



## Alternative Dispute Resolution

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# AGENDA

1. Definition – Alternative Dispute Resolution
2. The Legislative environment
3. Mediation – Arbitration – Private Trial
4. Privileges disputes

# Definition

- **alternative dispute resolution** is a “process” and means mediation, conciliation, negotiation, or any other means of facilitating the resolution of issues in dispute
- alternative dispute resolution may be a process which is consensual or mandated
- will be independent of the traditional mechanism for dispute resolution

# Legislation and dispute resolution

- established forums for dispute resolution include common law courts; legislated hearings and proceedings
- a variety of legislation creates opportunity for ADR:
  - The Ontario Rules of Civil Procedure provide for mandatory mediation in specified actions
  - The Statutory Powers Procedures Act provides that a tribunal may direct the parties to a proceeding to participate in an alternative dispute resolution mechanism for the purposes of resolving the proceeding
  - The Regulated Health Professions Act provides that the Registrar may, with the consent of the parties, refer the parties to an alternative dispute resolution process

# Legislated Independence

- The person who “facilitates” the alternative dispute resolution process shall not otherwise participate in the proceeding nor shall notes or statements of the facilitator be compellable;
- The evidence, documents and submissions shall remain confidential from any other proceeding;
- The result achieved by ADR may be subject to review or approval of the legislated tribunal.

# Alternative Dispute Resolution by Agreement

- Mediation: consensual, non-binding, by agreement may result in written agreement;
- Arbitration: consensual, binding, the *Arbitrations Act*, results in an award, may be subject to appeal;
- Private Trial: consensual, often presided over by retired judge, follows the rules of procedure and evidence may be binding or subject to appeal;

# ... Alternative Dispute Resolution by Agreement

- By Contract: consensual at the time of creating the contract, subject to terms agreed to by the contracting parties, binding subject to judicial enforcement, may use mediation, arbitration, private trial.

# *Public Hospitals Act*

- The hospital and physician relationship is one of a contracted right of access;
- The authority of the board of a hospital is to appoint and grant privileges to a physician as well as to revoke, suspend or deny appointment; (s.36)
- Appointment and grant of privileges is one associate with rights and obligations primarily by the hospital to the physician; (s.37)
- The obligations and right are protected by a statutory right of appeal by “hearing”; (s.39) and further appeal to a statutory tribunal; (s.41)



# Anatomy of an Appointment Dispute

## Foundation for Review on Appeal

- Competency and quality of care
- Manpower need and resource availability
- Collegiality/Disruptive Behavior
  - Team work, compliance with rules
  - Disruptive behaviour can be defined as any action, verbal or physical, which is disrespectful of others and adversely affects staff morale or service provision. It can include behaviours inconsistent with rules and policies as well as behaviours that put patients or staff at risk.

# ..... Appointment Disputes

## **Foundation for Action (mid-term)**

- An issue of patient safety
- Immediate risk supporting extreme action
- Urgent need to accommodated risk
- Authority of Chief of Staff, Administrator and Board

# ..... Appointment Disputes

## *Public Hospitals Act (s.39)*

- parties: MAC; physician; others
- directors as tribunal members, can not have prejudged or received information
- adversarial
- burden rests with the MAC
- HPARB

# Alternative Dispute Resolution

## Opportunities for ADR

- policies which incorporate dispute resolution
- important where there is the need for internal or external review
- to support remediation

# Remediation

- Remediation vs. Discipline:
- Zero Tolerance
- Repeat Behaviour
- Insight
- Practical Opportunity for Remediation
  - supervision
  - mentors
  - level of retraining

# .....Remediation

- Effective procedures will allow issues to be handled in a non-adversarial environment.
- Having a comprehensive complaints process can allow some flexibility in the approach that a hospital will take in addressing problems.
- Opportunity for an informal resolution may be possible.
- Engagement of counsel.
- Engagement of PHP.

# Questions?

## Thank You

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