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# Co-Operation or Co-Op(t)eration: Mandatory ADR Case Law/Procedure Review and General Discussion

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**CO-OPERATION OR CO-OP(T)ERATION: MANDATORY ADR**  
**CASE LAW/PROCEDURE REVIEW AND GENERAL DISCUSSION**

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Alternative dispute resolution [“ADR”] in Alberta has had wide support for many years in its many different forms over many different practice areas. For those family law practitioners, we have been using mediation since the early 1980s with many of our senior lawyers having received their training with John Haynes, long considered one of the founders of mediation and a master to watch. That has now further evolved to include arbitration, combination mediation/arbitration, judicial mediations, judicial mediation/arbitrations and collaborative law. Those in civil litigation and corporate commercial areas are likely also very familiar now with mediation and have also made good use of arbitration, which really has only begun to be used extensively in family law in the past decade.

While the concepts are not new, making ADR a mandatory step is relatively new. This original concept was met with some dissension as many saw this as forcing those not willing to settle into wasteful settlement discussions. To the surprise of many, focused settlement discussions, and certainly those that were more interest based than positionally based, began to demonstrate high levels of resolution. Even where complete resolution was not reached, issues were narrowed and the precious Court resources were able to be used more efficiently.

## **THE RULES AND HISTORY**

Alberta was introduced to the new *Rules of Court* in late 2010. Those rules included provisions for mandatory ADR prior to having trial dates set. Note Rules 8.4(3) and 8.5(1)(a) of our *Rules of Court* mandate that in order to request a trial date, you must provide a certificate (see Forms 37 and 38) to confirm the parties have participated in one of the dispute resolution processes delineated at Rule 4.16(1), until that requirement is waived in accordance with Rule 4.16(2). This is further reinforced for family lawyers as Rule 12.34 confirms the rules set out in part 4 apply to family law.

Specifically, Rule 8.4(3) says:

...the parties requesting a trial date must:

(a) Provide

- (i) A certificate that the parties have participated in at least one of the dispute resolution processes described in Rule 4.16(1) or
- (ii) A copy of an order made under Rule 4.16(2) waiving the dispute resolution process requirement.

Rule 8.5(1)(a) provides:

On application by a party in Form 38, the Judge may set a trial date or direct the Court clerk to do so if

(a) The Judge