Tip Sheet

Multiple Chemical Sensitivity (MCS)

Alternative Dispute Resolution

Empowering Community and Removal of Barriers (ECRoB)

What is a settlement agreement?

A settlement is a resolution to a dispute that is reached between the parties without going to court. A settlement involves the parties reaching an agreement on the terms and conditions of the resolution, which may include payment of damages, agreement to specific actions, or release from future liability.

Settlements can be reached through various forms of alternative dispute resolution (ADR), such as negotiation, mediation, or arbitration. Settlements can also be reached before or during the court process, such as through pre-trial conferences or court-supervised negotiations. Settlements are attractive because they allow the parties to resolve their dispute quickly, without the time and expense of a court case. Additionally, settlements are confidential, which can protect the parties' privacy and reputation.

It's worth noting that settlements are not always binding, and that the terms of the settlement must be agreed upon by all parties. If a party breaches the terms of the settlement, the other party may have legal remedies, such as the right to go back to court to enforce the settlement.

It's always recommended to consult with a lawyer for any legal advice before engaging in any form of settlement or alternative dispute resolution process.

What are partial settlements agreements?

A partial settlement is a resolution to a dispute that resolves some, but not all, of the issues between the parties. It occurs when the parties agree to settle some aspects of their dispute, while leaving other issues unresolved.
Partial settlements are attractive because they allow the parties to resolve some of the issues in their dispute quickly, without the time and expense of a full court case. Additionally, partial settlements can help to build momentum towards a full resolution of the dispute, as the parties may be more likely to reach a settlement if they have already resolved some issues.

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https://mcmillan.ca/insights/the-essential-guide-to-settlement-in-canada/

https://ca.practicallaw.thomsonreuters.com/4-381-9717?transitionType=Default&contextData=(sc.Default)&firstPage=true

Introduction

While traditional legal processes may come to mind when thinking about legal recourse, there are situations that may benefit from exploring alternative dispute resolution (ADR) options before resorting to the court system or administrative tribunals. ADR refers to a range of dispute resolution methods that can be used instead of, or in addition to, going to court. These processes can often be faster, less formal, and less expensive than going to court, and they can also help to preserve relationships between the parties. It's worth noting that ADR may not be appropriate in all contexts, and the appropriateness of this option will depend on a number of factors including what the person with a disability wishes to achieve. In some cases, ADR can be more expensive than going to a human rights tribunal which offers free mediation, so it's important to weigh the costs and benefits. Additionally, ADR is also available within administrative tribunal processes, providing another option for resolving disputes. ADR processes can also be used individually or in combination.

Some common types of ADR include:

● Negotiation: A process in which the parties engaged in a dispute engage in direct communication and discussion in order to reach a mutually acceptable resolution.

● Mediation: A process in which a neutral third party, called a mediator, facilitates communication between the parties and helps them to reach a mutually acceptable resolution.

● Arbitration: A process in which a neutral third party, called an arbitrator, hears and decides on the dispute.

The purpose of ADR is to encourage the parties to resolve their dispute without the need for a trial, and to narrow the issues in dispute if a trial is necessary. In provinces like Quebec, Ontario and British Columbia, consideration of ADR is mandatory, whereas, in other provinces, such as Alberta, it is simply encouraged. It is always best to check the specific rules and regulations of the province or territory where the case is

being held. To recapitulate, there are three main ways for individuals to resolve a dispute.

First, they can attempt to settle it themselves by engaging in negotiations and discussing potential solutions. Second, they can seek the assistance of a neutral third party to help facilitate a resolution through mediation. And finally, they can ask a third party to make a binding decision on the matter through either arbitration or the court system.

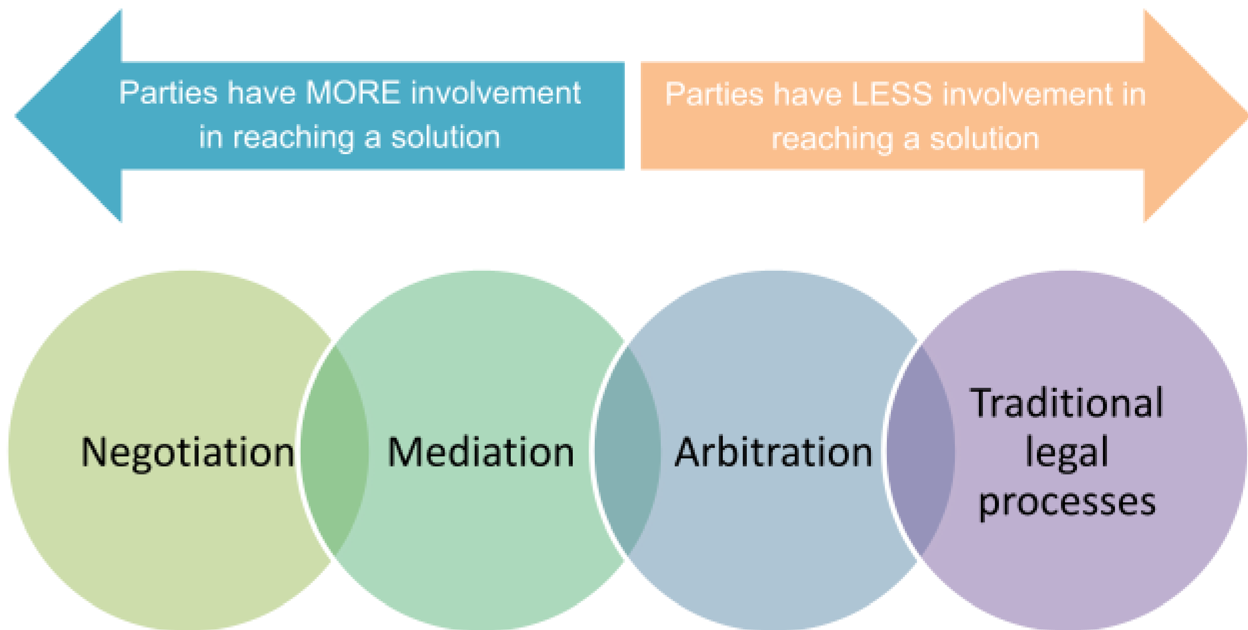
1. They can attempt to settle it themselves by engaging in negotiations and discussing potential solutions.
2. They can seek the assistance of a neutral third party to help facilitate a resolution through mediation.
3. They can ask a third party to make a binding decision on the matter through either arbitration or the court system.

It is important to note that ADR is a voluntary process that must be mutually agreed upon by all parties, whether it be by willingness or by contract. In other words, if one party wants to use ADR and the other does not, the ADR process will not proceed. However, it's important to note that if a party agrees to participate in ADR, they are usually bound by the terms of the ADR agreement. This may include conditions such as confidentiality and the binding nature of any settlements reached through ADR. If a particular ADR method is unsuccessful, other ADR methods may be used (with the exception of arbitration). If the particular option is withdrawn before a settlement is reached, pursuing resolution through the court system remains an option, unless parties have previously signed a non-litigation agreement.

Parties can not opt for ADR in cases where:
● the Government wants the case to set a precedent;
● a key element of a statute's interpretation is in dispute;
● an important question of Government policy is at issue;
● the Government requires a full public record of proceedings;
● the dispute involves a public law matter, such as the Charter or Constitution.

When deciding on the most suitable dispute resolution process for your situation, it is important to take certain factors into consideration. For instance, if there is an imbalance

of power between the parties or if one party feels intimidated or threatened, processes such as negotiation or mediation may not result in a fair resolution. If you have any concerns about which dispute resolution method is right for you, it is advisable to seek guidance from someone knowledgeable in the field. Every conflict is unique, so obtaining legal advice tailored to your specific circumstances is important.



The following subsections provide a more detailed explanation of each of the common types of alternative dispute resolution (ADR). These include negotiation, mediation, and arbitration.

1. Negotiation

Negotiation is a type of alternative dispute resolution (ADR) where parties in a disagreement communicate directly to reach a mutually beneficial solution. Through discussion, compromise, and concessions, parties can find a resolution that meets their

needs and interests. The outcome of negotiations is not binding and parties are free to accept or reject it and can withdraw at any time during the process.

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Negotiation can occur informally through direct communication or more formally through structured conferences. It can be used to resolve various disputes, including commercial, family, employment, and personal injury matters.

Negotiation and mediation are similar, but the key difference is the involvement of a neutral third party. In mediation, a mediator facilitates communication between parties to help reach a resolution. In negotiation, parties communicate and resolve their dispute without a neutral third party. In ADR, lawyers are not considered neutral third parties, while mediators and arbitrators are.

Negotiation can occur or without the assistance of lawyers. Parties may choose to have their lawyers present during negotiations to represent their interests. If lawyers are involved in the negotiation process, they can:

- Advise the client on the legal issues in the dispute and the strengths and weaknesses of the client's position.

- Negotiate on behalf of the client, bringing settlement offers to the client for review.

Negotiation offers several advantages, including flexibility, informality, privacy, and control over the process and outcome. However, it also has potential disadvantages such as one party's unwillingness to negotiate, lack of structure, and pressure on the weaker party to settle.

The negotiation ends when one of these two situations arises:

1) An agreement is reached between the parties (also known as a settlement). It is important to note that this does not necessarily mean that both parties feel entirely satisfied with the results.

2) When the parties cannot agree to a settlement. Other alternative dispute resolution methods can be utilized (such as the ones below) or parties can decide to bring the matter to court.

In other words, it is a consensus-based dispute resolution.

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Here is an example of a successful multiple chemical sensitivity (MCS) related negotiation. A woman with MCS lives in an agricultural area and reacts strongly to pesticides, especially when they have been freshly applied. Her neighbors happen to be farmers who use pesticides on their crops. The two parties meet and negotiate an agreement whereby the neighbors will give this woman at least a week's notice when they are going to apply pesticides so that she can make arrangements to stay away during that time. They put it in writing and all parties sign the agreement, thus making it legally binding. The issue is resolved without it ever reaching court.

2. Mediation

Mediation is a type of alternative dispute resolution (ADR) where a neutral third party, called a mediator, facilitates communication and negotiation between parties in a dispute to help reach a mutually acceptable solution. Mediation is non-binding, meaning parties are free to accept or reject proposed settlements and can withdraw at any time during the process.

A mediator helps parties understand each other’s perspectives, identify common interests, and explore settlement options. They do not make decisions or impose solutions but help parties overcome impasses by highlighting their needs and interests. Mediation is often faster and less expensive than going to trial and allows parties to maintain control over the outcome.

Mediation can resolve various disputes, including employment and other matters. It is often used as an alternative to court but can also be a step in the litigation process. Mediation is voluntary and requires both parties’ consent to participate.

Mediation is generally confidential, meaning information shared during sessions cannot be used in court. This encourages open and honest communication to facilitate dispute resolution. Confidentiality applies only to the mediation process and not to pre-existing or externally sourced information. Information shared outside mediation, such as with lawyers, can potentially be used in court.

In Canada, the selection of a mediator is typically a mutual decision made by parties in a dispute. Parties must agree to participate in mediation and on the mediator’s

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selection. The mediator facilitates communication and negotiation between parties and their effectiveness depends on establishing a good working relationship with both sides.

There are exceptions to the rule of mutual selection of a mediator. In some cases, a court or government agency may appoint a mediator, or the parties may agree to use a particular mediator from a pre-approved list. If the parties do not agree on the selection of a mediator, or if one party does not wish to participate in the mediation, the process may not take place.

In Canada, the profession of mediation is regulated by each province and territory through its own laws and regulations. While anyone with the necessary skills and training can become a mediator, some provinces and territories may require specific training or education for certification. Mediators often have a background in law, social work, psychology or conflict resolution. Professional organizations in some provinces and territories also offer training and certification. It's important to check the regulations and certification requirements for mediators in your province or territory, as well as the mediator's credentials, before engaging in mediation.

Using a certified mediator may be a good idea even in cases where you don't need a certified mediator. For example, certified mediators:

- Can share their specialized knowledge and mediation experience with you.
- Must follow a code of ethics and have insurance to cover mistakes they make (malpractice insurance).
- Can ensure confidentiality – with a few exceptions, even a court can’t force a mediator to repeat what was said during mediation.

Before engaging in mediation, it’s important to check the laws and regulations regarding confidentiality in the specific province or territory. Consulting with a lawyer for legal advice is also recommended.

If a settlement is reached during mediation, the parties can make it legally binding by creating a written contract and having it signed by both parties. This agreement can then be enforced by a court. If no agreement is reached, the parties may return to their

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original positions and consider other options for resolving the dispute, such as going to court. Mediation is voluntary and there is no obligation to reach an agreement.

Even if no agreement is reached during mediation, the process can still be beneficial. Mediation can help parties better understand each other’s positions and interests and narrow down the issues in dispute. Partial agreements may also be reached during mediation, allowing the parties to continue working towards a final resolution.

Here is an example of a successful MCS mediation. A woman with MCS lives in an agricultural area and reacts strongly to pesticides, especially when they are freshly applied. Her neighbors happen to be farmers who use pesticides on their crops. They decide to hire a neutral third party - the mediator - to help them resolve the dispute. With the mediator's help, the parties eventually agree that the neighbors will notify the woman at least two weeks in advance when the pesticides will be applied, so that she can make travel arrangements during that time. The mediator helps them put the agreement in writing and have it signed, making it legally binding. The issue is resolved without ever going to court.

3. Arbitration

Legal arbitration is a form of alternative dispute resolution where a neutral third party, called an arbitrator, hears and decides on a dispute. It is similar to a trial but typically faster and less formal. Arbitration is often used when parties have a pre-existing agreement with an arbitration clause or as an alternative to going to court with the consent of all parties. In rare circumstances, it may be required by statute. While arbitration is usually binding, it can also be non-binding.

In arbitration, parties agree to have their dispute resolved by an arbitrator instead of a judge or jury. The process is governed by rules established by an arbitration organization or agreed upon by the parties. The arbitrator hears evidence and arguments and makes a final and binding decision, called an award. This award can be enforced in the jurisdiction it was rendered and in other jurisdictions. As part of the process, parties may agree to limit their rights to pursue other legal remedies, such as filing a lawsuit.

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The arbitration process is confidential and parties are bound by the terms of the arbitration agreement. This may include terms such as the finality and enforceability of any awards made.

Arbitration can be used to resolve a wide range of disputes, including those related to employment and other matters. It is also commonly used in unionized workplaces. (See Section 4.1.1 for more information.)

The qualifications to become an arbitrator in Canada vary depending on the jurisdiction, type of arbitration, and specific case or dispute. While some organizations offer training and certification programs for arbitrators, education is not a requirement for arbitrators. Arbitrators may have a degree, including a law degree, or experience in a specific field.

The ability for parties to opt-out of an arbitration process once it has begun depends on the specific terms of the arbitration agreement and the jurisdiction. Generally, parties may be able to opt-out if they have not agreed to be bound by the arbitration agreement or if the agreement allows for it. However, if the parties have agreed to be bound by the terms of the arbitration agreement, they may not be able to opt-out unless the agreement provides for this right. It's always recommended to consult with a lawyer for any legal advice before engaging in an arbitration process.

Here's an example of a successful arbitration related to MCS. A woman with MCS works in a chemical plant and reacts strongly to certain chemicals used in the manufacturing process. She and her employer disagree on how to accommodate her disability. They decide to hire a neutral third party - the arbitrator - to help them resolve the dispute. The arbitrator hears both sides of the argument and examines any relevant documents or evidence. The arbitrator then makes a decision on how the parties should proceed. In this case, the arbitrator might require the employer to make certain accommodations for the woman, such as providing her with protective equipment or adjusting her work schedule. The arbitrator would then issue a legally binding decision that both parties must follow.

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Finality of ADR

In negotiation and mediation processes, all parties must agree on the settlement agreement. As a result, appeals are generally not possible. The solutions proposed in these processes are not binding unless all parties explicitly agree to make them so.

The ability to appeal an arbitration award depends on the laws governing the arbitration process and the terms of the arbitration agreement. In Canada, most arbitration awards are final and binding, with limited options for challenging the award. However, the rules for appealing an arbitration award may vary by jurisdiction and type of arbitration process.

In some cases, parties may have the right to appeal an arbitration award if they can demonstrate that the arbitrator made a mistake of law or if there was a procedural error during the arbitration process. In other cases, parties may have the right to apply to have the award set aside if there was misconduct by the arbitrator or if the award was made without jurisdiction.

As a general rule, it's always recommended to consult with a lawyer for any legal advice before engaging in an arbitration process, or before attempting to appeal an arbitration award.

Breach of an ADR agreement

If a party breaches an alternative dispute resolution (ADR) agreement, the consequences will depend on the specific circumstances and the terms of the ADR agreement. In general, if one party breaches an ADR agreement, the other party may have a number of legal remedies available, such as:

1. Enforcing the ADR agreement through the court system: Depending on the specific terms of the ADR agreement and the jurisdiction, the parties may be able to seek enforcement of the agreement through the court system.

2. Terminating the ADR agreement: In some cases, the parties may be able to terminate the ADR agreement if one party breaches a material term of the agreement.

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3. Seeking damages: If one party breaches the ADR agreement, the other party may be able to seek damages for any losses suffered as a result of the breach.

It's important to note that the specific remedies available in the event of a breach of an ADR agreement will depend on the specific terms of the agreement and the jurisdiction.

Resources

For further information, please consult the following pages:

● Dispute resolution guide :
https://www.justice.gc.ca/eng/rp-pr/csj-sjc/dprs-sprd/res/drrg-mrrc/index.html

● Dispute prevention Model Clauses and agreements:
https://www.justice.gc.ca/eng/rp-pr/csj-sjc/dprs-sprd/res/index.html

● Resolving disputes – Think about your options :
https://www.justice.gc.ca/eng/rp-pr/csj-sjc/dprs-sprd/dr-rd/index.html

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