

RESOLVING DISPUTES

THINK ABOUT YOUR OPTIONS



WHAT'S INSIDE

Introduction

Conflict

What is dispute resolution?

When should you consider dispute resolution?

How do I convince the person I disagree with to participate?

Some dispute resolution choices:

- **Negotiation**
- **Mediation**
- **Arbitration**

Some advantages of dispute resolution

Where to get more information?



Department of Justice
Canada

Ministère de la Justice
Canada

Canada

DEPARTMENT OF JUSTICE
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Published by authority of the Minister of Justice
and Attorney General of Canada
Government of Canada

by

Communications and Executive Services Branch
Department of Justice Canada
Ottawa, Ontario
K1A 0H8
Tel.: (613) 957-4222
Fax: (613) 954-0811

©Her Majesty the Queen in Right of Canada, 1998
as represented by the Minister of Justice

Catalogue No. J2-152/1998E
ISBN 0-662-27183-1

Printed in Canada

Aussi disponible en français
*Les choix qui s'offrent à vous pour régler
des différends*

TABLE OF CONTENTS

Introduction	1
Conflict	1
What is “dispute resolution”?	2
Negotiation	4
Mediation	4
Arbitration	6
When should you consider DR?	7
How do you convince the person you disagree with to participate?	8
Thinking about your dispute resolution options?	9
Where can you get more information?	11

INTRODUCTION

The purpose of this pamphlet is to provide you with information to help you think of different ways of resolving your disputes without going to court. You will learn about some different dispute resolution options and how to find people who offer services in the field. You can use this information to find a process that best meets your needs.

CONFLICT

Conflict is a fact of life. We face problems and disagreements all the time: at home, on the job, and in our neighbourhoods. Not all these disputes are serious, and we may choose to ignore some without any consequences. However, some are more serious and cannot be ignored. If they are not dealt with, they may become worse and take time and money to resolve.

Going to court is one way of settling a dispute. However, it can be costly and time consuming. Moreover, it is not always a satisfying process for the parties involved. More and more, people are looking outside the courtroom for quicker and potentially less costly alternatives for resolving disputes. This pamphlet outlines some of these options.



Choose the way that works best for your particular dispute and for the people involved.



WHAT IS “DISPUTE RESOLUTION”?

“Dispute Resolution” (DR) is the term used to describe a variety of ways of dealing with disputes, including the option of going to court.

“Alternative Dispute Resolution (ADR),” a term you may have heard before, refers to resolving disputes in ways other than going to court. This pamphlet uses the term DR rather than ADR to remind you that there is a broader range of dispute resolution options.

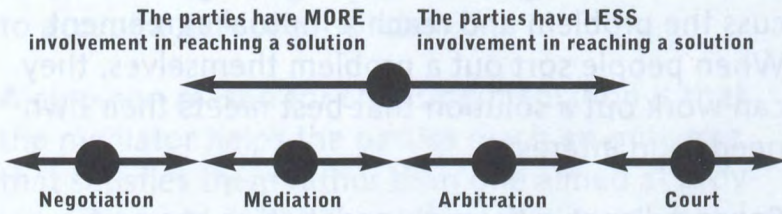
People get involved in many types of disputes. With the variety of DR options available, you can choose the best method for dealing with your particular situation. You may choose one way to deal with a child custody dispute whereas an employment problem or a dispute with your municipality might call for something different.

There are three commonly used methods of resolving disputes without going to court:

- negotiation
- mediation
- arbitration

These methods are described in this pamphlet and each involves a process. Although the formal court process is not discussed here, it too is an option. In fact, sometimes the court will be the necessary route to follow. Remember that you may often be able to deal with your problem informally through discussions. Working together, you can try to reach an agreement that will suit you both.

Dispute resolution covers a range of choices, from negotiating a solution to going to court.



Each option should be viewed as a distinct process, but each can be used alone or in combination.

For example, in a process combining mediation and arbitration (called "Med-Arb"), if the dispute is not settled through mediation it proceeds directly to arbitration. These processes offer choices for resolving your disputes.

In assessing which process may be appropriate for your dispute it is important to keep certain things in mind. For instance, where one side has power over the other or where one party feels intimidated or frightened it may not be possible to resolve disputes fairly through processes such as negotiation or mediation. Barriers arising out of gender or cultural differences may also make it difficult for the parties to resolve the issues themselves.

If you have any concerns about the dispute resolution method that is appropriate for you, talk to someone who knows the field. They can help you choose the process that is best for you.



The best solutions are usually those worked out by the people themselves. When people cannot agree, the courts may have to decide for them.

NEGOTIATION

People who disagree can often get together to discuss the problem and reach a mutual agreement. When people sort out a problem themselves, they can work out a solution that best meets their own needs and interests.

Solving disputes through negotiation is a part of everyday life. For instance, in a situation where your teenager asks you for the car keys, after some discussion you reach an agreement on conditions for using the car and when to return home. This is an example of negotiation.

Effective negotiation skills and methods can be learned. You can read books or take courses to improve your negotiating technique. In some cases, you may also prefer to hire a lawyer, advocate, or counsellor who has the expertise to help you to negotiate or who can negotiate on your behalf.

MEDIATION

People involved in a dispute can ask a mediator, an unbiased and impartial person, to assist them in their negotiations. Where negotiation has not been successful, the mediator can often help to ease tension and encourage discussion between the parties. The mediator can help the parties themselves find a solution that can often result in a "win-win" situation, where everyone is satisfied with the result. Participation in mediation may or

may not be voluntary. For example, some courts require that certain cases be referred to mediation before a trial can be scheduled. Either way, the mediator cannot force you to settle the dispute or to accept a particular solution.



A common reason for choosing mediation is that the mediator helps the parties reach an outcome that satisfies them rather than one aimed at proving right and wrong. Through mediation, parties are able to work together to reach a solution which can be more creative than that which a court would impose. Courts are somewhat limited in the remedies that they can provide to resolve disputes.

The cost of mediation is usually shared between the parties. In most cases it is not necessary for lawyers to be present during the mediation process.

Situations that lend themselves well to mediation are certain family disputes, business disagreements, contract disputes, insurance claims, as well as employment and environmental issues, to name a few.

If gender or cultural differences are making it difficult to resolve issues or conflicts or if there is such a clear inequality in bargaining power so as to make you question whether you could resolve your issues through mediation, talk to someone about your concerns. Choose the process that is best for you. The section in this pamphlet entitled "Where to Get More Information" can help to put you in touch with people who can help you make this choice.



ARBITRATION

When people in a dispute cannot resolve the dispute themselves, either through face-to-face negotiation or with the assistance of a mediator, they can agree to refer the matter to arbitration. In arbitration, a neutral person or panel of people hears the facts and issues and makes a decision. Arbitrators are often people who are experts in a specific area of the law or a particular industry, especially in cases where the decision-maker needs to be knowledgeable about a particular subject matter or business practice.

The arbitrator or panel is usually chosen by the parties together. If they can't agree they can have an acceptable person or organization choose the arbitrator for them. Otherwise, each can choose an arbitrator, and the two arbitrators will then choose a third to make a panel of three. In some instances parties may prefer to have their matter heard before a panel.

Arbitration tends to be less formal and quicker than going to court. The parties can agree in advance on the ground rules for the arbitration (as opposed to court procedures which are fixed). One or both parties may have a representative speak for them at the arbitration hearing or they may speak for themselves.

The arbitrator then makes a decision based on the facts, any contract between the people, and the applicable laws. The arbitrator will explain how the decision was reached. If the applicable law allows, you can decide yourself in advance whether the



arbitrator's decision will be final and binding or whether it should be subject to review by a court if a party disagrees with the decision.

The arbitrator may also make a decision on costs. Depending on how complex the case is and how long it takes to resolve, arbitration usually costs less than going to trial.


WHEN SHOULD YOU CONSIDER DR?

The sooner, the better.

As time goes by, it may become harder to agree on a solution that satisfies everyone. Each side will become convinced they are "right" and the other side is "wrong."

Your lawyer, if you have one, may suggest you try mediation before going to court. Or, you may be advised that it would be cheaper and faster to have the dispute go to arbitration. The fact is that most court actions settle before trial. Using DR methods early can save both the time and money involved in taking a dispute to court.

Even if you're already in court or have begun the process of going to court, you can still use other DR options. In fact, many courts have established dispute resolution programs that require parties to participate in some other form of DR prior to proceeding with their court action. The court office or your lawyer should be able to inform you of any such program in your community.



HOW DO YOU CONVINCe THE PERSON YOU DISAGREE WITH TO PARTICIPATE?

Not everyone will immediately agree to participate in a mediation or other DR process. They may need more information about how the process works and whether it meets their needs. They may also need some time to realize the cost and time involved in taking the dispute to court.

Emotions are often highly charged. People may be angry or so intent on proving the other “wrong” that nothing other than having their day in court will appeal to them. Sometimes, merely waiting a few days or weeks can make a difference and parties may be more willing to discuss the options more calmly and openly.

If you need help to contact the other party to explain the advantages of using other DR options, consider consulting a third party who is trained to act as an impartial outsider to assist you. He or she can make a presentation on the benefits of DR and answer any questions about the processes (see *Where Can You Get More Information?*).

Don't be discouraged. Even if the other party insists on going to court, remember that DR processes can be used at any time — even after a lawsuit has been filed.

THINKING ABOUT YOUR DISPUTE RESOLUTION OPTIONS

The following list indicates some advantages of using certain DR processes described in this pamphlet:

Flexibility

There is much more room for creativity when you resolve your dispute yourself or with the help of a third party. You can work together to arrive at a solution that meets the needs of all parties.

Control

You will have more control over both the process and the outcome.

Personal Satisfaction

You are more likely to be satisfied with both the process and outcome because you chose the DR process and played a more active role in resolving your dispute and designing a solution that is best for you.

Lower Costs/Less Time

DR processes may save you both time and money. They are generally faster and less complex than proceeding through the court system, and that can mean a savings in legal fees and court costs.





Talk to someone about your particular dispute. This will help you to decide how to proceed and how to determine whether DR is appropriate for your situation. Know your rights. Make sure that you understand the process that you have chosen and are comfortable with it.

Confidentiality

Dispute resolution process and results can, in general, be kept confidential. (There are certain circumstances where the law does require disclosure of information though, such as the “duty to report” suspected or confirmed child abuse required by the *Child and Family Services Act* in each province and territory.)

Getting at the Root of the Problem

Many disputes are the result of underlying problems. DR processes can get at the issues which contributed to creating the dispute. At the same time, they work towards a solution that is satisfactory for everyone involved.

Maintaining relationships

Disputes often involve parties who have a working or family relationship and will need to continue to live or work together after the dispute is resolved. These DR methods encourage people to work together at resolving the disagreement which often results in improved relationships and perhaps in fewer new disputes.

Agreements that last

Parties are more likely to comply with an agreement that they helped design rather than one that was imposed on them.


When Should Disputes Be Left to the Courts to decide:

- The issue of violence itself is not mediable. The courts may provide better protection for parties who have been the victim of violence or threats of violence. Further, where a power imbalance between the parties is so pronounced that it cannot be properly managed, even by an experienced mediator, the courts may be better equipped to handle the matter.
- DR processes are generally confidential and therefore are not appropriate if one of the parties wants the issue to be publicized or wants the outcome to be seen as an example for other similar disputes.
- Where there is a need to establish precedent, where the outcome of the case could affect a great number of people or where a definite and broadly applicable solution is required, the court would be the appropriate forum to resolve the dispute.



WHERE CAN YOU GET MORE INFORMATION?

Lawyers, social workers, psychologists and other professionals trained and experienced in DR can all provide DR services. When choosing a DR professional, look for someone whose skills and training seem most relevant to your situation. Ask for references and speak to others who have used that individual's or organization's services.



To Find a DR professional:

- ◆ Check your library for further information.
- ◆ Look in the yellow pages of your telephone book for professionals listed under “mediation” or “family mediation” or professionals listed under “arbitration” or “arbitration/mediation.”
- ◆ For additional information on DR options check with your “lawyer referral service,” the provincial law society, the Canadian Bar Association or a legal aid organization.
- ◆ Ask your lawyer or other adviser for a referral to a mediator or arbitrator.
- ◆ Contact your provincial public legal education and information organization (see the addresses at the end of this pamphlet).

When selecting a neutral person you should consider the following questions:

- ◆ Was this person recommended to you by a reliable source?
- ◆ Have they received mediation or other DR training from an established and reputable centre?
- ◆ Do they have appropriate knowledge for your type of conflict or problem?
- ◆ Did they ask you questions to determine whether the process you have chosen (e.g., mediation) is appropriate for your situation and whether they are best suited to handle the case?

- ◆ Did they carefully explain what mediation or other DR processes are and how they differ from counselling or legal services? Did they ensure that you understand the difference?
- ◆ Did they discuss with you about other methods you have tried or considered trying in order to resolve the conflict?
- ◆ Do you feel confident that they will be able to remain impartial and not favour one party over the other?



These are only a sampling of the kinds of questions that you may want to consider. You may also want to talk to others who have used the services of a dispute resolution professional. They may be able to offer you insight into both the process they chose and the person they selected to assist them.

For more information contact:

Newfoundland

Public Legal Information of Newfoundland
P.O. Box 1064, Station "C"
215 Water Street, 5th Floor, Atlantic Building
St. John's, Newfoundland A1C 5M5
Phone: (709) 722-2643
Fax: (709) 722-8902
e-mail: plian@ns.sympatico.ca

Prince Edward Island

Community Legal Information Association of
Prince Edward Island
1st Floor — Sullivan Building
16 Fitzroy Street
Charlottetown, Prince Edward Island C1A 7M8
Phone: (1-800) 246-9798 toll free in province
(902) 892-0853
Fax: (902) 368-4096
e-mail: cliapei@isn.net



Nova Scotia

Public Legal Education Society of Nova Scotia
911-6080 Young Street, Halifax, Nova Scotia B3K 5L2
Phone: (902) 454-2198
Fax: (902) 455-3105
e-mail: plens@web.net

New Brunswick

Public Legal Education and Information
Service of New Brunswick
P.O. Box 6000, Fredericton, New Brunswick E3B 5H1
Phone: (506) 453-5369
Fax: (506) 457-7899
e-mail: pleis@web.net

Quebec

Direction des communications
Ministère de la justice
1200, route de l'Église, Sainte-Foy (Québec) G1V 4M1
Phone: (418) 644-3947
e-mail: communications.justice@justice.gouv.qc.ca

Ontario

Community Legal Education Ontario
119 Spadina Street — Suite 600, Toronto, Ontario M5V 2L1
Phone: (416) 408-4420
Fax: (416) 408-4424
e-mail: cleo@web.net

Manitoba

Community Legal Education Association (Manitoba)
501-294 Portage Avenue, Winnipeg, Manitoba R3C 0B9
Phone: (204) 943-2382
Fax: (204) 943-3600
e-mail: info@mb.ca

Saskatchewan

Public Legal Education Association of Saskatchewan
115-701 Cynthia Street, Saskatoon, Saskatchewan S7L 6B7
Phone: (306) 653-1868
Fax: (306) 653-1869
e-mail: pleasask@web.net

Information for Saskatchewan can also be obtained at the following address:

Mediation Services Branch
Saskatchewan Justice
3085 Albert St., Room 323
Regina, Saskatchewan
S4P 3V7
Phone: (306) 787-5747
Fax: (306) 787-0088
e-mail: kacton@justice.gov.sk.ca

Alberta

Public Legal Education Network of Alberta
c/o Legal Resource Centre
University of Alberta Extension
10049-81 Avenue, Edmonton, Alberta T6E 1W7
Phone: (403) 492-5732
Fax: (402) 265-2458
e-mail: loisgander@ualberta.ca

British Columbia

The People's Law School
150-900 Howe Street, Vancouver, British Columbia V6Z 2M4
Phone: (604) 331-5400
Fax: (604) 331-5401
e-mail: ghardy@van.cybersurf.net

Northwest Territories

Legal Services Board
P.O. Box 1320, Yellowknife, Northwest Territories X1A 2L9
Phone: (403) 873-7450
Fax: (403) 873-5320

Yukon

Yukon Public Legal Education Association
c/o Yukon College
P.O. Box 2799, Whitehorse, Yukon Y1A 5K4
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Fax: (403) 668-5541

