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# Community Legal Information Association of Prince Edward Island, Inc.

## Resolving Conflict Outside of Court

Conflict can arise in any situation or relationship over just about anything. If the matter is an important one, it may seem like going to court is the only option, but 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 outcome.

This pamphlet will explain some of your options and also explain how to prepare for different conflict resolution processes.

Alternative dispute resolution (ADR) is a name for the different ways that people can solve conflicts outside of court. It allows all of the parties 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 a resolution. Alternative dispute resolution can be **voluntary** (you choose to do it), **court-ordered** (the court orders you to do it), or **mandatory** (you are directed to do it), as in some work situations. Some ADR methods are mediation, collaborative law, negotiation, and arbitration.

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

### Why choose alternative dispute resolution?

Alternative dispute resolution is usually less expensive than going to court. In negotiation, mediation and collaborative law:

- 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 interests;
- the solution is usually more effective, appropriate and more likely to be followed;
- the process is more private than going to court;
- parties can improve their relationships and communication.

If you are considering alternative dispute resolution, ask yourself:

- Am I willing to meet face to face with the other party or parties?
- Am I willing to work toward a win-win 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 alternative 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.

Negotiation, mediation and collaborative law give the parties the most control over the outcome. The parties come to an agreement and put the agreement into action. Arbitration gives the parties the least control over the outcome. In arbitration, the arbitrator hears all of the facts and then makes a judgment. The most appropriate method for you depends on your situation and the circumstances.

In this pamphlet, you will learn about:

- Negotiation;
- Mediation;
- Collaborative law;
- Arbitration;
- Preparing for alternative dispute resolution.

## **Negotiation**

Negotiation is the 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 his or her place.

Everyone uses negotiation in different parts of their life. For example, a child may ask her parent if she 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 having her homework done. Other examples are when you negotiate interest rates with your bank or negotiate with co-workers about when everyone is taking their vacation time.

## **Mediation**

Mediation is a process to resolve conflict between two or more parties. The process is confidential and anything said in mediation can't be used against parties later. Mediation involves you, the other person(s) and a mediator who is neutral. The mediator helps the parties to find a solution by examining underlying issues and finding common ground.

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.

Once the mediator has met with everyone, he or she will think about whether mediation is appropriate in the situation. If the mediator and the parties agree that mediation is a safe and appropriate choice, he or she will then 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 an agreement 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.

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 has to agree to take part. However, there are times when the court may order mediation.

### **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 he or she is “neutral”. This means he or she does not take sides or judge that anyone is right or wrong. If a mediator does not believe he or she can be neutral, he or she will suggest you find a different 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 judgments.

### **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 the parties seek legal advice on an issue before continuing.

Sometimes the parties will hire lawyers to finalize the agreement created during mediation. If each party has the agreement reviewed by their own lawyer before signing, the agreement is more legally binding. Lawyers can also ensure that each party’s rights are protected, that each party understands the agreement, and that the laws of the province are being followed.

If there are no legal inaccuracies and you understand the agreement, 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 family law cases, mediation is not final. For example, in child custody, circumstances can change over time and agreements may need to be mediated again.

You always have the option of re-using mediation to reach a new agreement. Many mediation agreements state that if new conflicts arise, either of you can ask to go to mediation again and the other will attend.

## **Collaborative Law**

In collaborative law, each party works with their own collaborative law lawyer. In a series of meetings, attended by all parties and their lawyers, 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. Parties create solutions that best meet their needs. The goal of collaborative law is an agreement between the parties.

All of the parties must commit to settling all issues without going to court. 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 law process. If the collaborative law process breaks down, none of the collaborative lawyers involved can take the case to court. In other words, each party has to find new lawyers to represent him or her in court.

The collaborative law contract states clearly that what happens in the collaborative law meetings cannot be used as evidence in court. Because of this, you are safe to speak openly during the process about the problems you are facing and to consider creative solutions.

### **What is the role of collaborative lawyers?**

Collaborative lawyers are trained to help parties find common ground, understand each other's concerns and come to an agreement. A collaborative lawyer will represent your interests but also listen to the other parties' interests. The other parties' collaborative lawyers will represent the other parties' interests and will also listen to you. The lawyers help parties exchange information and explore all options. The lawyers can help with drafting legal documents, give legal advice and help the parties understand the law.

## Is an agreement made through collaborative law 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 knowledge. One of the strengths of arbitration is that parties can choose an arbitrator who is trained in different areas of law or technical knowledge. If you cannot agree on an arbitrator, you may each choose one and those arbitrators will choose another to create a panel.

The parties agree in advance to abide by the arbitrator's decision. They participate in a formal hearing where all sides can present evidence and give testimony. Once arbitration is complete, the arbitrator will provide 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** (you decide to go) **court-ordered** or **mandatory** (you are directed to go). Arbitration is most commonly used for resolution of labour (between workers or between workers and employers) and commercial disputes (between companies).

## Finding a Neutral Professional

### How do I choose a neutral professional?

Finding a neutral professional who is a good fit for you, the other parties and the situation can be a challenge. As you contact different professionals, be sure to find out:

- Do they have special training in dispute resolution?
- Do they understand the type of issue I am facing?
- Do I (and the other parties) believe the professional will be able to be impartial and neutral?
- Does the professional have references I can call?
- Did the professional explain the process of the particular dispute resolution method they practice?
- Did the professional ask me questions to see if the particular dispute resolution method is right for us?

Different ADR professionals have different approaches. You can contact different professionals to see who would be a good fit for everyone involved and the situation.

When all parties are satisfied and comfortable with the chosen, neutral professional, you are ready to begin.

## **Mediators**

You can check the yellow pages under “Mediation”. You can visit Family Mediation Canada ([www.fmc.ca](http://www.fmc.ca)) to find a mediator. You can also get a list of mediators from Community Legal Information Association (CLIA) 902-892-0853 or 1-800-240-9798.

If the issue concerns a parenting plan, mediation may be offered free of charge through the Family Court System at 902-368-6928. If the issue concerns family care-giving for those with dementia, mediation is offered through the Alzheimer Society for a fee. The Alzheimer Society can be reached at 902-628-2257 or 1-866-628-2257.

## **Collaborative lawyers**

Call Community Legal Information Association (CLIA) and the Lawyer Referral Service for the names of collaborative lawyers in PEI (1-800-240-9798 or 902-892-0853).

The Association of Collaborative Lawyers of PEI consists of trained collaborative law lawyers who practice independently of one another. Each collaborative lawyer has special training in mediation, negotiation and the collaborative law process of dispute resolution. [www.collaborativelawpei.com](http://www.collaborativelawpei.com)

## **Arbitrators & Negotiators**

If you would like to use arbitration or want to hire a lawyer to negotiate for you, contact large law firms in your area to see if they offer arbitration and negotiation services. You can also use the search engine at Lancaster House ([www.lancasterhouse.com/arbitrators/index.asp](http://www.lancasterhouse.com/arbitrators/index.asp)) or at Atlantic Labour Arbitrators Association ([www.atlanticarbitrators.ca](http://www.atlanticarbitrators.ca)). It is ok to ask what types of conflicts an arbitrator handles.

## **Preparing for Alternative Dispute Resolution**

**Important:** Do you feel you can take part in dispute resolution safely? If there is abuse, violence or power imbalance between parties, dispute resolution may not be appropriate.

When preparing for alternative dispute resolution, it is important that you think carefully about who needs to be involved. You also need to be able to clearly state what issues need to be resolved.

All of the parties need to agree on which dispute resolution process to use and upon a neutral professional to help with that process.

## **Suggestions for participation in mediation and collaborative law**

Each of us responds to conflict in different ways. In mediation and collaborative law, the goal is for parties to work together to come to a resolution. When you collaborate, you find solutions that you can live with and that do not require any party to give in. The goal is a “win-win” solution. While in a mediation or collaborative law process, the focus is on understanding the needs of all the parties and finding creative ways to meet everyone’s needs. It’s common for the solutions to be very different from the opposing “solutions” parties had in the beginning.

Tension and conflict can be reduced or increased based on how we choose to express our thoughts and feelings. When you enter conflict resolution, try using “I-messages”. This is a type of communication where the speaker talks about how he or she feels without blaming the other party or parties.

For example: “You’re a terrible parent. I do all the work when it comes to the kids and you’re too lazy to even pick the kids up from school”. If you express your feelings this way, it is likely that the conflict will get worse. An example of an “I message” is: “When I hear you say you won’t pick the kids up from school, I feel frustrated because I feel like the responsibility of childcare is on my shoulders. I want to talk about ways we can share this responsibility.” By clearly stating the situation, the impact on you, and what you would like in the future, you can help both of you move toward resolution.

Some other tips:

- 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 sole custody. What actually matters to me is that the children have stability and that they feel comfortable in their routine. Sole custody is one way to achieve that, but there are other ways.
- Make sure you speak only for yourself. Bringing other people’s opinions or views into the conversation can be confusing and misleading.
- When the other party speaks, listen closely and try to understand his or her perspective and feelings.
- Remember that over 90% of communication between human beings 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 your interests with someone you trust. Ask this person to “role play” the other party. You may get valuable insight and feedback. Practice your I-messages.

## **How to participate in arbitration**

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

- be courteous;
- be clear;
- avoid rambling;
- prepare all evidence and witnesses you will use;
- be organized;
- follow the rules set out by the arbitrator.

## **What if Alternative Dispute Resolution Fails**

If your attempts to resolve the conflict fail, you may want to discuss using a different form of alternative 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 your last resort.

If you need legal advice, but do not have a lawyer, call the Lawyer Referral Service at 902-892-0853 or 1-800-240-9798. You will receive a short consultation for a small fee.

This information has been prepared by Community Legal Information Association of Prince Edward Island, Inc. It contains general information about the law. It does not contain legal advice. To obtain legal advice, contact a lawyer. If you don't know a lawyer, call the Lawyer Referral Service at 902-892-0853 in the Charlottetown area or 1-800-240-9798 toll-free.

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For more information, you can telephone CLIA at 902-892-0853 or 1-800-240-9798, visit our website at [www.cliapei.ca](http://www.cliapei.ca) or email us at [clia@cliapei.ca](mailto:clia@cliapei.ca). We are also on Facebook.

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