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Introduction

Conflict can arise in any situation or relationship. If the matter is important, it may seem like going to court is the only option. Going to court is an expensive, lengthy, and stressful procedure. There are no guarantees that you will get what you want. There are other ways to resolve conflict that give you and the other people involved more control over the outcomes.

This booklet explains what Dispute Resolution is and the types available:

- Negotiation;
- Mediation;
- Collaborative Practice; and
- Arbitration.

The appropriate type of Dispute Resolution depends on your situation and circumstances.

The information in this booklet is not legal advice, and does not replace guidance from a lawyer.

What Is Dispute Resolution?

Dispute Resolution is an umbrella term for the different ways that people can resolve conflicts outside of court.

Dispute Resolution allows all the **parties** (the people involved) to talk about what happened, how it affected them, and what is important to them in the future. Often, talking about the issue in a safe, respectful atmosphere can help the parties come to an agreement.

Dispute Resolution can be voluntary or mandatory. **Voluntary** is when you choose to do it. **Mandatory** is when you must do it, like if you are ordered to by the court or directed to by an employer.

This booklet explains the following dispute resolution methods: negotiation, mediation, restorative justice circles, collaborative practice, and arbitration. There may be more dispute resolution methods available to you, such as restorative justice circles.

In this booklet, the people directly involved in a conflict are called the “party” or “parties.” For example, if Gina, Melissa, and Jacob are in a conflict over an access road to the beach, each person is a “party” to the conflict.

Why Choose Dispute Resolution?

Dispute Resolution can be less expensive and more time efficient than going to court. In negotiation, mediation, and collaborative practice:

- Everyone has a chance to talk about the issues in the conflict and how the conflict has affected them;
- Everyone participates in finding a solution;
- The solution is more likely to address everyone’s needs and situation;
- The process is more private and collaborative than going to court;
- Parties may improve relationships and communication.

If you are considering dispute resolution, ask yourself:

- Is it safe for me to communicate with the other party or parties?
- Am I willing to work toward a collaborative outcome rather than winning or losing?
- If we come to an agreement, can I commit to following it?
- Have I considered the different types of dispute resolution and decided which is best for my situation?
- Are the other parties willing to try out-of-court options?

If you answered yes to these questions, you may find dispute resolution helpful.

If there is abuse, violence, or a power imbalance between parties, dispute resolution may not be appropriate.

Types of Dispute Resolution

Negotiation

Negotiation is direct or indirect discussion between parties to try to resolve an issue. Negotiation is an option available to everyone. Sometimes the people involved in the negotiation will work together directly, without help from anyone else. Sometimes a person will hire someone, such as a lawyer, to act in their place.

Everyone uses negotiation in different parts of their life. For example, a child may ask if they may sleep over at a friend's house. The child and the parent will discuss the idea and come to an agreement with conditions like the child finishing their homework first. Other examples are when you negotiate interest rates with your bank or your pay with an employer.

Mediation

Mediation is a process to resolve conflict between two or more parties. The process is confidential, and anything said in mediation cannot be used against parties later. Mediation involves you, the other person(s) and a mediator. The mediator takes a neutral and impartial role in the process. The mediator helps the parties to find a solution by helping them to explore the underlying issues and then helping them to find an agreement that all parties are satisfied with.

Usually, the mediator will meet with each person individually before the mediation begins. In this meeting, the mediator will explain the mediation process and ask you questions about your experience and the conflict. The meeting is meant to help you identify what your interests are and prepare you to communicate in the actual mediation process.

Once the mediator has met with everyone, they will think about whether mediation is appropriate in the situation. If the mediator and the parties agree that mediation is safe and appropriate, they will prepare for the mediation. Each party may be asked to take part in more sessions alone with the mediator as part of the preparation.

Once everyone is prepared, mediation begins. All parties and the mediator meet together. Most mediators work with you and the other person(s) to create communication guidelines. These can include agreements about confidentiality, respect, and other issues that will help everyone feel safe. The mediator guides everyone through the mediation process and makes sure everyone has a chance to speak and participate.

The goal of the mediation is to:

- Provide a space for parties to share what they have been experiencing with regards to the conflict;

- Express their needs; and
- Eventually come to an agreement that both parties are satisfied with.

Once the mediation process is complete, a written agreement will be prepared for you to sign that summarizes the agreements you have reached. This agreement must be acceptable to everyone. It is up to you and the other parties to put the agreement into effect.

Mediation is usually a voluntary process, which means everyone must agree to take part. However, the court may order mediation in some cases.

What is the role of the mediator?

The mediator guides parties through the process of mediation and ensures all parties can participate. Sometimes, you may hear a mediator talk about how they are “neutral” or “impartial.” This means they do not take sides or judge that anyone is right or wrong. They are there to be helpful and guide the discussion. If a mediator does not believe they can be neutral, they will suggest you find another mediator.

The mediator does not make any decisions for you. The mediator does not enforce any agreements the parties make. The mediator does not determine blame or make judgements.

Will I still need a lawyer?

Mediation is not a legal process. Many people come to agreements without using a lawyer. Sometimes, hiring a lawyer is appropriate. There may be times during the mediation when the mediator will recommend that parties seek legal advice about an issue before continuing.

Sometimes, the parties will hire lawyers to finalize the agreement created during mediation. A lawyer can ensure that your rights are protected, that you understand the agreement, and that the laws of the province are being followed.

If you understand the agreement and it is legally accurate, it can be made binding. Once the agreement is written, signed, and witnessed, it becomes a legally binding contract.

Is mediation final?

Generally, a mediated agreement is final. In some cases, such as in some family law cases, the parties may agree that an agreement in mediation is not considered final. An agreement may include a piece that check-ins happen over a period of time to ensure the terms still reflect the needs of the parties. For example, in parenting time, circumstances can change over time as children age and agreements may need to be revisited with the help of a mediator again.

You may be able to come up with a new agreement with the help of a mediator. Many mediation agreements state that if new conflicts come up, either party can ask to go back to mediation and the other will attend.

Child-Focused Family Mediation

The Family Law Centre offers free mediation to help parents agree on parenting time and decision-making responsibility. Call 902-368-6928.

Collaborative Practice

The goal of collaborative practice is an agreement between the parties. Parties create solutions that best meet their needs.

In collaborative practice, each party works with their own lawyer, and often a financial specialist and a family professional. Family professionals include social workers, psychologists, child specialists or other specialists that the parties believe would be helpful. Each party may use the same financial specialist and family professional, who is neutral and will not take sides, or you may each have your own. This is your collaborative team.

The collaborative practice process involves a series of meetings, with both parties, the lawyers and other members of the team as needed. In these meetings, everyone works together to resolve the conflict in a way that allows parties to have control over the outcome. The parties' lawyers advise their clients and guide them through the process.

All parties must commit to settling all issues without going to court and to exchange information freely to come to an agreement. The parties must also agree to be respectful to each other during the process.

Everyone, including the lawyers, signs a legally binding contract saying that you will not take the case to court while you are in the collaborative practice process. If the process breaks down, none of the collaborative team members involved can take part in the court case. Each party would have to hire new lawyers and other professionals to represent them in court or to provide services.

The collaborative practice contract clearly states that any information from the process cannot be used as evidence in court. This means you may speak openly during the process about the problems you are facing without fear that what you share could be used as evidence against you later. There are some exceptions. For example, when there is evidence that a child is in danger, Child Protection Services must be notified.

What is the role of collaborative practice professionals?

Collaborative practice professionals are trained to help parties find common ground, understand each other's concerns, and come to an agreement. These professionals will represent your interests but will also listen to the other parties' interests too. The other parties' team members will represent their interests and will also listen to you. The lawyers will help parties exchange information and explore all options. The lawyers can help:

- Draft legal documents;
- Give legal advice; and
- Explain the law.

Is an agreement made through collaborative practice legally binding?

If all parties sign the agreement before witnesses, the agreement is legally binding. It is important that each party fully understands the agreement and the consequences of the agreement before signing.

Arbitration

In arbitration, the parties involved select an arbitrator. The arbitrator is usually an experienced professional who is trained to review the evidence and make a decision. Sometimes the conflict can involve very technical matters. One of the strengths of arbitration is that parties can choose an arbitrator who is trained in different areas of law or a technical area. If you cannot agree on an arbitrator, you may each choose one and those arbitrators will choose a third arbitrator to create a panel.

The parties agree in advance to abide by the arbitrator's or panel's decision. They participate in a formal hearing where all sides can present evidence and give testimony. Once arbitration is complete, the arbitrator will give a written decision. This decision is usually final and binding, but sometimes parties will agree to take part in non-binding arbitration. The courts rarely re-examine an arbitrator's decision.

Arbitration can be voluntary, court ordered, or mandatory. Arbitration is most used for resolution of:

- Labour disputes (between workers or between workers and employers); and
- Commercial disputes (between companies).

Getting Ready for Dispute Resolution

It is important that you think carefully about who needs to be involved in your dispute resolution process. You also need to be able to clearly state what the issues are and what needs to be resolved.

All parties must agree on which dispute resolution process to use. They also must agree on which neutral professional will help them with the process.

When you contact different professionals, be sure to ask:

- Do they have specialized training in dispute resolution and/or facilitated processes?
- Do they understand the type of issue/conflict we are facing?
- Will they be neutral?
- Do they offer flexibility in meeting times and location?
- Did they explain their practice of dispute resolution?
- Did they ask questions about our situation to see if their practice of dispute resolution is right for us?

How to participate in mediation and collaborative practice

In mediation and collaborative practice processes, the goal is for parties to work together to come to a resolution. The goal is a solution that works for everyone. The focus is on understanding the needs of all the parties and finding creative ways to meet both parties' needs.

Some suggestions:

- Try to express what is important to you, rather than what you believe the solution is. For example, I may say that I must have the majority of parenting time. What actually matters to me is that the children have stability and a regular routine. Having the majority of parenting time may be one way to achieve that, but there are also other ways.
- Make sure you speak only for yourself. Bringing other people's opinions or views into the conversation can be confusing or misleading.
- When the other party speaks, listen closely, and try to understand their perspective and feelings.
- Remember that over 90% of communication is through "body language" and tone of voice. Try to maintain an open and positive posture, facial expression, and tone of voice.
- Rather than focusing on who is right and who is wrong, try to focus on understanding each other's perspectives and finding creative ways to resolve the conflict.

Practice how you will talk about the conflict and what matters to you most with someone you trust. You may get valuable insight and feedback.

How to participate in arbitration

Arbitration is more focused on facts than relationships. In arbitration, it is more important to clearly state facts and present evidence when it is your turn.

Remember to:

- Be polite;
- Be clear;
- Avoid rambling;
- Prepare your evidence and witnesses;
- Be organized;
- Follow the rules set by the arbitrator.

What if Dispute Resolution Fails?

If your attempts to resolve the conflict fail, you may want to discuss using a different form of dispute resolution. For example, if mediation fails, the parties may decide to go to arbitration. You may also wish to contact a lawyer for legal advice.

Taking your dispute to court is the last resort.

The **Lawyer Referral Service** is administered by Community Legal Information. If you are eligible for the service, you may access up to 45 minutes of consultation with a lawyer for \$25 + tax.

If you need financial advice, contact a financial specialist.

Helpful Resources

Mediation PEI www.mediationpei.com

Family Mediation Canada www.fmc.ca

Collaborative Practice PEI www.cppei.ca

Atlantic Labour Arbitrators Association www.atlanticarbitrators.ca

Lancaster House (database of arbitrators) www.lancasterhouse.com/arbitrators

Academy of Financial Divorce Specialists www.afds.ca or 1-888-893-7526

Community Legal Information (inquiry line and lawyer referral service) 902-892-0853 or 1-800-240-9798

Child-Focused Family Mediation 902-368-6928.

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For more information on other legal topics, you can visit our website at www.legalinfopei.ca, email us at info@legalinfopei.ca, or telephone us at 902-892-0853 or 1-800-240-9798. You can also find us on social media.

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