

# DISPUTE RESOLUTION OPTIONS FOR FAMILY LAW

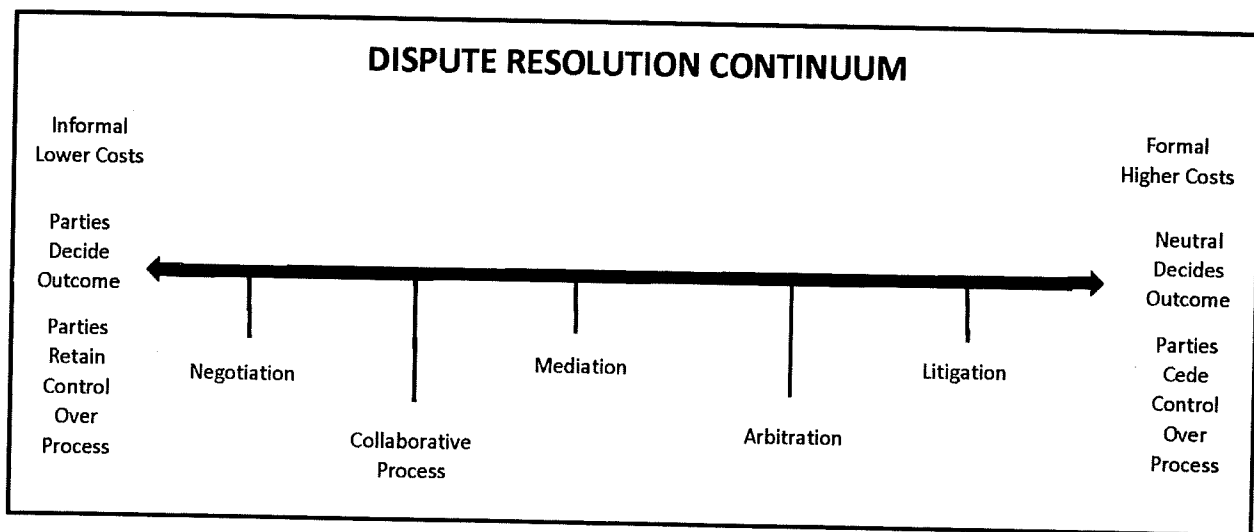
Choosing a process to resolve your Family Dispute is one of the most important decisions you will have to make. The process will impact your resolution time, cost and effectiveness. When a relationship breaks down there are many decisions to be made. Many people assume that they have to go to court if they cannot come to an agreement on their decisions. This is not the case. There are many alternative dispute resolution options ("ADR") available. We are good in court but we know that most people want to avoid that if they can. Our team has lots of experience and success resolving issues without going to court.

Going to court is only one way of settling a dispute. It is often 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. We will explain the advantages and risks for each option and help you choose a process that is right for you and your family.

There are many ADR options available including:

- Negotiation;
- Collaborative Process;
- Mediation;
- Mediation-Arbitration
- Arbitration (Parenting Coordinator)
- Litigation

The following chart may help you in discussing the range of dispute resolution options available.



In looking at the dispute resolution continuum several things become clear. The first thing that jumps out at you in looking at the continuum is that as you move from the left to the right the parties increasingly cede control for decision making to a third party. Secondly, as you move to the right on the continuum, the parties also increase the likelihood that one of them will be a loser and one of them will be the winner. In other words, you have missed an opportunity for a win-win resolution. Finally, as you move to the right, the dispute resolution process becomes more expensive in terms of transaction costs, stress, acrimony, financial expense, and damaged relationships.

## **NEGOTIATION**

Negotiation is probably the most flexible method of dispute resolution available to help resolve family issues. There is nothing stopping separated couples from reaching their own agreement. When people sort out a problem themselves, they can work out a solution that best meets their own needs and interests. It is always recommended that you get legal advice before agreeing to anything to ensure that your needs are being met.

Negotiation can also be done with the assistance of lawyers. During a supported self-negotiation, our lawyers can provide support to you in advance of the negotiation by explaining your other process options and their likely costs, by helping you identify what is important to you and by helping you brainstorm various alternatives for settlement. If you are successful in reaching an agreement with the other party, your lawyer can also help you in preparing a legally binding agreement for review by the other party and his or her lawyer.

Cases are frequently settled out of court. A skilled lawyer negotiator can be your most effective tool in reaching a cost-effective settlement.

## **COLLABORATIVE PROCESS**

Collaborative law is a form of structured resolution in which the parties and their lawyers sign an agreement not to go to court and to work together as a team to find compromise and settlement. The parties' lawyers, and other professionals, such as financial advisors, child care specialists and divorce coaches, if needed, attempt to problem solve together through a series of meetings, with resolution of the dispute as the ultimate goal. It is interest based, as opposed to purely focused on legal rights and solution oriented. If the parties are unable to reach a settlement, both parties must obtain new lawyers if one of the parties takes the matter to court.

The collaborative process encourages open communication and cooperation. It also helps parents practice the type of effective problem-solving they may have to do for many years after their separation, particularly if they have children.

Our lawyers are trained in collaborative law and can explain the advantages and disadvantages of this alternative to help, you decide, if this is right for you.

## **MEDIATION**

Mediation is another kind of structured negotiation whereby a mediator helps the parties discuss and reach an agreement about the issues in dispute. The mediator is a neutral third party who guides the parties through their negotiations, helps to identify the parties' interests and to find compromise. The mediator's objective is to assist with communication and negotiation.

The mediation process is confidential. A mediator cannot give either party legal advice or make a decision about your case. It is the role of the mediator to isolate the set of agreed facts, help the parties identify the issues in dispute and to begin work on settlement options.

The mediation process offers several advantages. It takes less time than litigation. It is confidential. It allows all parties to feel comfortable sharing information that may be central to reaching a meaningful and affordable solution.

Mediation usually costs less than litigation. Mediation can often lead to the resolution of most conflicts in one or two business days of work, leading to a significant reduction in total cost.

Mediation can often be a lot less damaging to the relationships between the parties. This is particularly important where there is likely to be ongoing parenting or family relationships.

If your mediation does not work, you do not have to start again with a new lawyer.

As trained mediators, we know how to get the most out of the process, while protecting your interests.

## **MEDIATION – ARBITRATION**

Mediation has lots to recommend it, however, it sometimes makes sense to include a way of breaking an impasse by giving the mediator the power to resolve a stalemate by imposing a decision as an arbitrator.

In this hybrid two-stage approach the parties sign an agreement that commits them to the mediation process and describes what will happen if an agreement can't be reached. It is important to understand what will trigger the end of mediation and the beginning of arbitration, and whether the mediator will have the power to make decisions as an arbitrator on all of the issues or just some of them. Like mediation, it is important that you choose a trained and experienced mediator and arbitrator.

## **ARBITRATION**

Arbitration is a dispute resolution process that is a lot like going to court. The parties hire a trained and experienced arbitrator who acts like a private judge. The parties attend a hearing where they can call witnesses and produce documents to support their case. The arbitrator hears the evidence and arguments presented by the parties or the lawyers and then makes a decision and which is binding on the parties.

Arbitration is suitable for disputes where confidentiality, finality, and speed are important factors. While arbitration may seem expensive, as the parties pay for it themselves, it can be a great way to resolve issues expeditiously and in the long run you can sometimes save money compared to traditional litigation.

There are special rules surrounding the arbitration process. You should always consult with a lawyer before agreeing to engage an arbitrator.

## **PARENTING COORDINATION**

Parenting Coordination is a child focused dispute resolution process that involves elements of both mediation and arbitration. It is only used to resolve disputes about parenting arrangements after there is a Final Order or Separation Agreement. A neutral third party, called a parenting coordinator (who has special training in mediation and arbitration of family law disputes, as well as the dynamics of family violence) is hired by the parties to help resolve issues that arise during the implementation of the parenting plan. The parties sign a contract about the scope of the parenting coordinator's services and when a problem arises, either party can contact the parenting coordinator. The parenting coordinator listens to each party's concerns and position about the problem and will then attempt to resolve the issue through mediation, but if that isn't possible, the parenting coordinator will make a decision and impose a resolution, much like an arbitrator.

## **COURT (LITIGATION)**

Going to court is sometimes necessary to move your matter forward or finally resolve your dispute. You can be assured that our family lawyers know the judicial system well and are highly regarded advocates with a proven reputation of excellence. Our family lawyers handle a full range of litigation matters, including appeals. We take the time to explain the risks and protocol so you enter the courtroom feeling prepared and comfortable. We take a practical and results oriented approach to achieve a timely and cost-effective resolution of your dispute.

## **UNBUNDLED LEGAL SERVICES**

We also provide unbundled legal services, in a limited scope retainer, such as providing legal advice and a written opinion, case strategizing, coaching, document preparation, review and editing, and attending Examinations for Discovery, hearings, mediations, and arbitrations. This allows clients the opportunity to retain control of their case, pay only for the specific legal services that they can afford, receive legal advice and access legal services to protect their legal interests. Unbundled legal services can be provided at any stage of a legal matter; prior to the start of a court action, during negotiations, mediations, arbitrations, and hearings.

## **SUMMARY**

In many jurisdictions, more than 98% of cases settle before the trial date but only after tens of thousands of dollars have been spent on legal fees.

Your choice of dispute resolution process can, and often does, impact the length, intensity and severity of the conflict.

Not everyone will immediately agree to participate in a collaborative process, mediation or other dispute resolution 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. Even if the other party insists on going to court, don't be discouraged, remember that the alternative dispute resolution process can be used at any time, even after a lawsuit has been filed.

Let us help you decide which process is best for you. For more information on these dispute resolution options please contact our lawyers at Soll & Company, 172 Battle Street, Kamloops BC, V2C 2L2. Phone 250-372-1234 Fax 250-374-1295 Email [info@sollandcompany.com](mailto:info@sollandcompany.com) or visit our website [sollandcompany.ca](http://sollandcompany.ca)