

The Alberta Rules of Court

Dispute Resolution



You Must Try to Work It Out!

According to the new *Alberta Rules of Court*, before you can get a trial date for a Court of Queen's Bench civil action, you must try to resolve your case using certain court-approved dispute resolution processes. This is mandatory. In other words, before you can ask for your day in court, you must try to settle your dispute **out** of court. This is also known as Dispute Resolution.



Legal
Resource
Centre
of Alberta

Phone: 780-451-8764
201, 10350 -124 ST
Edmonton, AB T5N 3V9
www.legalresourcecentre.ca

Why Must You do This?

The court system is complicated and expensive. It can also take a very long time from starting your case to getting to trial. If the people involved in the dispute (called “the parties”) can meet, exchange information, and work towards a resolution, with the assistance of professionals trained to help, everyone benefits. And now, the Rules make it mandatory. Specifically, the new Rules state that one of the responsibilities of the parties is to: “*consider and engage in one or more dispute resolution processes... unless the Court waives this requirement.*” (Rule 4.1 (e)) The Rules also state that the Clerk of the Court of Queen’s Bench cannot schedule a trial date in a civil law matter until the parties have engaged in a dispute resolution process. (Rule 8.4(3))

What Are Your Options?

The *Alberta Rules of Court* (Rule 4.16 (1)) say that you may use:

- a dispute resolution process in the private or government sectors involving an impartial third person as a mediator;
- a judicial dispute resolution process (JDR);
- a court-annexed dispute resolution process; or
- any program or process designated by the Court.

In some rare circumstances, you may not be required to try a dispute resolution process before trial. However, to do this, you must apply to a judge for an exemption. The judge may grant such an exemption if:

- you tried dispute resolution before your court case started, and you, the other side, and the judge believe that a further dispute resolution process would not be beneficial;
- the nature of your claim is not one that is likely to result in an agreement;
- there is a compelling reason why dispute resolution should not be attempted by the parties;
- the judge is satisfied that engaging in a dispute resolution process would not be successful; or
- the dispute is of such a nature that a decision by a judge is necessary or desirable.

Please note: Rule 4.16 is very new. In the future more options will likely become available, especially in the “court-annexed” category. This booklet discusses some of the options that are as of October 2011.

1. Private Mediation Services

In a private mediation, the persons involved in a dispute hire a mediator to assist them. Mediators are impartial persons who are trained in dispute resolution. They help you discuss the problem with the opposing side, with the goal of helping you find a solution. They do



not have the power to order you to do anything or to impose a solution on you. The mediator you select must be acceptable to all of the parties to the dispute. Once you hire a mediator, then all parties will decide the terms and conditions for your dispute resolution process. The parties must pay for the mediator’s services themselves. You should all agree about how the mediator will be paid before you hire one.

There are several professional associations that can help you choose a mediator. They include:

- the ADR Institute of Canada (www.adrcanada.com);
- The Alberta Arbitration and Mediation Society (www.aams.ab.ca) phone toll-free: 1-800-232-7214; and
- Alberta Family Mediation Society (www.afms.ca) phone toll-free: 1-877-233-0143.

2. Judicial Dispute Resolution

The judicial dispute resolution process (JDR) is set out in the *Alberta Rules of Court* 4.17 to 4.21. JDRs occur when you and the other parties to a civil case meet with a judge, and the judge helps you reach an agreement to resolve all or part of your dispute.

Getting Started

You or one of the other parties involved in the dispute must begin the JDR process. Before a judge will undertake this process, all parties must agree, as much as they can, that every person necessary to participate in the JDR will give it a try. If any person has a good reason not to participate, they must ask a judge for permission to be left out. All participants must agree to the rules to be followed, including:

- the nature of the process;
- the matters to be discussed and the way the JDR will be conducted;
- the date, time and location for the JDR;
- the role of the judge and what the parties expect the judge's role to be;
- procedures to be used before, during and after the JDR, such as the exchange of materials;
- who will participate; and
- any other matters relevant to the JDR process, the parties, or the dispute.

Selecting a Judge

You and the other parties may request a judge of your choice. If you cannot agree on a judge, or the judge you select is not available, then you may contact the JDR co-ordinator, who will put the case on a wait list for the first opportunity to obtain a date and a judge willing to assist. The dates and the judges who are available for judicial dispute resolutions for Edmonton and Calgary can be found at www.albertacourts.ca/CourtofQueensBench/Assignments/tabid/318/Default.aspx.

This site also shows the types of JDRs that individual judges will undertake. If you do not live in Edmonton or Calgary, contact the JDR co-ordinator in the judicial district where you filed the papers to begin your case, and ask for information.

Confidentiality

The JDR process is confidential. All parties must agree that anything that they say or documents that they make for the purposes of the JDR are confidential and are made “without prejudice”, meaning that they **cannot** be used as evidence in any later court proceedings concerning this dispute or any other dispute. Any papers or documents that are created for the purposes of the JDR that are in the possession of the judge or the Clerk of the Court must either be returned to you or destroyed, except for a court order or agreement which is made to resolve the dispute. The judge who takes part in the JDR cannot hear any following applications or preside at the trial, without the written agreement of all of the parties.

Resolution

If your JDR process is successful, the judge will sign an order or judgment, consented to by all of the parties, to resolve the dispute. Alternatively, you and the other participants may write an agreement that sets out your resolution.



Processes Designated by the Court

Please note that it is not yet clear if these programs will meet the dispute resolution requirements of Rule 4.16. Talk to your lawyer. If you are representing yourself, talk to the trial co-ordinator at the courthouse for more information.

A. Roster Mediation Service

As of October 2011, there are no officially “court-annexed” mediation programs in the Court of Queen’s Bench. In the future, there may be. In the meantime, however, Alberta Justice, a department of the Government of Alberta, maintains an online roster of mediators who are available throughout the province to mediate civil court cases. This is called the “Roster Mediation Service”. If you and the other parties in the dispute select one of these mediators, you must pay for their services yourselves. The Roster Mediation Service allows mediators to list their areas of expertise, such as Aboriginal and cross-cultural matters, landlord and tenant disputes, and community and neighbourhood disputes, among many others. All mediators on the Alberta Justice Roster are trained and experienced in mediation, agree to follow a Code of Conduct and Ethics, and they carry insurance coverage. The Queen’s Bench Mediation Program Roster is available at www.albertacourts.ab.ca/CourtofQueensBench/CivilMediation/RosterMediators/tabid/75/Default.aspx.

Information on mediation and the mediation roster is also available through Mediation Co-ordinators found at the following courthouses:
Grande Prairie: 780-833-4202

Edmonton:	780-415-2701	Lethbridge:	403-388-3102
Red Deer:	403-755-1437	Medicine Hat:	403-529 8716
Calgary:	403-297-5536	Wetaskiwin:	403-755-1437

B. Other Programs

There are other court-related services that may be able to assist you if your dispute involves family law issues such as custody, child or spousal support, or access. Some of these services, listed below, are voluntary, while some are mandatory under other Rules of Court. Using one of these services **may** meet the requirement to try a dispute resolution process under Rule 4.16 if any subsequent trial deals with only custody, spousal or child support or access. Ask your lawyer or the trial coordinator for more information about this.

i) Family Justice Services: Family Mediation

Family Mediation Services can assist you in resolving child-related issues. A mediator can help resolve issues such as child and/or spousal support, parenting time, communication issues, and minor issues related to the division of property. Both parties must agree to take part. Lawyers, family court counselors, judges and the parties themselves may request a referral to this program. If you have a gross annual income of less than \$40,000 a year, and a child or children under the age of 18, then you may be able to use this service for free. For more information, visit: http://justice.alberta.ca/programs_services/mediation/Pages/mediation_services.aspx

Calgary: 403-297-6981 Edmonton: 780-427-8329
Elsewhere in Alberta: 403-340-7187

ii) Dispute Resolution Officer Project (Calgary)

The Dispute Resolution Officer Project operates only in the Judicial District of Calgary. If you are asking for interim child support or to change an existing child support order, it is **mandatory** that you meet with a Dispute Resolution Officer (DRO). A DRO is a lawyer trained and knowledgeable in family law. The parents, and their lawyers, if they are represented by lawyers, attend. The DRO meets with the parties to try to negotiate a settlement and can also give directions about the disclosure of information by both sides.

At the end of the meeting, the DRO writes a report for the court file, or may draft a consent order if the parties reach an agreement. The consent order will be sent to a judge to review and sign. For more information, visit: www.albertacourts.ab.ca/CourtofQueensBench/DisputeResolutionProject/tabid.89/Default.aspx.

Calgary: 403-297-6981

iii) Child Support Resolution Project (Edmonton)

The Child Support Resolution (CSR) project operates only in the Judicial District of Edmonton, and is **mandatory** for persons who are representing themselves and are asking for interim child support under the *Divorce Act*, to change an existing child support order and may be mandatory in other cases. If you have questions about whether a meeting with a CSR officer is mandatory in your case, contact the CSR clerk at 780-427-1907. A CSR officer meets with the parties to try to negotiate a settlement and may give directions about the disclosure of further financial information by the parties. A CSR officer is a lawyer trained and knowledgeable in family law.

At the end of the meeting, the CSR officer writes a report for the court file and may draft a consent order if the parties reach an agreement. The consent order will be sent to a judge to review and sign. For more information, visit: www.albertacourts.ab.ca/CourtofQueensBench/DisputeResolutionProject/tabid89/Default.aspx.

Where can you find the Rules of Court?

You can find the *Alberta Rules of Court* by visiting the website of the Alberta Queen's Printer at www.qp.alberta.ca. Click on Laws Online/Catalogue and enter Alberta Rules of Court. Copies of the Rules of Court are also available at public libraries and at libraries in courthouses around the province.

The Rules are also available at www.albertacourts.ab.ca/rulesofcourt.aspx.

Conclusion

The new *Alberta Rules of Court* state that it is the responsibility of the parties to manage their dispute by engaging in good faith participation in a dispute resolution process. This booklet outlines some of these processes. Talk to your lawyer, or if you are representing yourself, the trial co-ordinator's office to obtain more information, so that you can make informed choices. This may help you to settle your case in the most timely and cost-effective way.