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# Do I have to? Mandatory ADR in Family Law Matters

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# Why require family dispute resolution (ADR)?



"It started with a trial separation."  
Then it went straight to court."



# Why require family dispute resolution?

- Large number of self-represented parties
- Access to Justice Reports
- Separation as an emotional issue with legal aspects, not a legal issue with emotional aspects
- Exposure to or involvement in persistent parental conflict negatively affects the resiliency of kids

# Why require family dispute resolution?

## **10 Reasons to Keep Out of Court:**

1. Focus is on resolution, not battle
2. Create win-win agreements
3. Avoid unpredictable outcomes
4. Costs far less than litigation
5. Go at your own pace
6. Improve communication
7. Preserve relationships
8. Maintain your privacy
9. Tell your story and be heard
10. Less stress

# Amendments to *the Queen's Bench Act*

## “Family dispute resolution

44.01(1) In this section:

**‘family dispute resolution’** means a process used by parties to an application to which this section applies to attempt to resolve one or more of the disputed issues, and includes:

- (a) the services of any of the following persons:
  - (i) a family mediator;
  - (ii) a family arbitrator as defined in section 2 of *The Arbitration Act, 1992*;
  - (iii) a parenting coordinator as defined in section 21.1 of *The Children's Law Act, 1997*;
- (b) other collaborative law services; and
- (c) any other process or service prescribed in the regulations;  
(« *processus de résolution des conflits familiaux* »)

# Amendments to *the Queen's Bench Act*

(3) Subject to subsections (6) to (8), if the parties to an application to which this section applies have not already done so, after the close of pleadings the parties must:

- (a) participate in family dispute resolution; and
- (b) file with the court a certificate of participation in family dispute resolution, in the form prescribed in the regulations.

# *Amendments to the Queen's Bench Act. Cont.*

- Amending legislation was passed and received Royal Assent May 2018
- The amendments not yet proclaimed. Will be proclaimed once regulations are prepared



# ADR Service providers

- There are a range of family dispute resolution services.
  - Public and private mediation
  - Collaborative law
  - Parent Coordination
  - Family Arbitration

# ADR Service providers

- Qualifications of services providers will be set out in Regulations – consultation with stakeholders conducted in spring 2019
- Grandparent clause for each category of service provider

# Family Mediators

- Attended mediation training
- Family law training (if not a lawyer)
- Membership in organization
- Experience in family related issues
- 14 hours training in Interpersonal Violence
- Maintain professional liability insurance
- Ongoing CPD
- Includes both public and private mediators

# Collaborative Law Services

- Taken Collaborative Law Training
- Member of Collaborative Professionals of Sask, and a lawyer
- 14 hours training in Interpersonal Violence
- Ongoing CPD
- Parties using collaborative law must enter into a participation agreement

# Parent Coordinator

- Be a member of an organization
- At least 5 years experience in family-related practice
- 40 hours of Parent coordination training
- 14 hours training in interpersonal violence
- 14 hours training in family law if the PC is not a lawyer
- Ongoing CPD
- Maintain professional liability insurance

# Parent Coordinator

- Regulations will also set out extent of PC's authority to interpret orders or agreements:
  - Child's daily routine including parenting time
  - Education including any special needs
  - Participation in extra-curricular activities and events
  - Temporary care of the child
  - Medical, dental or other health care
  - Discipline
  - Transportation and exchange relating to parenting time
  - Holiday/ vacation, and any associated travel

# Family Arbitrator

- Member of the Law Society of SK
- At least 10 years experience in family law related practice
- 40 hours of arbitration training
- 14 hours training in interpersonal violence
- Ongoing CPD
- Enter into an arbitration agreement with the parties
- Must apply SK family legislation

# ADR Service providers

- How will the public know who is a qualified service provider?
  - The Ministry of Justice will maintain a list of family mediators, parent coordinators, and family arbitrators, which will likely be available on-line.
  - Will link to on-line list of collaborative law professionals



# When do parties need to attend ADR?

- Will operate similarly to parent education:
  - If you apply to court and agree on everything, ie, just applying for divorce, don't need to attend ADR
  - Ideally parties would attempt ADR before paying to open a court file. If they haven't, they need to attempt ADR at the close of pleadings
  - “close of pleadings” as defined in the Queen's Bench Regulations

# When do parties need to attend ADR?

- Participation in an ADR process will generate a Certificate (which will be a prescribed form)
- Completion of ADR prior to Regs coming into force **may** count – If party applies to court for an exemption and, for example, attaches a copy of a collaborative law agreement signed 5 months prior to requirement coming into force, and the process has now failed, court may grant an exception under s.44.01(6)(d)
- Section 44.01(6)(d) proof of attempt to engage other party

# Exemptions

- Certain exemptions – situations of interpersonal violence, child abduction, urgency
  - Parties can ask the court for an exemption at the same time they are requesting any other *ex parte* relief
- Applicant may apply to the court *ex parte* for an exemption, at the same time as applying for substantive relief

# Failure to Participate

(4) Subject to subsection (6), a party who fails to participate in family dispute resolution is prohibited from:

- (a) taking any further step in the proceeding; and
- (b) filing with the court any further application for relief.

(5) If a party fails to participate in family dispute resolution, the court, on application, may:

- (a) strike out the party's pleadings or other documents;
- (b) refuse to allow the party to make submissions on an application or at trial;
- (c) order the party to participate in family dispute resolution; or
- (d) order costs or any other relief.

# Participate in good faith?

- People need to “**participate**” in the family dispute resolution process. How do we prepare them to participate?



*Judith sensed that the mediation would take more time than the half-day that it had been scheduled for.*

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# Next Steps

- Regulations to be proclaimed
- Pilot location
- Time to ensure there are service providers who meet the requirements in the regulations

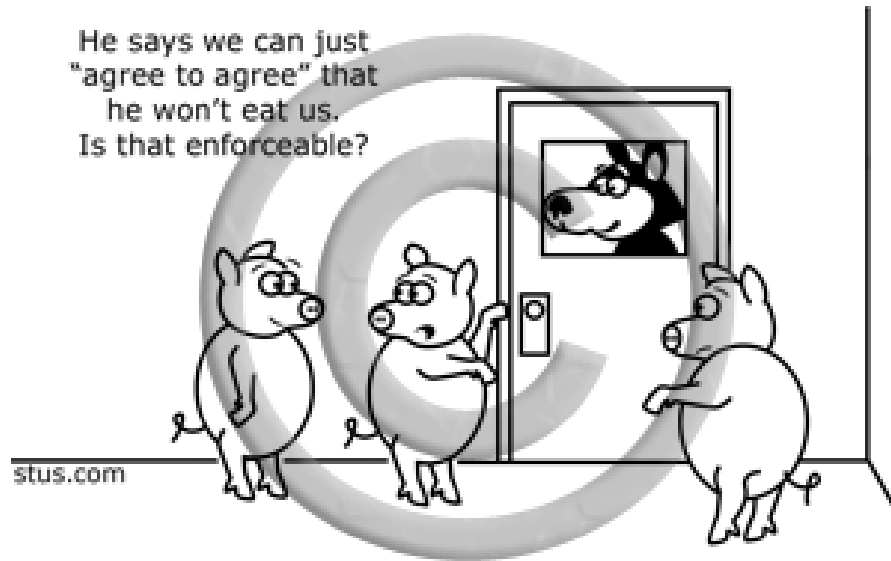
# Questions?



I think you misinterpreted my offer to  
"settle this out of court."



He says we can just  
"agree to agree" that  
he won't eat us.  
Is that enforceable?



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