the parties can bargain freely, without fear of the other, or that such will be the case if precautions are taken, such as arranging for separate arrival and departure; separate seating areas; etc.

Presumably, if the screener determines that there are no reasonable steps that can be taken to protect the weaker party, the parties will be directed to the Court system where there is no screening, and save for the presence in the courtroom of security, no other safeguards will be put in place.

Logically, if makes sense to require screening in arbitration, it makes equal if not more sense to mandate it for litigation as well, and if it makes sense for family law arbitrators to be required to regularly upgrade or at least refresh their skills, so too ought judges and screeners be required to meet the same standard.



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