

Luther Standing Bear (1868? – 1939)  
Oglala Sioux chief

## Notes:

This image shows a single sheet of white paper with horizontal blue ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

This project was made possible by:

**flew** Family Law  
Education for Women  
Women's Right to Know

**fodf** Femmes ontariennes et  
droit de la famille  
Le droit de savoir

Funded by: / Financé par :



Project Advisory Committee

Ontario Federation of Indian Friendship Centers  
Thunder Bay Indian Friendship Center  
Nishnawbe Aski Legal Services  
Native Women's Association of Canada

The views expressed in these materials are the views of the Ontario Native Women's Association (ONWA) and FLEW and do not necessarily reflect those of the Province.

This brochure is made possible by Family Law Education for Women (FLEW), a public legal education project funded by the government of Ontario. FLEW's goal is to provide information to women about their family law rights in Ontario. FLEW has also produced materials on the following topics: Family Law Arbitration, Domestic Contracts, and Family Law Issues for Immigrant, Refugee and Non-status Women. For information about materials available in other languages and formats, please see visit [www.onefamilylaw.ca](http://www.onefamilylaw.ca) and [www.undroitdefamille.ca](http://www.undroitdefamille.ca).

# Alternative Dispute Resolution



When you and your partner separate, you will have to deal with several legal issues. For example, you must decide about financial support, how to care for your children and how to divide the family property. You can go to court to make these decisions. You can also make informal arrangements or use **alternative dispute resolution (ADR)**.

## What is ADR?

Alternative dispute resolution, or ADR, is an informal way to settle a disagreement. People can negotiate, or work with a mediator or arbitrator. Negotiation, mediation and arbitration are different types of ADR. You cannot be forced into ADR for a family law case. You and your former partner must choose it freely.

If you are thinking about using ADR, **talk to a lawyer**. If you do not, you may give up rights that you do not know you have.

Do **not** use ADR to settle a dispute with someone who has been violent or abusive. Do **not** use it with someone who has tried to bully you, or someone who has more power than you.

### When you could use ADR:

- In some family law cases, ADR can be better than going to court. Here is why:
- you can have more control over what happens to your case
  - you can choose how to deal with your case
  - it can be faster and cheaper than a court case
  - it may be less upsetting than going to court

If you can be open and honest with your partner, ADR may be a good way for the two of you to work out the issues you have when your relationship ends. If possible, you should **have a lawyer assist you**.

- However, ADR is not good for all kinds of disputes. ADR is not recommended if:
- you feel your partner does not listen to you or respect you
  - you cannot talk to your partner
  - you cannot work cooperatively with your partner
  - your partner has been abusive or violent
  - your partner has tried to bully or scare you
  - your partner can take advantage of you
  - your partner has more power than you

### What are the different kinds of ADR?

There are four kinds of ADR that can be used to deal with family law disputes: negotiation, mediation, arbitration and collaborative family law.

### 1. Negotiation

Negotiation can be very informal. You and your former partner talk until you come to an agreement. You can speak to each other, or you can hire lawyers to talk on your behalf. Sometimes one person has a lawyer and the other person does not. Most lawyers will try to negotiate before they decide to take the case to court.

When you negotiate, you will come to a spoken agreement. Make sure the agreement is written down and signed by both of you. If the agreement is not in writing, it will be very hard to enforce.

### 2. Mediation

A **mediator** helps people talk to each other and come to an agreement. A mediator knows how to deal with conflicts. Mediators are usually social workers, psychologists or lawyers.

The mediator must be fair. They can not favour you or your partner in the dispute. They can suggest ways to solve the conflict, but you do not have to take their advice. They cannot offer legal advice.

You should talk to a lawyer before you take part in mediation. A lawyer can explain your rights and responsibilities to you but does not usually come with you to the mediation.

If you are not happy with the mediation, you can leave and it will be over. If you cannot reach an agreement, the mediation will end. At that point, you could try a different kind of ADR, or go to court. If you come to an agreement at mediation, do not sign the agreement until you get a lawyer to read it.

Mediation is free. You can find a mediator at any family court in Ontario. You can also hire a private mediator, if you can afford it. If you are getting legal advice, you may have to also pay the lawyer.

### 3. Arbitration

In arbitration, you and your former partner hire a third person to resolve your conflict. This person is called an **arbitrator**. The arbitrator cannot grant a divorce or an annulment, but can decide on custody, support, access and how to divide property. Arbitrators can only decide on the issues you ask them to resolve. The arbitrator must use only Canadian or Ontario family law.

## Case Scenario:

A family left their community for a hockey tournament. The mother went out shopping for clothing and other items they might need for the return back to the community and left the father in charge of the children at the hotel. While she was out shopping, the father, who was in the hotel with the children, decided to get drunk. He was so intoxicated in the hallway that the hotel staff called the police and he was taken to jail.

The police called CAS and they apprehended the children immediately. CAS called the “Talking Together” program and made a referral. The parents had to return to their community without the children. The Talking Together facilitator made a trip to the community to conduct a Talking Together circle. The family invited their supports who confirmed that the parents were indeed good parents. CAS was also present and admitted that they had no prior involvement with this family. The father told everyone in the Circle that he had decided to have some drinks with his friends that night, but did not mean to get drunk. He was apologetic to both his wife and children.

The Circle participants came up with a plan to ensure the children would remain safe to return to the parents as this was an isolated episode. The participants came up with a plan to have the children return home and for the father to seek a counselor for an assessment.

The plans also included how the children would be brought home and who would escort them etc. They found this type of dispute resolution more productive than a court visit, where the underlying issues resulting in the CAS intervention wouldn’t have been explored.

If you do not know your rights under Canadian laws, **talk to a lawyer**. Once arbitration starts, you cannot decide to walk away. You must obey the arbitrator’s decision. Arbitration can be expensive because you should have a lawyer. You may also have to pay the arbitrator. Even if you do not have a lawyer with you at the hearing, you must prove that you got legal advice before agreeing to arbitrate.

**Remember, arbitration is not the same as mediation.** If you are in mediation, you have choices. You can end the talks at any time or decide not to accept what your spouse is offering or what the mediator suggests. In arbitration, you have no choice. You must accept the arbitrator’s decision, as long as it follows the law.

### 4. Collaborative Family Law

Collaborative family law is a new form of ADR. You, your former partner and your lawyers work together to resolve the issues. This is a very different way for lawyers to work. In court, lawyers must fight for their client’s rights without considering what the other person needs.

Collaborative family law is usually faster and cheaper than going to court. It is also more relaxed than court. But it is not a good idea for every couple. It can only work if people respect each other and work together to solve their problems. Only people who can afford to hire a lawyer can use collaborative family law.

Sometimes, couples who use collaborative family law do not reach an agreement. If this happens, you must hire a new lawyer to represent you in court.

Collaborative family law can be expensive because you must have a lawyer. The cost will depend on how much you are paying your lawyer. Legal Aid will not pay a lawyer to help you. If the collaborative talks fail, you will have to hire a different lawyer to represent you in court.

“The color of the skin makes no difference.  
What is good and just for one is good and just  
for the other.”  
- Chief White Shield