

Alternate Estate Dispute Resolution in current COVID-19 times

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The potential advantages of various forms of alternate dispute resolution that exist instead of going to court have been stated many times. In the current state of emergency, with courts operating on a very limited basis, there is even more impetus to resolve disputes outside of the courts, or at least to resolve preliminary matters so that major matters can get into the court system faster once they are fully operational again.

Contested estate litigation matters are effectively shut down during this emergency period and will be greatly slowed once the courts are opened again due to backlogs. Family law cases have relied for years on a process referred to as Mediation/Arbitration or “MedArb” but the process has not been used in estate matters, often because estate disputes involve multiple parties and may involve minor children or future generations.

A group of experienced estate practitioners who also have long experience in mediation, have introduced an initiative for Mediation/Arbitration in estate matters in an effort to ensure that disputes can still be heard and resolved even though the courts are not operating to hear contested matters except in exceptional emergency situations.

The mediation/arbitration approach combines the two elements so that the parties agree on a neutral who will initially act as a mediator to try and arrive at a settlement. If that is impossible after a reasonable time, the matter switches to an arbitration and the mediator automatically becomes an arbitrator. The issues can be technical ones like disputes over documents to be disclosed or procedure to be followed, or they can go to the whole basis of the underlying dispute. Because estate disputes may involve parties under various disabilities or future generations which may have interests, often the ultimate resolution on a matter will have to be approved by a court. The arbitration decision will take this into consideration and once the decision is made, the adult parties agree to put the decision before a court for final approval. However for interlocutory matters like disputes over disclosure of documents or records or other procedural aspects, the decision of the arbitrator will be binding and will not have to be referred back to court.

Margaret Rintoul of Blaney McMurtry LLP is participating in this program. For further information about it and how she can assist, she can be contacted directly at 416-593-2981 or mrintoul@blaney.com.

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