

Alternative Dispute Resolution Processes

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UPDATE 2011: ALTERNATIVE DISPUTE RESOLUTION PROCESSES

DISPUTE RESOLUTION RULE

Some form of dispute resolution before trial is now required under the new Rules:

Division 3

Dispute Resolution by Agreement

Subdivision 1

Dispute Resolution Processes

Dispute Resolution Processes

4.16(1) The responsibility of the parties to manage their dispute includes good faith participation in one or more of the following dispute resolution processes with respect to all or any part of the action:

- (a) a dispute resolution process in the private or government sectors involving an impartial third person;
- (b) a Court annexed dispute resolution process;
- (c) a judicial dispute resolution process described in rules 4.17 to 4.21 [*Judicial Dispute Resolution*];
- (d) any program or process designated by the Court for the purpose of this rule.

Other than Court annexed dispute resolution processes, there are no “government sector” processes. Private processes will be discussed below. Some creative Counsel have suggested that 4.16(1)(a) might include a Dispute Resolution Officer attempting to mediate child maintenance and/or other family issues, however this only satisfies 4.16(1)(1) if the subsequent trial is limited to these issues.

Court annexed dispute resolution processes will be discussed below. Judicial dispute resolution processes are those described in rules 4.17 to 4.21, which are, essentially, the same as the JDR Guidelines of June 1996. They are prescribed in the new Rules as follows:

Subdivision 2
Judicial Dispute Resolution

Purpose of Judicial Dispute Resolution

4.17 The purpose of this Subdivision [*Judicial Dispute Resolution*] is to provide a party-initiated framework for a judge to actively facilitate a process in which the parties resolve all or part of a claim by agreement.

Judicial Dispute Resolution Arrangement

4.18(1) An arrangement for a judicial dispute resolution process may be made only with the agreement of the participating parties and, before engaging in a judicial dispute resolution process, and subject to the directions of the presiding judge, the participating parties must agree to the extent possible on at least the following ground rules:

- (a) that every party necessary to participate in the process has agreed to do so, unless there is sufficient reason not to have complete agreement;
- (b) rules to be followed in the process, including rules respecting:
 - (i) the nature of the process,
 - (ii) the matters to be the subject of the process,
 - (iii) the manner in which the process will be conducted,
 - (iv) the date on which and the location and time at which the process will occur,
 - (v) the role of the judge and any outcome expected of that role,
 - (vi) any practice or procedure related to the process, including exchange of materials, before, at or after the process,
 - (vii) who will participate in the process, which must include persons who have authority to agree on a resolution of the dispute, unless otherwise agreed, and
 - (viii) any other matter appropriate to the process, the parties or to the dispute.

(2) The parties who agree on the proposed judicial dispute resolution process are entitled to participate in the process.

(3) The parties to a proposed judicial dispute resolution process may request that a judge named by the parties participate in the process.