

Alternatives to Going to Court

Going to trial to have a judge hear evidence and make a decision is sometimes the most effective way of resolving a difficult legal dispute. However, it is also one of the slowest and most expensive ways of resolving a dispute.

Therefore, you may want to consider other methods of dispute resolution. This guidebook gives you an overview of dispute resolution alternatives, such as:

- negotiation;
- mediation;
- neutral evaluation; and
- arbitration.

These techniques are often called alternative dispute resolution or “ADR”. However, as only about three percent of lawsuits filed with the court ever reach the stage of going to trial, many are no longer using the term “alternative” when referring to these methods, but instead use the term “appropriate” dispute resolution. This guide will refer to all these methods as “ADR”.

What is ADR?

ADR refers to a number of approaches that allow parties to resolve disputes outside of the court system. These dispute resolution methods can be used to resolve cases faster and cheaper than going

to court. These methods can also be used, however, after an action has been started.

The Dispute Resolution Office is an office of the BC Ministry of Attorney General that promotes dispute resolution. Their website can help you determine if ADR is right for you: see www.ag.gov.bc.ca/dro. According to the Dispute Resolution Office, the main types of dispute resolution are:

Negotiation: Any form of non-facilitated communication in which the opposing parties discuss the steps they could take to resolve their dispute. Negotiation can occur directly between the parties or indirectly through people acting on behalf of the parties, such as lawyers.

Mediation: A process in which a neutral third party, with no decision-making authority, attempts to facilitate a settlement between disputing parties. Mediation is generally a private, voluntary, dispute resolution process.

Neutral evaluation: A process in which parties obtain from an experienced (and possibly expert) neutral third party a non-binding, reasoned evaluation of their case on its merits. The opinion or assessment is expected to have persuasive value, especially because the neutral third party is jointly selected.

This Guidebook provides general information about civil, non-family claims in the Supreme Court of BC. It does not explain the law. Legal advice must come from a lawyer, who can tell you why you should do something in your lawsuit or whether you should take certain actions. Anyone else, such as court registry staff, non-lawyer advocates, other helpers, and this guidebook can only give you legal information about how to do something, such as following certain court procedures.

Standards are in effect for the filing of all Supreme Court civil and Supreme Court family documents, except divorce and probate. When you submit your completed documents, registry staff will check to make sure they meet the minimum standards before accepting them for filing. It is your responsibility to include all other information required by the court and ensure it is correct.

For information about how to get help with your case, see the last page of this document.

Arbitration: Disputes are submitted to a neutral adjudicator who receives evidence and arguments from both parties and renders a binding decision.

Advantages of reaching a voluntary resolution

Reaching a voluntary resolution of your dispute has many advantages:

- It is more flexible because the process can be designed to suit the dispute.
- It allows you to take an active role in resolving your dispute, which means both you and the other party are more likely to be satisfied with the outcome and therefore more likely to comply with the settlement. If you go to trial or arbitration, a judge or arbitrator will reach an independent decision about the case and the parties may not like the result. The winning party often must undertake additional processes to enforce the judgment of the court or decision of the arbitrator.
- It can resolve the problem quickly with less paperwork and legal processes, which results in less expense.
- The process is usually confidential. (Information about your dispute would only be available to media or others by agreement.)
- In mediation, the parties can choose a mediator, who specializes in managing conflict and in helping the parties reach a mutually satisfactory outcome.
- If a relationship between the parties will continue after the dispute is resolved, it is often easier to maintain the relationship if you use mediation, as it is a far less adversarial approach to conflict resolution.

Negotiation

The simplest, most direct method of dispute resolution is negotiation. Negotiation involves ongoing communication, written or verbal, with the other party involved in the dispute. You can do this yourself or with the help of a lawyer or other support person. It is possible that you will be able to reach an agreement that is satisfactory to both of you. It will save you time and money and it avoids the lengthy litigation process.

Before you begin negotiating with the other party, it is a good idea to talk to a lawyer, who can give you some advice on the likely outcome of the dispute if it went to trial, as well as tips on effective negotiation strategies. When negotiating, it is important to have thought about what will likely happen if you do not reach an agreement, including the best possible outcome and the worst possible outcome.

Some key principles of negotiation are:

- Separate the people from the problem. Be critical of the subject matter of the dispute, not of the person with whom you are in a dispute. Personal attacks rarely lead to agreement.
- Focus on interests and needs, not on your position. A position is a party's conclusion about what the final outcome of the dispute should be. An interest relates more to what caused the party to reach the conclusion. Interests are the needs of the parties that must be met to be able to resolve the dispute.
- Generate a variety of options before settling on an agreement.
- Base the agreement on objective criteria, such as scientific findings, professional standards or legal precedent.

Mediation

Mediation is an assisted negotiation. The parties in mediation negotiate their own resolution to the dispute with the help of the mediator, who is trained in conflict management. A mediator helps parties negotiate more effectively by:

- establishing the ground rules for the discussion;
- helping parties identify common ground;
- avoiding irrelevant or unproductive discussions;
- keeping the parties focused on the issues;
- moving the parties from fixed positions;
- helping the parties to listen to each other and to understand the other's frame of reference;
- dealing with power imbalances; and
- helping the parties find a resolution that meets their interests.

When cases go to trial or arbitration, usually one person wins and one person loses. In mediation, however, the goal is to find a solution that meets the needs of everyone involved. The settlement is put in writing and becomes a binding contract.

The BC Mediator Roster Society operates a mediation consultation program, which is designed to help answer your questions about the process. Under the program, a qualified mediator will meet with you for 30 minutes for a nominal fee of \$30. The mediator will help you decide if mediation is suitable to resolve your dispute, and answer all your questions about the process, including how much it will likely cost. You can find out more information on the BC Mediator Roster Society website at: <http://www.mediatebc.com/Find-a-Mediator/Find-a-Mediator.aspx?RosterTypeId=1>

Neutral Evaluation

A neutral evaluation is a process in which parties obtain a non-binding, independent evaluation of their case from a neutral third party, jointly selected by the parties. Depending on the nature of the dispute, the neutral third party could be an expert in a certain field, a lawyer experienced in the type of case, or a retired judge. The evaluation could also be made by a panel of two or three persons.

The opinion or assessment of a neutral legal professional is often persuasive enough to convince the parties to adopt it as their settlement. You may want to talk to a lawyer about this process, and find out how you can find the right person to give you an unbiased opinion about your case.

Arbitration

When a dispute is submitted to arbitration, the arbitrator:

- considers and assesses the evidence presented to him or her by the parties;
- may call his or her own witnesses and retain experts;
- cannot exclude evidence that a court would otherwise admit; and
- orders an award based on the evidence presented that is legally binding on all parties.

Arbitration is generally a private, voluntary method of adjudication; however, the government sometimes requires that certain disputes be submitted to arbitration (e.g., landlord and tenant disputes under the *Residential Tenancy Act*). Contracts sometimes state that disputes about the contract will be resolved by arbitration rather than litigation.

As you move from negotiation (where you negotiate a resolution to your dispute on your own), to mediation (where the mediator assists the parties in reaching a resolution), to arbitration (where the arbitrator makes a binding decision), the process becomes more formal, complicated, and more like litigation in court. For that reason, arbitration is generally more expensive than mediation, which is generally more expensive than negotiation.

The British Columbia Arbitration and Mediation Institute (BCAMI) can provide you with more information about dispute resolution services, and can provide you with a list of qualified arbitrators (and mediators). The BCAMI typically refers clients to arbitration for disputes involving contract interpretation, partnerships, construction, insurance, motor vehicle accidents, condominium issues, payment for goods and services, and commercial landlord and tenant issues.

One advantage of arbitration over litigation is that the parties can choose their decision-maker. Normally the award of an arbitrator is final and binding – and is enforceable as an order of the court.

Resolving a dispute after a court action has been commenced

Even if your dispute reaches the stage where an action has been commenced in the Supreme Court, you can still use ADR to reach a settlement of the dispute. You may want your dispute resolved quickly and less expensively than by proceeding to trial. Or, perhaps you learn that your position and that of the other party are not that far apart. Getting some input from an objective third party at this stage could lead to a quick resolution of your dispute.

If you would like the dispute to be mediated, there is a process called the “Notice to Mediate,” which allows any party to an action in the Supreme Court to compel all other parties to the action to mediate the matters in dispute. This procedure is often used in cases involving motor vehicle accidents and construction disputes.

This procedure is not available in proceedings started by petition, or in cases involving allegations of physical or sexual abuse.

A full explanation of the Notice to Mediate regulations and the procedures you must follow to issue a notice to mediate are available on the Internet at: www.ag.gov.bc.ca/dro. Once on the website, click on the Notice to Mediate link.

Of course, parties can always negotiate a resolution at any time they are willing to do so. The court rules (Rule 9-1) provide a formal procedure to make an offer to settle. If the offer is not accepted and the court later determines that the offer was one that ought reasonably to have been accepted, the court may order costs to be paid or may deprive a party of costs (see note below on costs).

Why it’s important to think about settling

When considering settlement, you need to think about the money you have already spent and the money you will spend if you take your case to trial. Think also about the possibility that you may lose the lawsuit and be ordered to pay a sum of money to the other party in the dispute as well as the other party’s costs.

- Making an offer to settle or agreeing to a settlement does not mean that you are admitting liability in the lawsuit. It simply means that you would like to resolve the lawsuit before it goes to trial.
- Under the Supreme Court Rules, the party who is unsuccessful in a lawsuit is generally ordered to pay the other party’s costs. The costs of the other party are calculated in accordance with the Rules (see Rule 14-1 and Appendix B of the Rules of Court).

- Although costs only cover a portion of the total expenses that someone must pay to take a case to court or defend a case, they can still be very significant.
- In addition to the expense and the risk that you will be ordered to pay costs, you also need to think about the amount of time you will have to spend in the various litigation events.
- Consider also the emotional toll of litigation. You will be doing this work in addition to your regular daily routine. It may take much longer than you expect and there is no guarantee that you will win.

Getting advice from a lawyer about your case can help you figure out what would be a reasonable settlement of your claim. A lawyer may also be able to help you negotiate a settlement. If you can reach an agreement to settle the case, make sure that your settlement is documented so that it ends the dispute. A lawyer can give you advice on how to properly document a settlement so that the settlement agreement cannot be later questioned and reopened. Information about the steps involved in settling a case after a lawsuit has been commenced can be found in the guidebook, *Resolving Your Case Before Trial*.

Get Help With Your Case

Before you start your claim, you should think about resolving your case without going to court (see the guidebook, *Alternatives to Going to Court*). If you do not have a lawyer, you will have to learn about the court system, the law that relates to your case, what you and the other side need to prove, and the possible legal arguments for your case. You will also need to know about the court rules and the court forms that must be used when you bring a dispute to court.

Legal Information Online

All *Guidebooks for Representing Yourself in BC Supreme Court Civil Matters*, along with additional information, videos and resources for Supreme Court family and civil cases are available on the Justice Education Society website: www.SupremeCourtBC.ca

Clicklaw gives you information about many areas of law and free services to help you solve your legal problems: www.Clicklaw.bc.ca

The Supreme Court of BC's website has information for people who are representing themselves in court: http://www.courts.gov.bc.ca/supreme_court/self-represented_litigants/

Legal information services

The Vancouver Justice Access Centre's, Self-help and Information Services includes legal information, education and referral services for Supreme Court family and civil cases. It is located at 290 - 800 Hornby Street in Vancouver (open Monday to Friday): www.SupremeCourtSelfHelp.bc.ca.

For information about other Justice Access Centre services in Vancouver and Nanaimo, see: <http://www2.gov.bc.ca/gov/content/justice/about-bcs-justice-system/jac>

Legal advice

You may be eligible for free (pro bono) legal advice. Access ProBono Society of BC's website gives you information about the legal assistance that is available to you: www.AccessProBono.ca.

Legislation

BC Legislation (statutes), regulations, and Rules of Court can be found at: www.BCLaws.ca.

Court rules and forms

Supreme Court forms can be completed in 3 ways:

1. Completed online and filed at: <https://justice.gov.bc.ca/cso/index.do>
2. Completed online, printed and filed at the registry
3. Printed, completed manually and filed at the registry

Court forms that can be completed online are available at <http://www.supremecourtbc.ca/supreme-court-civil-forms>

Printable court forms are available at: <http://www.supremecourtbc.ca/supreme-court-civil-forms>

Common legal terms

You can find out the meaning of legal terms at: www.SupremeCourtBC.ca/glossary

Family law

For information about family law claims, see: www.FamilyLaw.LSS.bc.ca

This guidebook is part of a series:

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