



Online Survey Results: Court Annexed Dispute Resolution

Online Responses to the Survey
conducted
November 24, 2008
to
December 8, 2008

[Online Survey Context: Ongoing Consultations]

- This online survey was conducted by Court Services as part of its ongoing consultations with the judiciary and key stakeholders, including:
 - the Negotiating the Future Conference 2001;
 - visioning sessions to discuss possible models for court annexed mediation;
 - focus groups to discuss benefits and concerns about court annexed mediation; and
 - the creation of a stakeholder Steering Committee and stakeholder Working Groups to recommend governing principles for court annexed mediation.

Online Survey Context: ALRI's Proposed New *Rules of Court*

- The Alberta Law Reform Institute's (ALRI) goal for the *Rules of Court* project was:

"To create rules that are clear, useful and effective tools for accessing a fair, timely and cost efficient civil justice system."

- Absent a waiver from the Court, ALRI's proposed new rules require parties to attempt one of four dispute resolution processes, including a court annexed dispute resolution process, prior to obtaining a trial date. ALRI refrained from defining court annexed dispute resolution process while the Queen's Bench Civil Mediation Program was still a pilot project.

[Online Survey: Purpose]

- In order to increase access to justice, Court Services would like to provide a program that could be offered as a “court annexed dispute resolution process”.
- This online survey was designed to obtain feedback on some of the details needed to clarify what might be included in a “court annexed dispute resolution process” in accordance with ALRI’s proposed new rules.

[Online Survey Questions: Premise]

- The Queen's Bench Civil Mediation Program is a court annexed mediation pilot project pursuant to Practice Note 11. The Program is restricted to:
 - civil non-family claims;
 - claims filed in Lethbridge and Edmonton;
 - claims filed after September 2004;
 - claims with an Affidavit of Records filed; and
 - claims without a Certificate of Readiness.

- The questions asked in the online survey were premised on the Queen's Bench Civil Mediation Program.

Online Survey Design and Scope: Limits

- The online survey link was available for response by the judiciary, lawyers, mediators, litigants, and others.
- Respondents were asked 7 questions related to court annexed mediation, plus 1 question related to their background.
- Responses were limited to the options provided. “None of the above” was not provided as an option. This design was chosen as a means of determining the preferred option from the limited number of options provided. A text box immediately followed each question to permit respondents to provide comments.



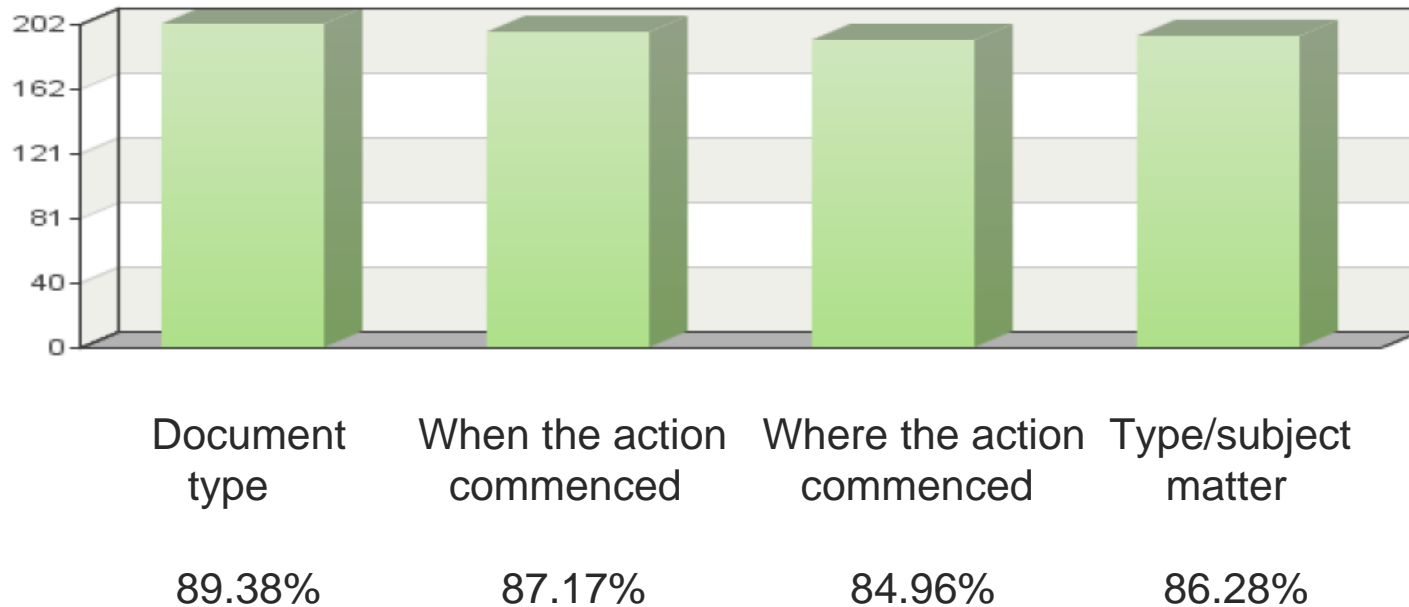
Online Survey Results

[Online Survey: Responses]

- 226 online responses were received:
 - 137 lawyers;
 - 96 mediators;
 - 40 members of the judiciary and others (court counsellors, students, Alberta Justice employees, etc.);
 - 47 selected more than one option.

- Over 584 online text box comments were received.

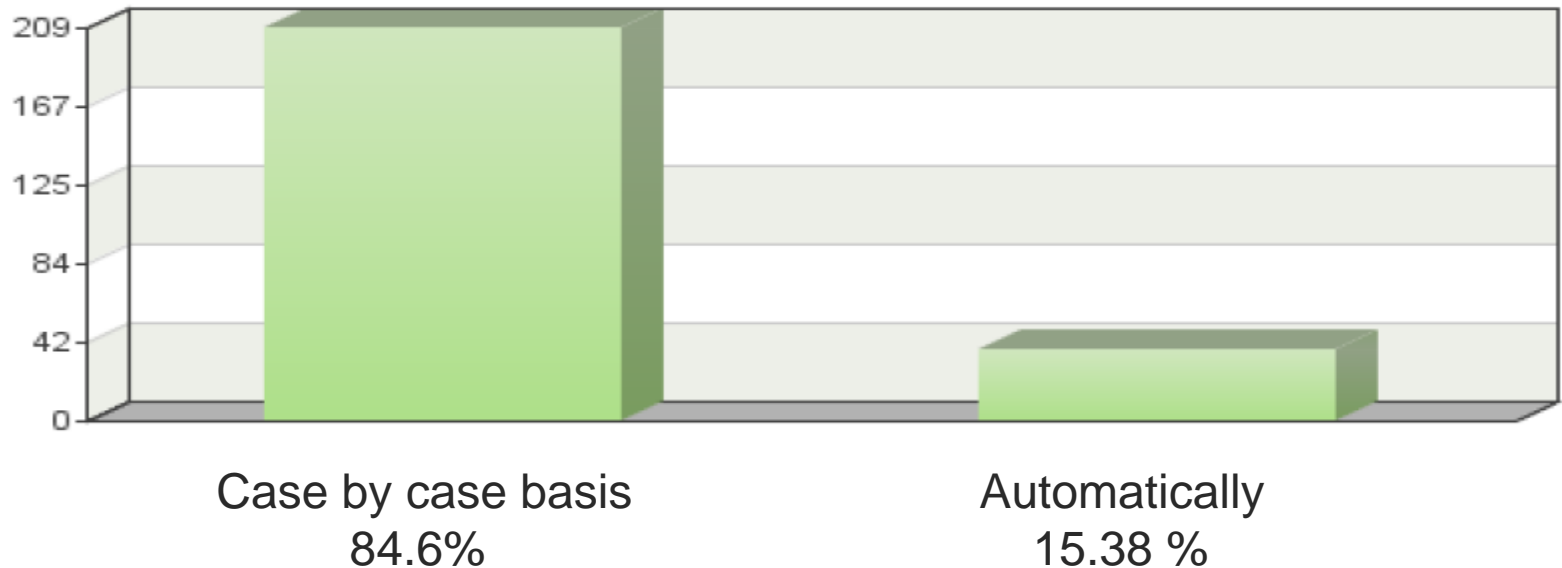
1. Access to court annexed dispute resolution processes should include all actions regardless of:



Text Box Responses: Summary

- Document Type:
 - Court annexed dispute resolution processes should not be used for originating applications (such as evictions, judicial review, etc.) because a fast outcome is usually required.
- When the action commenced:
 - This process should be available for old files.
- Where the action commenced:
 - Make the process available to all Albertans but don't make parties travel long distances to access the process.
- Type/subject matter:
 - Subject matter is not the deciding factor in whether this type of process will be successful – it's the underlying drivers (interests) that are important.
 - Don't mediate where there is violence or abuse or where a party is incompetent.
 - Don't mediate constitutional issues.

2. Exemptions from a court annexed dispute resolution process should be granted:

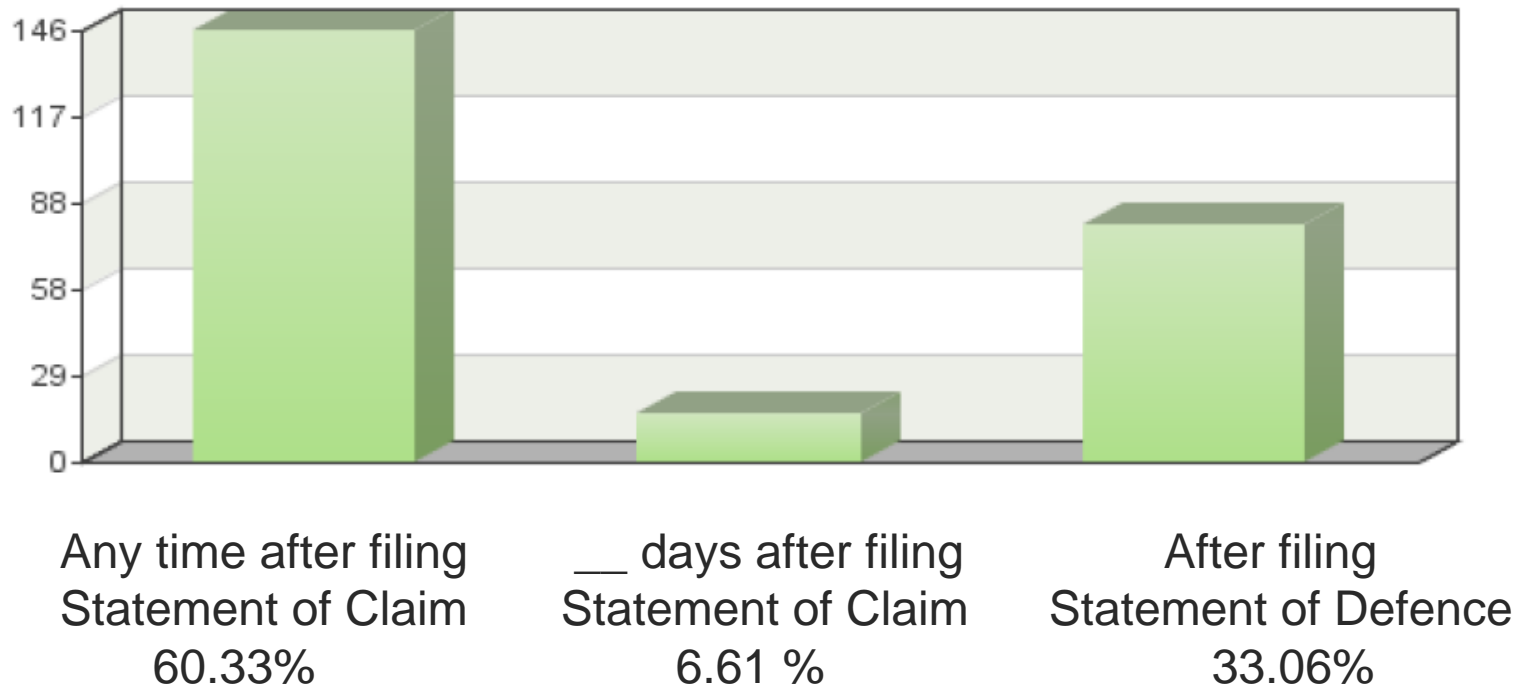


Note: The proposed rules allow for a justice to grant a waiver from the requirement to use one of the four dispute resolution process listed in R. 4.16(1) prior to obtaining a trial date. This question asks about being exempted from one process only—court annexed dispute resolution.

[Text Box Responses: Summary]

- Exemptions from a court annexed dispute resolution process should be allowed only in limited cases.
- The process needs to be flexible when considering which cases are not suitable for the process. It should not set standards or guidelines that must be followed.
- Litigants need to be able to seek an exemption from this process if they want one.
- Exemptions from a court annexed dispute resolution process should only be granted by a judge or knowledgeable person.

3. Access to court annexed dispute resolution processes should be permitted:



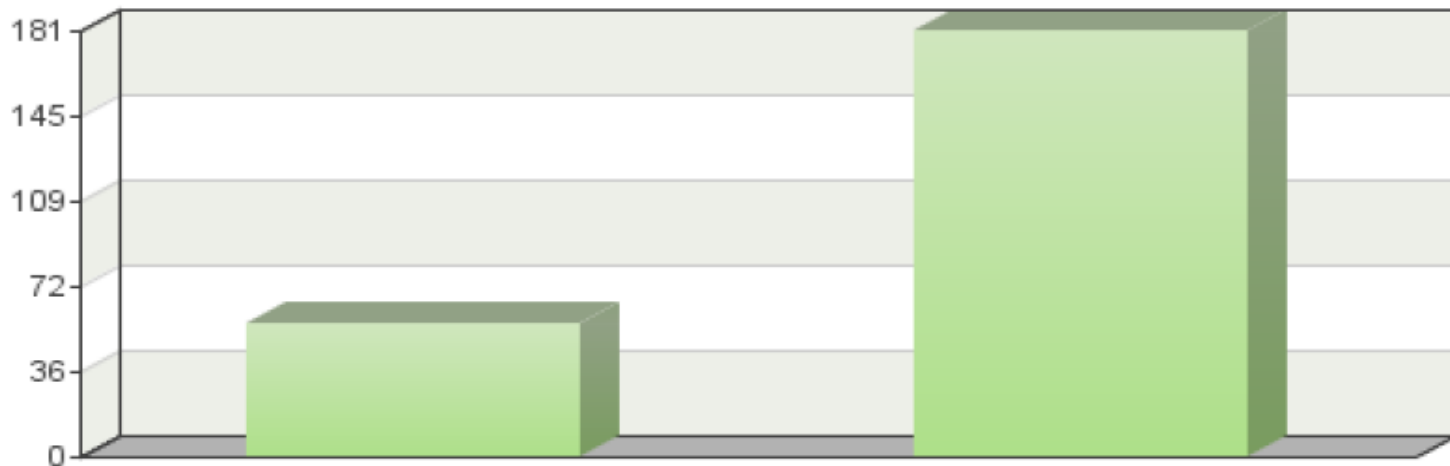
(Responses ranged from 60-90 days)

Alberta Justice and Attorney General

Text Box Responses: Summary

- Access to mediation should be permitted even before the Statement of Claim is filed.
 - For family matters, access to the process should commence following the exchange of information or financial disclosure.
- Mediation should occur earlier rather than later in the litigation process.
- Don't make parties go to expense of filing a Statement of Defence before they can access this process.
- A Statement of Defence is rarely filed in family matters so a requirement to file one would exclude most family matters.

4. Access to court annexed dispute resolution processes should be prevented:



After the trial date
has been set
23.95%

within ___ days of trial
76.05%
(Responses ranged from 0-120 days)

Text Box Responses: Summary

- 76% of the responses preferred that access to court annexed dispute resolution be prevented at some time prior to trial:

120 days before trial—8 responses

90 days before trial—11 responses

60 days before trial—16 responses

30 days before trial—31 responses

14 days before trial—5 responses

10 days before trial—5 responses

7 days before trial—5 responses

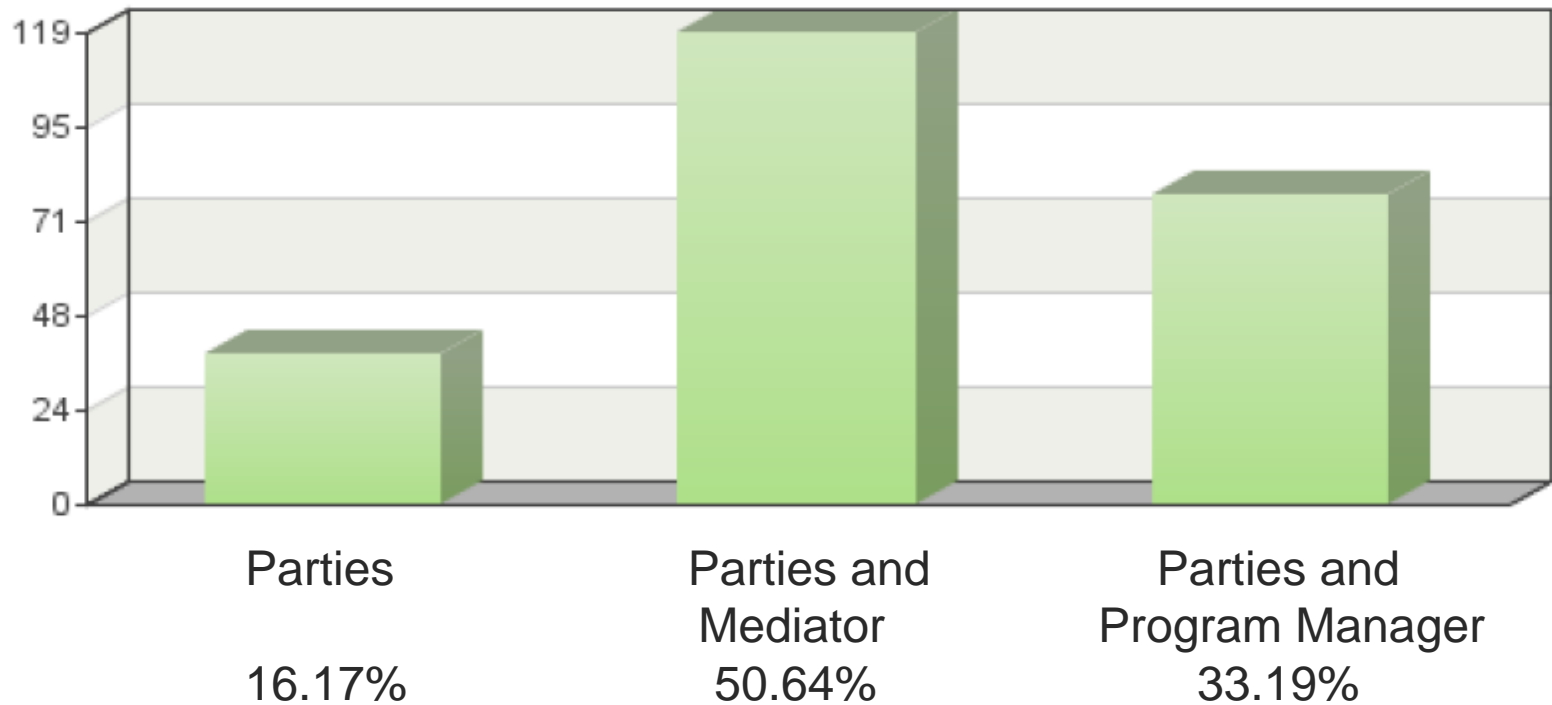
0 days before trial—27 responses

Note: Time periods with fewer than 5 responses were excluded from this summary.

[Text Box Responses: Summary]

- Litigants can use private mediation after the trial date is set rather than a court annexed process that uses court resources.
- The process must build in safeguards against the use of mediation as a stalling tactic.
- Mediation should be available at any time, including up to and during trial.

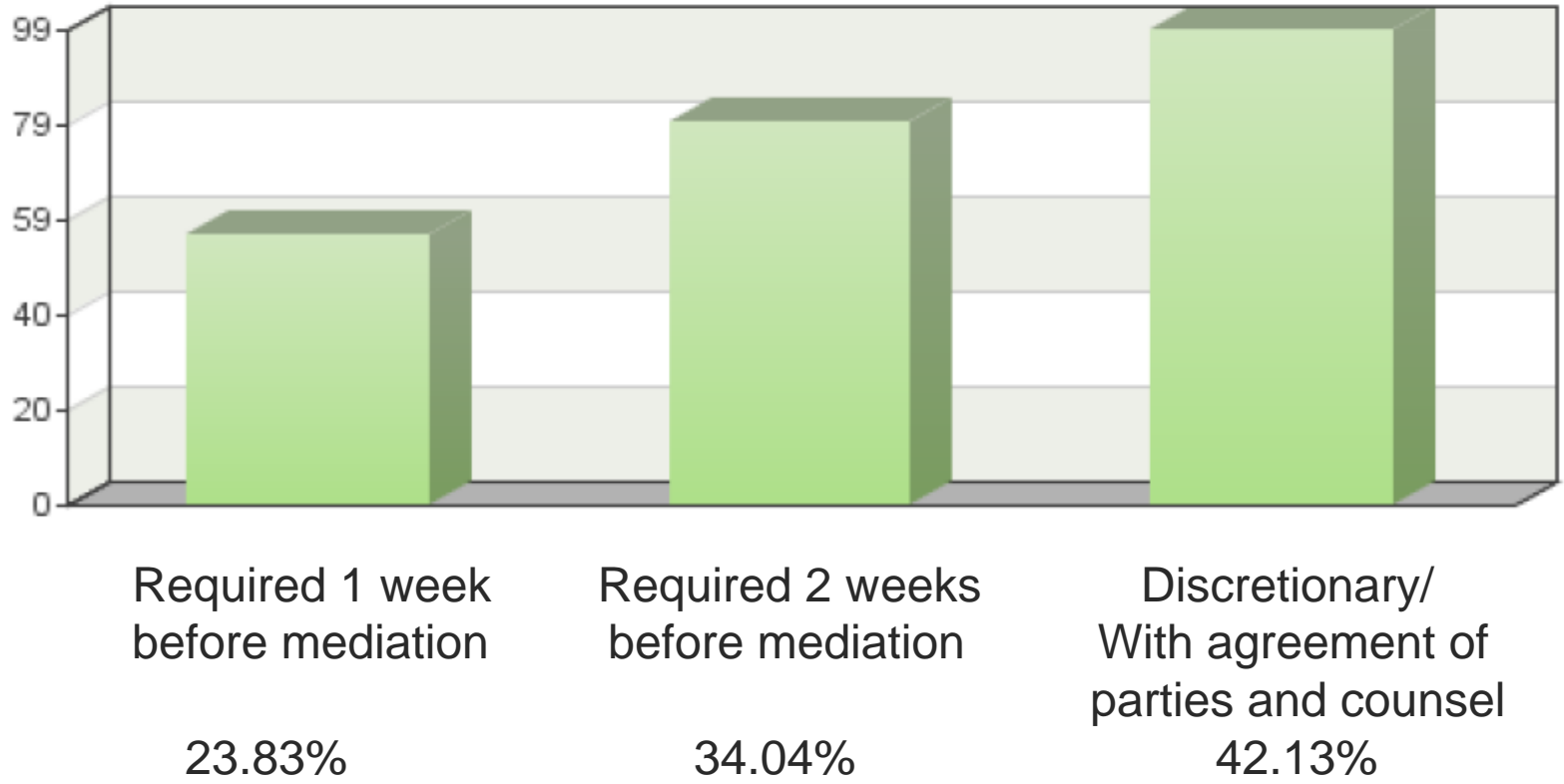
5. Exchange of information for court annexed dispute resolution should be decided by:



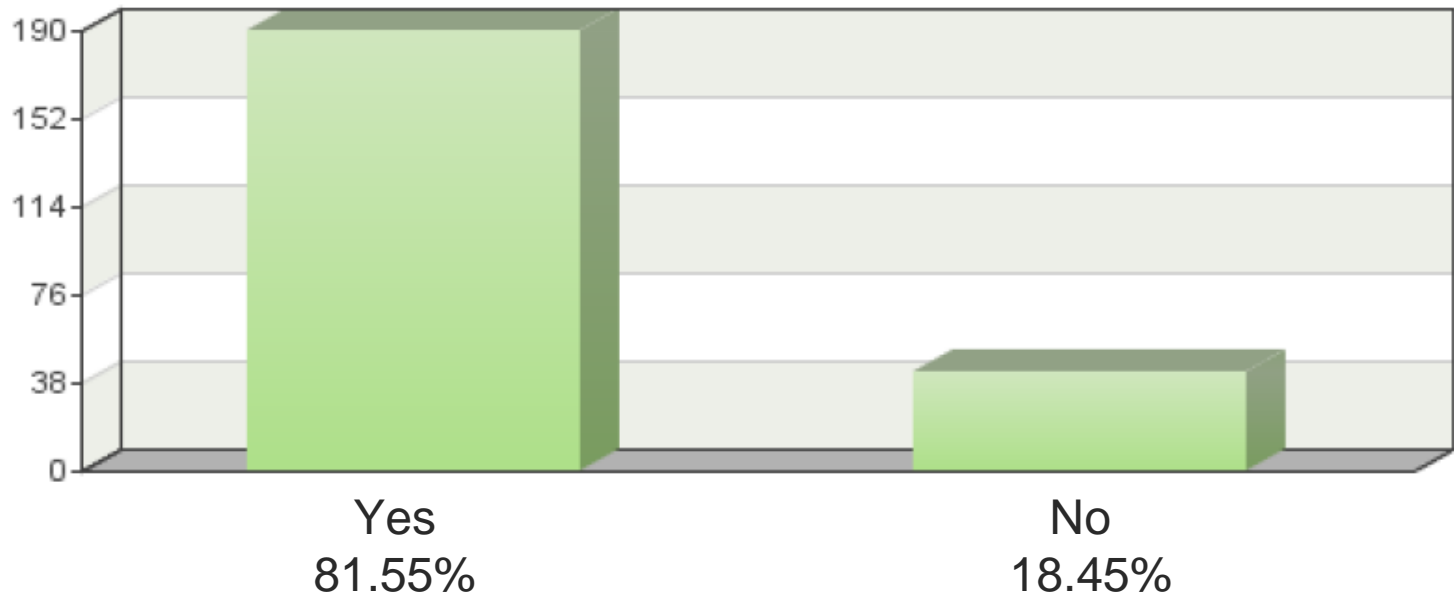
Text Box Responses: Summary

- The rules around exchange of information should be determined in the pre-mediation planning or screening meeting.
- Where there is a series of mediation meetings, the decision should be made in the mediation with the assistance of the mediator.
- Standard time frames are desirable to reduce fighting between the parties, to provide predictability, and to lessen the adversarial nature of the proceeding.

6. The exchange of information should be:



7. Should parties initially share costs associated with court annexed dispute resolution processes equally, unless otherwise agreed:



Text Box Responses: Summary

- Each party should initially bear its own expense for the process (each party is then invested in the process).
- The party who asks for the process should bear the entire expense up front.
- These processes should be free (like Family Justice Services mediation programs).
- There should be some way for the “totally innocent” or wrongfully included party to recover the expense of mediation.

Online Survey Responses: Overall Themes

- A court annexed dispute resolution process must be flexible.
- Party self-determination (the right of parties to make their own decisions and choices) is important.
 - Participants should have the freedom to choose the type of dispute resolution process. It should not be restricted to interest-based mediation.
- Court annexed dispute resolution processes should be made available to all Albertans.
 - Distance should not be a barrier to access.
 - The process should be free, or at the very least subsidized.
- The process should include pre-screening or assessment for suitability by a trained person.
- The process should focus on the suitability of the matter for the process, not on mandatory mediation.
- The process needs to provide safeguards against stalling or “fishing” expeditions.

[Next Steps]

Court Services will use all responses received and information learned from previous consultations to collaborate with the judiciary, key stakeholders, and the Rules of Court Committee (where appropriate). This will help define a court annexed dispute resolution process to be implemented in either of the following:

- a proposed rule for the Alberta Rules of Court;
- a regulation; or
- a new Practice Note.

[Thank you]

Thank you for your interest in court annexed dispute resolution and for taking the time to share your thoughts with Court Services.

Further comments can be directed to:

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