

What to Expect when Engaging the Family Dispute Resolution Process

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PART I

Background

PART I - Background on Family Dispute Resolution (FDR)...

- What is **Mandatory Family Dispute Resolution**?
- **Options** include:
 - Family Mediation
 - Family Arbitration
 - Parenting Coordination
 - Collaborative Law Process
- Mandatory Family Dispute Resolution went **province-wide as of July 2022**.

What is “Participation”?

E.B. v. M.B. 2021 SKQB 277

[12] ... Family law litigants must “participate” in the process which implies that something more than simply “attending” is required of them.

[14] It follows that participating in a dispute resolution process as required by [s. 44.01](#) of the [QBA](#) requires something more than merely attending and ... would require the parties **attend, share information and provide settlement options and/or reasons why an option is unacceptable.**

Background continued...

- **Why Family Dispute Resolution?**

Section 7.3, Divorce Act

7.3 To the extent that it is appropriate to do so, the parties to a proceeding shall try to resolve the matters that may be the subject of an order under this Act through a family dispute resolution process.

- **Children's Law Act, 1997**

Obligations of lawyer

11(1) It is the duty of every lawyer who undertakes to act on behalf of an applicant or respondent in an application pursuant to this Part or Part III or IV to:

(a) discuss with the applicant or respondent the advisability of using alternative methods to resolve the matters that are the subject of the application; and

(b) inform the applicant or respondent of the collaborative law services and mediation services known to him or her that might be able to assist the parties in resolving those matters.

Background continued...

- **Law Society Code of Professional Conduct - Section 3.2-4**

Encouraging Compromise or Settlement

3.2-4 A Lawyer must advise and encourage a client to compromise or settle a dispute whenever it is possible to do so on a reasonable basis and must discourage the client from commencing or continuing useless legal proceedings.

Commentary

[1] A lawyer should consider the use of alternative dispute resolution (ADR) when appropriate, inform the client of ADR options and, if so instructed, take steps to pursue these options.

Court Support for Family Dispute Resolution

- ***Cabiles v Erbach, 2021 SKQB 129 (at para 36)***

[36] The object of the legislation here is to assist parties in efforts to work out solutions collaboratively and begin down the road towards cooperation.... Early family dispute resolution is a process intended to begin the journey towards civility sooner rather than later.

Court Support for Family Dispute Resolution

- ***S.L.L. v D.B.L.*, 2022 SKKB 277**

[39] As observed by Justice Haaf in *Anaquod v McLean*, 2022 SKQB 134, there is a trend in family law away from an adversarial culture of litigation to a culture of negotiation. *The Queen's Bench Act, 1998* as per s. 44.01 requires parties, to the extent that it is appropriate to do so, to try to resolve family law disputes through an alternative dispute process and outside the court structure. One of the meritorious goals of these legislative changes is to reduce trauma to children by reducing the conflict between the parties who are their parents.

- **Judicial Case Conferences (JCC Process)** – Saskatoon & Regina Judicial Centres

PART II

Supporting your Client through Family Dispute Resolution

Supporting Clients with Family Dispute Resolution

Things to Consider:

- Nature of the dispute
- Client budget – low-income options
- Privacy
- Expediency
- Ongoing support
- Level of legal support
- Skillset of service provider
- Level of conflict
- Service provider personality

FDR Service Providers

- Family Mediators
- Family Arbitrators
- Parenting Coordinators
- Collaborative Law Lawyers

Other Professionals

- Counsellors
- Tax experts
- Financial experts

Locating a Family Dispute Resolution Professional

- Lists available – example – [Recognized Family Mediators](#)
- Get to know who is on the list, build relationship, referrals, connections
- Provide clients and opposing party with range of options
- Encourage clients to participate – “attend, share information and provide settlement options and/or reasons why an option is unacceptable”
- If questions, lawyers and clients are free to contact

The Early Family Resolution Office

Phone 306-787-0439

Toll Free 1-833-787-0439

Email earlyfamilyresolution@gov.sk.ca

Exemptions

Family dispute Resolution - Section 44.01

(6) On an application made with or without notice, the court...may exempt a party from the requirement to participate in family dispute resolution pursuant to this section if:

- (a) there is a restraining order between the parties;
- (b) a child of the parties has been kidnapped or abducted by one of the parties;
- (c) there is a history of interpersonal violence between the parties;
- (d) the party provides proof of attempts to engage the other party in family dispute resolution; or
- (e) in the opinion of the person hearing the application, there are extraordinary circumstances.

- ***E.B v M.B 2021 SKQB 277*** – extraordinary circumstance - Parties had participated and mediator had did not sign the Certificate of Participation. **EXEMPTED**
- ***Anaquod v Mclean 2022 SKQB 134*** - Violence will not automatically lead to an exemption. Court will consider if the violence creates a power imbalance. **NOT EXEMPTED**
- ***SLL v DBL 2022 SKKB 277*** - The level/presence of violence resulted in exemption. **EXEMPTED**
- ***Lisitza v Herle (Lisitza) 2022 SKQB 71*** - child support payments had stopped completely, court ordered a payment before sending parties to FDR. **PARTIAL EXEMPTION**

How Lawyers can help before FDR

- Manage client expectations - (fees, process, next steps, etc.)
- Help client understand the law and their responsibilities
- Understanding the purpose of FDR, and the role of service provider
 - Example if Family Mediation – explain confidentiality and without prejudice negotiations
- Risk analysis - strength and weakness of case, costs, time, other options.
- Managing emotions/triggers – planning for how to deal with conflict.
- Prepare materials: mediation brief, common statement of facts, financial documents, etc.
- Encourage client to “participate” to lean into the process.
- Consider if other parties should be recommended as part of the process
- Empower Clients

“Be a problem solver, not a problem creator”

How Lawyers can help during FDR

- Be available to take a call, pop into virtual meeting, etc.
- Manage client expectations.
- Consider whether there is value in attending - Empower clients where possible.
- Connect with the mediator or service provider.

How Lawyers can help after FDR

- Drafting and finalizing agreements
- Filing joint applications
- Receive Certificate of Participation from Service Provider
- Review mediation summaries

PART III

What to Expect from your FDR Service Provider

Service Providers

- Should be able to explain to clients/lawyers:
 - Their experience – training with family conflict, high conflict, and interpersonal violence.
 - Costs for service
 - What the process looks like
 - Timeline for service
 - What “Participation” looks like, and when Certificate of Participation will be issued. Whether lawyers will be cc’d.
 - Mode of meetings: virtual/in-person/hybrid
 - Ability to adjust, accommodate process

Example Mediation Process

- Parties contact mediator
- Intake form - basic client information
- Assessment of appropriate mediator
- Fees (shared by the parties)
- Mediation agreement signed by parties
- Individual Intakes – screening tool used for DV
- Joint session
- Mediation Summary
- Certificate of Participation issued – if participated

PART IV

Myths/Troubleshooting

Myths

- This is expensive
- This does not help families resolve issues
- FDR creates delay
- Mediators give legal advice

Troubleshooting: who do I call if I have an issue with a Service Provider?

- Contact the service provider directly
- Contact associated body: Law Society, Alternative Dispute Resolution Saskatchewan, Family Mediation Canada, etc.
- Contact the Early Family Resolution Office

Questions