



Resolving Conflict Outside of Court



**Community Legal
Information**
Empowerment Through Knowledge

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

Canada 

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Introduction



This publication explains dispute resolution and why you may want to use it. **Dispute resolution** means resolving conflict outside of court. This publication explains these types of dispute resolution:

- Negotiation
- Mediation
- Collaborative Practice
- Arbitration




There may be other types of dispute resolution that you can access, such as a restorative justice circle.

About Us



Community Legal Information is a registered charity. We provide plain-language legal information and low-cost lawyer referrals. This resource was funded by Justice Canada.

Community Legal Information

-  www.legalinfopei.ca
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-  902-892-0853; 1-800-240-9798 (toll-free)

Dispute Resolution



What is dispute resolution?

Dispute resolution means resolving conflicts outside of court. It allows the people involved to talk about what happened, how it affected them, and what is important to them in the future.

Dispute Resolution can be voluntary or mandatory. **Voluntary** means you choose to do it. **Mandatory** means you must do it. For example, if the court orders you to or an employer directs you to participate in dispute resolution.

In family law cases, the law says you must try to resolve issues with dispute resolution before going to court.

What are the benefits of dispute resolution?

Sometimes going to court may seem like the only option to resolve a conflict. But going to court can be expensive, lengthy, and stressful. You may not get what you want at the end of a court process. Dispute resolution can be less expensive and stressful than going to court.

Some possible benefits of dispute resolution include:

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

A **party** is a person directly involved in a conflict.

If you are considering dispute resolution, ask yourself:

- Am I willing to work towards 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?
- Is the other side willing to try out-of-court options?

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

Negotiation



What is negotiation?

Negotiation is communicating to try and reach an agreement. Negotiation is an option available to everyone. It can be direct or indirect. You can work together directly with the other person, without help from anyone else. You can also hire a professional, such as a lawyer, to represent you.

Most people use negotiation in different parts of their life. For example:

- You negotiate interest rates with your bank.
- Your child asks if they may sleep over at a friend's house. You and your child discuss the idea and come to an agreement. There may be conditions like your child finishing their homework first.
- You negotiate pay with your employer.
- You negotiate parenting time with your child's other parent.

Mediation



What is mediation?

Mediation is when you, the other side, and a mediator try to resolve disagreements. The mediator is neutral and helps you communicate with each other to resolve conflicts.

Mediation is confidential. Anything said in mediation cannot be used against those involved later.

Mediation is usually voluntary, which means everyone must agree to take part. The court may also order mediation in some cases.



What is the mediator's role?

The mediator's role is to guide you through the process of mediation.

The mediator:

- Makes sure everyone has a chance to speak and participate.
- Stays neutral and does not take sides during the process.
- Helps you explore underlying issues in the conflict and find an agreement that everyone is satisfied with.

The mediator does not:

- Make any decisions for you.
- Enforce agreements between you and the other person.
- Blame or judge.

If a mediator does not believe they can be neutral, they will suggest you find another mediator.

What are common steps in a mediation process?

The mediator meets with each side individually before the mediation begins. In this meeting, the mediator explains the mediation process and asks questions about the conflict. The meeting is meant to help you identify your priorities and prepare you to communicate during the mediation process.

Once the mediator has met with everyone, they will consider if mediation suits the situation. If the mediator and those involved agree that mediation is safe and appropriate, they will prepare for the mediation. Each side may be asked to participate in sessions alone with the mediator to prepare.

Once everyone is prepared, mediation begins. All sides and the mediator meet together. Most mediators work with you and the other person to create communication guidelines. These can include agreements about confidentiality, respect, and other issues that will help everyone feel safe.

During mediation, those involved:

- Share what they have been experiencing because of the conflict,
- Express their needs, and
- Come to an agreement that all sides are satisfied with.

When mediation is complete, the mediator may prepare a written agreement for you to sign that summarizes the agreements you have reached. Everyone must agree with the terms of the agreement. It is up to the parties to put the agreement into effect.

Is an agreement made through mediation legally binding?

If an agreement between those involved is signed and witnessed, it becomes a legally binding contract. Make sure to fully understand an agreement before signing it.

Do I still need a lawyer?

It depends on your situation. Mediation is not a legal process. Many people make agreements without using a lawyer.

But sometimes, it is a good idea to hire a lawyer. For example:

- It is a good idea to get independent legal advice before signing an agreement. A lawyer can ensure that your rights are protected, that you understand the agreement, and that the agreement is legal.
- In some situations, a mediator may suggest that you get legal advice about an issue before continuing mediation.

Is the agreement final?

Generally, a mediated agreement is final.


Some agreements may include a condition that those involved revise the agreement at a certain time to make sure the terms still reflect their needs. For example, circumstances may change over time as children age. Changing circumstances may require different parenting arrangements. A parenting agreement may need to be updated with the help of a mediator again.


Many mediated agreements state that if new conflicts come up, either side can ask to go back to mediation, and the other will attend.


Are there free options for mediation?

The Family Law Centre offers free child-focused family mediation. Child-Focused Family Mediation helps parents make an agreement about parenting time and decision-making responsibility.

Child-Focused Family Mediation

 fcco@gov.pe.ca

 902-368-6928

 www.princeedwardisland.ca/en/information/justice-and-public-safety/child-focused-parenting-plan-mediation

Collaborative Practice



What is collaborative practice?

Collaborative practice is when opposite sides in a family law matter negotiate a settlement together with collaborative practice lawyers and other professionals. Everyone must agree to keep the dispute out of court.

The process is based on mutual respect and the family's best interests. The goal of collaborative practice is an agreement between the parties. Parties create solutions that best meet their needs.

Support professionals may include:

- Social workers
- Psychologists
- Financial specialists
- Child specialists
- Other specialists that the parties believe would be helpful.

Each side can use the same specialists or have their own. Specialists are neutral and will not take sides.

What are common steps in collaborative practice?

Collaborative practice involves a series of meetings with all sides, the lawyers and other team members as needed. In these meetings, everyone works together to resolve the conflict in a way that allows those involved to have control over the outcome. The lawyers advise you and guide you through the process.

All sides must:

- Commit to settling all issues without going to court.
- Commit to exchange information freely to come to an agreement.
- Agree to be respectful to each other during the process.

Everyone, including the lawyers, signs a legally binding contract saying they will not take the case to court while in the collaborative practice process. If the process breaks down, no collaborative team members can participate in the court case. Each side would have to hire new lawyers and other professionals to represent them in court or to provide services.



If an agreement between parties is signed and witnessed, it becomes a legally binding contract.

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, if 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 people:

- Find common ground.
- Understand each other's concerns.
- Come to an agreement.

Collaborative practice professionals will represent your interests but will also listen to the other side's interests. The other side's team members will represent their interests and will also listen to you. The lawyers will help those involved explore all options.

Collaborative practice lawyers can:

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

Arbitration



Arbitration is when all sides agree to have someone outside their conflict find a solution for them.

An **arbitrator** is an independent person appointed to settle a dispute. Usually, an arbitrator is an experienced professional trained to review evidence and make a decision.

Arbitration is often used for resolving:

- Labour disputes. This could be between workers or between workers and employers.
- Commercial disputes between companies.

Sometimes the conflict can involve very technical issues. One of the benefits of arbitration is that those involved can choose an arbitrator who is trained in different areas of law or a technical area.

Arbitration can be voluntary, mandatory, or ordered by a court.



If you need financial advice, contact a financial specialist.

What are common steps in arbitration?

- All sides select an arbitrator. If they can't agree, they can each choose one, and those arbitrators will choose a third arbitrator to create a panel of three.
- All sides agree in advance to follow the decision of the arbitrator or panel.
- There is a formal hearing. All sides present evidence and give testimony.
- Once arbitration is done, the arbitrator will give a written decision. This decision is usually final and binding, but sometimes those involved agree to participate in non-binding arbitration. The courts rarely re-examine an arbitrator's decision.



Preparing for Dispute Resolution



Think carefully about:

- What the issues are and what needs to be resolved.
- What dispute resolution process is best for your situation.

Finding a Dispute Resolution Expert

Most of the time, all sides must agree on the professionals who will help them with the process.

Consider if the dispute resolution professional:

- Has specialized training.
- Asked questions about the conflict and understood the situation.
- Will be able to stay neutral.

Ask the dispute resolution professional:

- What will the process be like?
- Do you offer flexibility in meeting times and locations?
- Do you have experience with this kind of conflict?

Tips for mediation and collaborative practice

- 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 most of the parenting time. What actually matters to me is that the children have stability and a regular routine. Having most of the parenting time may be one way to achieve that. But I should be open to other options.
- Only speak for yourself. Bringing other people's opinions or views into the conversation can be confusing or misleading.
- Listen closely when the other party speaks. Try to understand their perspective and feelings.
- Remember that a lot of communication is through body language and tone of voice. Keep in mind your facial expression, tone of voice, and posture.
- Focus on understanding each perspective and finding creative ways to resolve the conflict.
- Practice how you will talk about the conflict with someone you trust. Ask them for feedback. You may get valuable insight.

Tips for Arbitration

- Arbitration is more focused on facts than relationships. When it is your turn, make sure you state facts and present evidence clearly.
- Avoid rambling.
- Be organized. Prepare your evidence and witnesses.
- Follow the rules set by the arbitrator.




What if dispute resolution fails?

If an attempt to resolve the conflict fails, there are other options. Consider:

- Working with a different dispute resolution professional.
- Using a different form of dispute resolution. For example, if mediation fails, maybe collaborative practice will work better.
- Contacting a lawyer for legal advice.

At Community Legal Information, we offer a Lawyer Referral Service. It provides a short consultation with a lawyer for a small fee.

Community Legal Information

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Glossary



Arbitration

When parties agree to have someone outside their conflict find a solution for them.

Arbitrator

An independent person appointed to settle a dispute.

Collaborative practice

When opposite sides in a family law matter negotiate a settlement together with collaborative practice lawyers, and other professionals. Everyone must agree to keep the dispute out of court.

Dispute Resolution

Resolving conflict outside of court.

Mandatory

When you must do something.

Mediation

When people on opposite sides of a conflict and a mediator try to resolve disagreements.

Negotiation

Communicating to try to reach an agreement.

Party

A person directly involved in a conflict.

Voluntary

When you choose to do something.

Support Services



If you are in an emergency, call 911.

Mediation PEI

 www.mediationpei.com


Helps you find mediators in PEI, including family, workplace, and elder mediation.

Family Mediation Canada

 www.fmc.ca

Helps you find certified family mediators.

Lancaster House Arbitrator Database

 www.lancasterhouse.com/arbitrators

Helps you find an arbitrator in the areas of labour, employment, and human rights law.


Academy of Financial Divorce Specialists

 www.afds.ca

Helps you find a Chartered Financial Divorce Specialist who can help you divide your finances during a separation or divorce.


Mi'kmaq Confederacy of PEI (MCPEI) Indigenous Justice Program

 www.mcpei.ca


 902-367-3681

A culturally based program for Indigenous people who come in conflict with the law. It is available to all Indigenous people regardless of status or if they live on or off reserve. The program supplements the mainstream justice system with Restorative Justice options and supports the healing of offenders, victims, and communities.

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We provide legal information, referrals, publications on legal topics in English and French, public speakers, and presentations on legal topics. This is a free, confidential service. We also offer the Lawyer Referral Service, which provides a short consultation with a lawyer for a small fee.

Positive Parenting from Two Homes

 1-877-203-8828; 902-368-4333

Offers free information and education for families experiencing separation, divorce and/or parenting from different homes, with children in kindergarten to grade nine. Sessions help parents deal with concerns about children getting caught in parental conflict.


Triple P Parenting

 www.triplep-parenting.ca/pei

A parenting program that provides ideas about healthy parenting approaches. Delivered online and in-person.


Strongest Families

 www.strongestfamilies.com

 902-368-4430

Provides high-quality, timely, no-cost mental health care for PEI children and youth and their families. The program is delivered online and through telehealth.

Child-Focused Family Mediation

 902-368-6928

A free meditation service that helps parents make an agreement on parenting time and decision-making.

More Resources






Community Legal Information also offers these publications:

- *Family Law Essentials*
- *Parenting and the Law*
- *How to Go to Family Court Without a Lawyer*
- *Family Violence and the Law*

All publications are free and can be found on our website. Contact us for paper copies.

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Community Legal Information is a registered charity that receives funding from Justice Canada, the Law Foundation of PEI, the Law Society of PEI, PEI Department of Justice and Public Safety, and other sources. Community Legal Information provides understandable and useful information about the law and the justice system in Prince Edward Island.

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

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