

Alternatives to Court

FACT SHEET

This fact sheet provides information on alternative dispute resolution options to help parties in a family law matter come to an agreement without going to court.

CAUTION! Alternative Dispute Resolution is based on equality. It is not counseling, and it is not appropriate where violence or another form of power imbalance is a factor. If either of the partners in a relationship is unable to speak about their personal views or is afraid for their safety or that of their children, a more formal approach to resolving issues may be better.

Working it Out

Not everyone goes to court to work out the details of a divorce or separation. It is possible to resolve the legal issues of custody, access, child support, spousal support and division of property and debt without ever going to court or even making an application to court. You don't need to be friends with the other person to work out your legal issues. What is important is that you both have a common goal, such as finding the best way to parent your children after separation.

Whenever possible, work together to try to come to an agreement before going to court. When you have settled as much as you can with the other party outside of court, you are more likely to get an order that will work in the best interests of your changing family.

Alternative dispute resolution methods can help you to come to an agreement on your family law issues.

Alternative Dispute Resolution

Alternative dispute resolution is a term that refers to ways to settle disputes or differences without involving the courts. Direct negotiation, mediation and family law case conferences are all alternative dispute resolution methods.

Family law issues are adult problems. Do not involve your children in your negotiations with the other party. Always communicate with the other parent directly, never through the children.

Direct Negotiation

Direct negotiation involves talking directly with the other person to find solutions to various legal issues. This could take place wherever both of you are comfortable talking.

Mediation

In family law matters, mediation involves a neutral third party (mediator) who assists you and the other person in a family dispute to come to an agreement. Mediators help the parties identify and clarify their needs and interests. For more information on mediation and a list of mediators in the Yukon, check the website for Mediation Yukon at mediationyukon.com.

Family Law Case Conferences

If you start a court proceeding in a family matter, the court requires that a family law case conference be held with a judge. (See Rule 63 on the Supreme Court page, Rules and Forms, at www.yukoncourts.ca.) The purpose of the family law case conference is to make sure that all parties are aware of the alternative dispute resolution methods that are available and to talk about solutions for the particular case.

A Combined Approach

You can also use a combination of methods to resolve family issues. Some people, for example, use mediation to come to an agreement for custody and access but they go to a lawyer or to court to reach a settlement on how to divide the property. Other people ask a lawyer for advice at the beginning of the separation and to draft a consent order at the end of the process, but they do all the negotiation in the middle of the process themselves.

When Both Parties Agree

Once you and the other party have reached an agreement, you can file a consent order or a separation agreement with the court. For more information on consent orders, contact the Family Law Information Centre.

Helpful Hints on Using Alternative Dispute Resolution Methods

- Understand the law when negotiating a legal agreement. Do your research.
- Be objective. When you can't agree, think about what a judge would decide based upon the law.
- Stay on topic. Focus on the issues today, not disagreements from the past.
- Find a way to communicate that works for you, whether that's in a neutral place, over the telephone or by email.
- Stay calm. Separation can be a very emotional experience. Staying calm will help you to communicate effectively and make thoughtful decisions.
- Don't forget to listen! Take the time to hear what the other person is saying.

FOR MORE INFORMATION, CONTACT THE FAMILY LAW INFORMATION CENTRE

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This fact sheet is produced with the financial support of the Department of Justice Canada.

