



## Alternatives to Trial

### RESOLVING DISPUTES OUTSIDE OF COURT

Not every dispute needs to end up with someone being cross-examined in a courtroom. In civil and family matters, parties have the option of settling matters without litigation, for example through **mediation** or a **judicial settlement conference**. These are two examples of **alternative dispute resolution or ADR**.

### Why use alternative dispute resolution?

There are a lot of benefits to settling a dispute outside of the courtroom.

- **Settlement is less expensive.** If you hire a lawyer to take a dispute to trial, it can easily cost upwards of \$20,000.
- **Settlement can be faster.** Court time can be hard to secure, and you may have to wait months or longer for a trial.
- **Settlement is less stressful.** Settlement processes are held in a more private and informal setting and are less adversarial. Using an alternative dispute resolution mechanism can better preserve the relationship between parties, which is particularly important in a family law context.
- **Settlements are more predictable, with more control over the outcome.** Instead of having a judge review material and make a final decision, the parties can direct the process and focus on the details that are important to them.

#### *Some helpful definitions:*

- **Alternative Dispute Resolution (ADR):** Processes that provide a way for parties to come to an agreement outside of a trial.
- **Mediation:** ADR process where a neutral third party assists in resolving conflict through communication and negotiation.
- **Collaborative Law Process:** family law approach in which lawyers work together and with other professionals to achieve a settlement that meets the needs of all parties.
- **Judge-led settlement conferences:** ADR process where a judge assists in settling a dispute, typically through mediation.

### What alternative dispute mechanisms are available in the Yukon?

Some lawyers provide **mediation** services or use **collaborative law processes**. You can inquire with different lawyers or law firms whether they offer these services. The Law Society of Yukon has an [online list](#) of all lawyers practicing in the Yukon.

The Family Law Information Centre (FLIC) has a Family Mediator that works with parents in the process of separation or divorce and will help them resolve issues around child custody and access, support, and asset division. For more information contact: FLIC at 456-6721 or 1-800-661-0408 x6721 or [FLIC@gov.yk.ca](mailto:FLIC@gov.yk.ca).

There are also private **mediation** services available in the Yukon. For more information see the Mediation Yukon website, at [www.mediationyukon.com](http://www.mediationyukon.com). These mediators are professionals who may or may not also be lawyers.

The Yukon Courts provide settlement conferencing options, in which a judge will meet with the parties to try to work towards a resolution of the case. These include **pre-trial conferences** in Small Claims Court, and **case management** or **judicial settlement conferences** in Supreme Court, for both family and civil matters.

*Note:* Even if you decide to use an **alternative dispute resolution** process, you should speak to a lawyer so that you understand your legal rights.

### Judge-led settlement conferences

#### **Small Claims Court**

When a Claim and a Reply have both been filed with the Small Claims Court, the court registry will typically contact the parties to schedule a **pre-trial conference**. Alternatively, it is open to any party to request a **pre-trial conference** through the court registry.

**Pre-trial conferences** are held in a boardroom. Parties will meet with a judge or justice of the peace, who will provide their views about the strengths of the case and try to find areas of agreement. If you are unable to reach an agreement, the judge will provide information about what you will need to establish at trial and about the trial process. If you do have a trial, it will be before a different judge, and your settlement discussions cannot be raised there.

### **Supreme Court**

In a Supreme Court family or civil matter, you will be invited to participate in a **judicial settlement conference** before your matter is set down for trial. Alternatively, once a Statement of Claim has been filed in a case, you can request a **judicial settlement conference** at any time by contacting the Supreme Court Trial Coordinator. The Trial Coordinator will schedule a **case management conference** with a judge to determine what the issues for judicial settlement are.

**Judicial settlement conferences** will either be held in a Supreme Court Boardroom or, sometimes, in a courtroom. A judge in a **judicial settlement conference** will try to find areas of agreement between the parties. Sometimes only some of the issues can be resolved by agreement. If this happens, with the consent of the parties, the issues that are not agreed on can be decided by the judge after he or she hears both sides of the dispute. This is called a **binding judicial settlement conference**. You can also choose to have a trial on issues that cannot be resolved by agreement. If you do have a trial, it will be before a different judge, and your settlement discussions cannot be raised there.

### **How to prepare for a judicial settlement conference**

- Review the material that you have received from the other side. Are there additional documents they have that you want to see? Are there relevant documents that you have that have not been filed with the Court or provided to the other party?
- Think about your goals and interests. What is really important to you and why? What are the things you can compromise on and what can you not settle without?
- Think about what you want to say to the judge – what does he or she need to know about your interests and concerns to help you come to a reasonable settlement or a fair resolution?
- Be reasonable. Try to understand the interests and concerns of the other side, and when you are in the settlement conference, let the judge know that you have thought about these.

### **Agreements**

What happens with an agreement after an **alternative dispute resolution** process depends on whether it was reached with or without the assistance of a judge.

If an agreement is reached in a **judicial settlement** process, it will typically be converted into a judicial order that day. The agreement will be put into a formal document that gets signed by the judge. It may be read out in a courtroom. As a court order, it is **enforceable**. This means that it can be used as the basis for other orders, such as garnishment or seizure orders, or that if someone does not comply with a term they can be taken back to court.

If an agreement is reached without the assistance of a judge, you should review it with a lawyer before signing it. As well, if both parties consent, it is possible to include some of the terms of your agreement in a court order to make it enforceable. To get a court order that includes terms of your agreement, you will need to open a court file, and the agreement will be looked over by a judge before an order is issued.

#### **Information about Small Claims Court, including pre-trials:**

<http://bit.ly/SmClbooks>

Small Claims Court Regulations:

<http://bit.ly/SmClRegs>

#### **Information about Supreme Court Judicial Settlement Conferences:**

<http://bit.ly/JSCYKSC>

<http://bit.ly/YKSCRule37>

#### **General information for self-represented parties:**

<https://representingyourselfcanada.com/>

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