Ways the Court may manage action

4.11 The Court may manage an action in one or more of the following ways, in which case the responsibility of the parties to manage their dispute is modified accordingly:

(a) the Court may make a procedural order;

(b) the Court may direct a conference under rule 4.10 *[Assistance by the Court]*;

(c) on request under rule 4.12 *[Request for case management]*, or on the initiative of the Chief Justice under rule 4.13 *[Appointment of case management judge]*, the Chief Justice may appoint a case management judge for the action;

(d) the Court may make an order under a rule providing for specific direction or a remedy.

Request for case management

4.12(1) A request for a case management order must be made in writing to the Chief Justice and a copy of the request must be served on each of the other parties.

(2) The request must state

(a) the reason for the request, and

(b) whether any of the other parties agrees with the request.

(3) An action commenced or continued under the *Class Proceedings Act* must have a case management judge appointed for the action unless the Chief Justice decides otherwise, and the request for a case management judge must be made no later than the date on which the first application in respect of the class proceeding is made under section 2(2) of the *Class Proceedings Act*.

Appointment of case management judge

4.13 The Chief Justice may order that an action be subject to case management and appoint a judge as the case management judge for the action for one or more of the following reasons:

(a) to encourage the parties to participate in a dispute resolution process;

(b) to promote and ensure the fair and efficient conduct and resolution of the action;

(c) to keep the parties on schedule;

(d) to facilitate preparation for trial and the scheduling of a trial date.

Authority of case management judge

4.14(1) A case management judge, or if the circumstances require, any other judge, may

(a) order that steps be taken by the parties to identify, simplify or clarify the real issues in dispute,

(b) establish, substitute or amend a complex case litigation plan and order the parties to comply with it,

(c) make an order to facilitate an application, proceeding, questioning or pre-trial proceeding,

(d) make an order to promote the fair and efficient resolution of the action by trial,

(e) facilitate efforts the parties may be willing to take towards the efficient resolution of the action or any issue in the action through negotiation or a dispute resolution process other than trial, or

(f) make any procedural order that the judge considers necessary.

(2) Unless the Chief Justice or the case management judge otherwise directs, or these rules otherwise provide, the case management judge must hear every application filed with respect to the action for which the case management judge is appointed.

Case management judge presiding at summary trial and trial

4.15 Unless every party and the judge agree, a case management judge must not hear an application for judgment by way of a summary trial or preside at the trial of the action for which the case management judge is appointed.

Division 3
Dispute Resolution by Agreement

Subdivision 1
Dispute Resolution Processes

Dispute resolution processes

4.16(1) The responsibility of the parties to manage their dispute includes good faith participation in one or more of the following dispute resolution processes with respect to all or any part of the action:

(a) a dispute resolution process in the private or government sectors involving an impartial third person;

(b) a Court annexed dispute resolution process;

(c) a judicial dispute resolution process described in rules 4.17 to 4.21 *[Judicial Dispute Resolution]*;

(d) any program or process designated by the Court for the purpose of this rule.

(2) On application, the Court may waive the responsibility of the parties under this rule, but only if

(a) before the action started the parties engaged in a dispute resolution process and the parties and the Court believe that a further dispute resolution process would not be beneficial,

(b) the nature of the claim is not one, in all the circumstances, that will or is likely to result in an agreement between the parties,

(c) there is a compelling reason why a dispute resolution process should not be attempted by the parties,

(d) the Court is satisfied that engaging in a dispute resolution process would be futile, or

(e) the claim is of such a nature that a decision by the Court is necessary or desirable.

(3) The parties must attend the hearing of an application under subrule (2) unless the Court otherwise orders.

Information note

Note that under rule 8.4(3) *[Trial date: scheduled by court clerk]*, the court clerk cannot schedule a trial date unless satisfactory evidence is produced that the parties have participated in a dispute resolution process or the Court, by order, waives this requirement under rule 4.16(2). If the Court sets a trial date under rule 8.5 *[Trial date: scheduled by the Court]* the Court may, if the conditions of rule 4.16(2) are met, give a waiver of that rule at that time.

Subdivision 2
Judicial Dispute Resolution

Purpose of judicial dispute resolution

4.17 The purpose of this Subdivision *[Judicial Dispute Resolution]* is to provide a party-initiated framework for a judge to actively facilitate a process in which the parties resolve all or part of a claim by agreement.

Judicial dispute resolution process

4.18(1) An arrangement for a judicial dispute resolution process may be made only with the agreement of the participating parties and, before engaging in a judicial dispute resolution process, and subject to the directions of the presiding judge, the participating parties must agree to the extent possible on at least the following:

(a) that every party necessary to participate in the process has agreed to do so, unless there is sufficient reason not to have complete agreement;

(b) rules to be followed in the process, including rules respecting

(i) the nature of the process,

(ii) the matters to be the subject of the process,

(iii) the manner in which the process will be conducted,

(iv) the date on which and the location and time at which the process will occur,

(v) the role of the judge and any outcome expected of that role,

(vi) any practice or procedure related to the process, including exchange of materials, before, at or after the process,

(vii) who will participate in the process, which must include persons who have authority to agree on a resolution of the dispute, unless otherwise agreed, and

(viii) any other matter appropriate to the process, the parties or the dispute.

(2) The parties who agree on the proposed judicial dispute resolution process are entitled to participate in the process.

(3) The parties to a proposed judicial dispute resolution process may request that a judge named by the parties participate in the process.

Information note

The parties to a JDR process cannot, of course, bind a judge to participate in the process. The parties should find out in advance whether their proposed process gives a judge any difficulty. If the judge is not willing to participate in the process agreed on by the parties, the parties are free to seek the assistance of another judge.

If the parties agree and a judge is willing, the judge may assist the parties in working out a JDR process.

Documents resulting from judicial dispute resolution

4.19 The only documents, if any, that may result from a judicial dispute resolution process are

(a) an agreement prepared by the parties, and any other document necessary to implement the agreement, and

(b) a consent order or consent judgment resulting from the process.

Confidentiality and use of information

4.20(1) A judicial dispute resolution process is a confidential process intended to facilitate the resolution of a dispute.

(2) Unless the parties otherwise agree in writing, statements made or documents generated for or in the judicial dispute resolution process with a view to resolving the dispute

(a) are privileged and are made or generated without prejudice,

(b) must be treated by the parties and participants in the process as confidential and may only be used for the purpose of that dispute resolution process, and

(c) may not be referred to, presented as evidence or relied on, and are not admissible in a subsequent application or proceeding in the same action or in any other action, or in proceedings of a judicial or quasi-judicial nature.

(3) Subrule (2) does not apply to the documents referred to in rule 4.19 *[Documents resulting from judicial dispute resolution]*.

Involvement of judge after process concludes

4.21(1) The judge facilitating a judicial dispute resolution process in an action must not hear or decide any subsequent application, proceeding or trial in the action without the written agreement of every party and the agreement of the judge.

(2) The judge facilitating a judicial dispute resolution process must treat the judicial dispute resolution process as confidential, and all the records relating to the process in the possession of the judge or in the possession of the court clerk must be returned to the parties or destroyed except

(a) the agreement of the parties and any document necessary to implement the agreement, and

(b) a consent order or consent judgment resulting from the process.

(3) The judge facilitating a judicial dispute resolution process is not competent to give evidence nor compellable to give evidence in any application or proceeding relating to the process in the same action, in any other action, or in any proceeding of a judicial or quasi-judicial nature.

Division 4
Security for Payment of Costs Award

Considerations for security for costs order

4.22 The Court may order a party to provide security for payment of a costs award if the Court considers it just and reasonable to do so, taking into account all of the following:

(a) whether it is likely the applicant for the order will be able to enforce an order or judgment against assets in Alberta;

(b) the ability of the respondent to the application to pay the costs award;

(c) the merits of the action in which the application is filed;

(d) whether an order to give security for payment of a costs award would unduly prejudice the respondent's ability to continue the action;

(e) any other matter the Court considers appropriate.

Contents of security for costs order

4.23(1) An order to provide security for payment of a costs award must, unless the Court otherwise orders,

(a) specify the nature of the security to be provided, which may include payment into Court,

(b) require a party to whom the order is directed to provide the security no later than 2 months after the date of the order or any other time specified in the order,

(c) stay some or all applications and other proceedings in the action until the security is provided, and

(d) state that if the security is not provided in accordance with the order, as the case requires,

(i) all or part of an action is dismissed without further order, or

(ii) a claim or defence is struck out.

(2) If the security is given by bond, the bond must be given to the party requiring security unless the Court otherwise orders.

(3) If the security is given by money paid into Court, the money may, by agreement of the parties, be paid out and a bond substituted for it.

(4) As circumstances require, the Court may

(a) increase or reduce the security required to be provided, and

(b) vary the nature of the security to be provided.

(5) An order under this rule may amend a complex case litigation plan.

Division 5
Settlement Using Court Process

Formal offers to settle

4.24(1) At any time after a statement of claim, a claim under the *Family Law Act*, an application to vary a custody order under the *Extra-provincial Enforcement of Custody Orders Act* or an originating application to vary a corollary relief order granted by another court under the *Divorce Act* (Canada) is filed, but 10 days or more before

(a) an application for judgment by way of a summary trial is scheduled to be heard,

(b) a trial is scheduled to start, or

(c) an application is scheduled to be heard or considered,

one party may serve on the party to whom the offer is made a formal offer to settle the action or a claim in the action.