What the NAPEG Act says about Alternative Dispute Resolution (ADR)

46. The Chair of the Discipline Committee may, at any time before the commencement of a hearing into a complaint, appoint a referee to conduct an alternative dispute resolution process in respect of a complaint if:

(a) the Chairperson considers that an attempt to settle the complaint through the process is appropriate in the circumstances; and

(b) The complainant and practitioner agree to attempt to have the complaint settled through an alternative dispute resolution process, and agree to comply with the procedures that will apply to the process.

The referee shall terminate the process and refer the complaint back to the chairperson of the Discipline Committee, if:

(a) the complainant or practitioner request a termination of the process; or

(b) The referee considers it unlikely that the complaint will be settled through the process.

The Chairperson of the Discipline Committee shall provide the complainant and the practitioner with a written copy of:

(a) the appointment of a referee to conduct an alternative dispute resolution process in respect of a complaint under subsection (1) of Section 46., or

(b) The referee’s referral of the complaint back to the Chairperson under subsection (2) of Section 46 of the Act.

47. Communications and evidence arising from anything said or produced during the course of an alternative dispute resolution process are confidential and are not admissible in any proceedings under this or any other Act, or in any action, matter or proceeding, without the written consent of the complainant and the practitioner.

48. If a complaint is settled through an alternative dispute resolution process, the referee shall provide the chairperson of the Discipline Committee with a copy of the settlement agreement signed by the complainant and practitioner.

The chairperson of the Discipline Committee may:

(a) approve the settlement agreement; 
(b) with the consent of the complainant and practitioner, amend the terms and conditions of the settlement agreement and then approve it; or
(c) refuse to approve the settlement agreement.

A settlement of a complaint does not come into effect unless the chairperson of the Discipline Committee approves the settlement agreement under paragraph (2)(a) or (b).

The chairperson of the Discipline Committee may deal with a complaint under this Part as if there had been no appointment of a referee to conduct an alternative resolution process if

(a) The complaint is referred back to the chairperson under subsection 46.(2);
(b) The chairperson refuses to approve the settlement agreement under paragraph (2)(c); or
(c) The chairperson is satisfied that the practitioner has not complied with the terms and conditions of an approved settlement agreement.

The chairperson of the Discipline Committee shall notify Council of the disposition of a complaint referred to an alternative dispute resolution process.
What is Alternative Dispute Resolution?

Alternative Dispute Resolution (ADR) is a process that involves voluntary mediation to provide the parties to a dispute an opportunity to resolve the issues effectively and efficiently.

Under the NAPEG Act the mediator is called a ‘referee’. The referee is a neutral person, responsible for ensuring the process is fair and for helping the parties determine whether there is an opportunity to resolve the issues in a mutually satisfactory way.

Most mediations begin with each party providing his or her perspective on what gave rise to the dispute. The referee then works with the parties to determine what issues the parties should discuss and resolve. The parties in turn develop and explore options for resolution. If any option makes sense for both parties, they can resolve the dispute. The parties, not the referee, decide what is acceptable to each of them and whether they can reach an agreement.

NAPEG pays the referee’s fees, although the complainant and the practitioner help to select the referee.

Evidence is Confidential

Communication and evidence arising from anything said or produced during the course of an alternative dispute resolution process are confidential and are not admissible in any proceedings under this or any other Act, or in any action, matter or proceeding, without the written consent of the complainant and the practitioner.

Settlement

If a complaint is settled through ADR, the referee shall provide the Chairperson of the Discipline Committee with a copy of the settlement agreement signed by the complainant and the practitioner.

It does not come into effect until the Chair has approved the settlement agreement.

What is mediation and when does it work best?

The referee is a mediator. Mediation is a voluntary process, where an impartial facilitator (also called referee or mediator) helps the parties in conflict to communicate and to find an acceptable way for the parties to resolve their issues.

Mediation works best when:

- Both parties want to preserve their relationship;
- Other options for resolving the conflict are not as appealing;
- Both parties want to resolve the conflict and are willing to communicate openly and honestly;
- The correct people are involved in the process; and
- There is a specific issue to be resolved and it can be resolved.

What are the benefits of mediation?

- Success - most mediations result in some sort of an agreement between the parties;
- Speed - many disputes can be resolved within several hours;
- Costs - mediation is usually less expensive than going to a Board of Inquiry;
- Privacy - discussions are absolutely confidential and agreements can also be confidential;
- Preserves relationships;
- Informal atmosphere - mediators are trained to put people at ease; and
- Personal satisfaction - concerns are heard, even if there is no agreement.

Selecting a Referee

The Chairperson of the Discipline Committee has the responsibility of appointing a referee. However, both the practitioner and the complainant will be given the opportunity to consent to the referee appointed. The process will not commence until there is agreement on this point.