



Action Committee on Modernizing Court Operations

IMPROVING ACCESS TO JUSTICE THROUGH JUDICIAL DISPUTE RESOLUTION

A Statement from the Action Committee

Our Committee supports Canada's courts in their modernization efforts. It provides guidance for addressing challenges, and highlights opportunities and innovative practices to modernize court operations and improve access to justice for court users.

1. CONTEXT AND BACKGROUND

In its [Orienting principles for reducing court backlog and delays](#), the Action Committee recognized that promoting early Judicial Dispute Resolution (JDR) and Alternative Dispute Resolution (ADR) plays a key role in reducing backlog and delays by optimizing court processes and resources. JDR and ADR can also increase access to justice by providing a process that is more accessible to litigants, particularly if they are self-represented. JDR refers to judge-led processes that seek to resolve cases earlier and more efficiently than through a full trial or, if that is not possible, to narrow the issues to be litigated. JDR could include triaging practices, case management or settlement conferences, or informal trials. These processes can be mandatory or on consent, and binding or non-binding. A related concept is court ADR, where parties meet with a non-judicial actor within court-led or court-endorsed processes with the same goals as JDR.

This publication outlines common features of successful JDR and court ADR in Canada, followed by identified benefits of these processes and considerations for courts wishing to introduce a new JDR or Court ADR option into their operations. It ends with some examples from the wide range of JDR and Court ADR programs across the country.

2. COMMON FEATURES OF CANADIAN JDR AND COURT ADR

Courts across Canada integrate JDR or ADR into their processes in many different ways. Some initiatives have been running for years, while others are in the pilot stage or are currently being rolled out more broadly after an initial pilot. Many of these programs are located in family court, though JDR and ADR may work equally well for other matters.

Despite the different ways courts approach JDR, some common elements are evident. Considering these components of successful JDR may be of assistance to courts that would like to try a new approach to dispute resolution.

Proactive judicial involvement. Judges play a pivotal role in guiding JDR processes by engaging directly with parties to mediate disputes. This may include taking a more inquisitorial role by controlling what evidence will be permitted or asking all of the questions, rather than allowing parties to question each other directly.



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Simplified processes: JDR offers a less formal approach to dispute resolution than court hearings. For example, the rules of evidence may be relaxed, or the process could take place in a boardroom with everyone sitting around a table, rather than in a courtroom.

Early intervention: Most JDR programs provide the parties with an opportunity to resolve their disputes – or, if resolution is not possible, to reduce the number of issues in conflict – much more quickly than traditional court processes.

Consent-driven, collaborative approaches: JDR and ADR provide a more collaborative approach to problem-solving than the adversarial court process. To facilitate this collaboration, Canadian JDR programs are often only available if both parties consent to the process.

3. BENEFITS

Regardless of the model adopted, courts across Canada have identified many benefits to JDR and court ADR.

3.1 Meeting the needs of Litigants

JDR and related models can meet the needs of litigants, and particularly those who represent themselves, by:

- Minimizing the need to understand complex legal processes or have specialized legal knowledge
- Offering a less intimidating environment compared to formal court proceedings
- Making the process more accessible by removing traditional courtroom formalities

3.2 Resolving Disputes More Quickly

One of the main benefits of JDR is that it can lead to quicker case resolution by:

- Giving parties the opportunity to address their issues with a judge more quickly than if they were going to trial
- Limiting the amount of evidence that will be considered, and therefore keeping the focus on solving the issues that are actually in dispute, rather than revisiting past grievances
- Reducing the number of issues in dispute for parties who still do go to trial

3.3 Finding Durable Solutions

JDR and ADR can support effective and lasting solutions by:

- Fostering collaborative results that both parties have greater control in developing, and therefore feel more invested in
- Operating by consent to ensure that all parties are willingly agreeing to, and engaging in, the process. This can lead to more informed decision-making



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- Encouraging customized processes and solutions tailored to the unique needs of the parties involved

4. CONSIDERATIONS

JDR or court ADR initiatives provide opportunities for courts to increase access to justice by offering quicker and simpler processes. However, the success of a project will depend on both how it is designed and how it is implemented on the ground. To increase the chances of success, consider the following matters when designing a new JDR or court ADR process.

4.1 Design Considerations

Like any project or pilot, a new JDR or Court ADR initiative should be developed and introduced in a structured way.

Identify who should be involved in developing the project: Determine whether new rules or procedures are required. If implementing new rules requires the involvement of the executive or legislative branch, engage them in the process early. Assess how the Bar or service-delivery organizations whose clients might be affected by the project may be affected, and develop a strategy to engage them in the design. For more information on [Collaborating Effectively with Stakeholders](#), visit the Action Committee's past publication on this topic.

Support change through careful planning: Participants, including judges and the Bar, will be more open to a shift in orientation from adversarial to collaborative processes if they have been engaged throughout the project's design and are provided with adequate training to work in new ways. The project should also be monitored to ensure that it is achieving its intended results. For tips on taking a change management approach to piloting a new process, visit the Action Committee's publication, [Orienting Principles: Leading and Managing Change in the Courts](#).

Assess how to leverage virtual technologies, as appropriate: In addition to saving time and minimizing travel, virtual dispute resolution sessions can provide a less intimidating setting than court, but the appropriateness of virtual appearances for JDR will be case specific. For a list of relevant considerations, see the Action Committee's publication, [Virtual Hearings: Operations Considerations – Benefits and Challenges](#).

Virtual processes may require some adaptation to function similarly to in-person processes, and participants may need additional technical information or support to participate effectively. For example, virtual caucus rooms can be used to meet with parties separately, but may require advance planning, depending on the platform used. Additional attention to each party might also be needed to make them feel included and heard in the process, since establishing a rapport can be more difficult online.

4.2 Implementation Considerations

While JDR and court ADR can have multiple benefits, they are more appropriate for some situations than others. As such, in addition to thinking about how a new initiative will be developed, a court that is planning to introduce or expand JDR or ADR offerings may wish to consider the following substantive matters.



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Maintain an appropriate power balance between the parties: This consideration is especially important in cases involving intimate partner violence. Courts should ensure that judges conducting JDR are trained in identifying and responding to family violence.

Strike the right balance between structure and flexibility: Courts should assess what procedural fairness considerations may arise in a JDR process, and how to address them. Another relevant concern is how a judge will decide when a formal trial is more appropriate: relevant considerations may include the relationship between the parties, the complexity of the issues, or the nature and volume of evidence, among others. And finally, even if a court had decided to implement mandatory JDR or court ADR, consideration should be given to maintaining the discretion to forego this stage where appropriate such as, for example, instances of family violence.

Introduce specialized procedures to meet the cultural needs of Indigenous families and children: Given how the child protection system has historically discriminated against Indigenous families, it may be necessary to modify procedures or develop a separate process to meet the needs of Indigenous families and children. Community members and Elders can help the court to identify alternative approaches.

5. INITIATIVES

Courts across Canada have adopted many innovative dispute resolution programs. This illustrative list of examples shows the wide range of approaches available to integrating JDR and ADR into court processes – from taking the dispute resolution process out of the courts to retaining the trial format while simplifying the rules to support self-represented litigants.

5.1 Starting Outside the Court: Early Resolution and Case Management Model (Provincial Court of British Columbia)

To help parties achieve earlier, more collaborative resolutions to their family law disputes, the Family Justice Services Division of the Ministry of the Attorney General and the Provincial Court of British Columbia deployed the [Early Resolution and Case Management Model](#) as a prototype in Victoria in May 2019. The model was then expanded to Surrey in December 2020, with plans for wider implementation in the Lower Mainland within the next three to five years. Under this model, parties attend Justice Access Centres, where they receive legal information, a needs assessment, and referrals to appropriate services. In the initial needs assessment, a Family Justice Counsellor determines if it is appropriate for the parties to complete a parenting education program and to participate in at least one consensual dispute resolution, facilitated by a Family Justice Counsellor, before filing court applications.

If there are still outstanding issues needing a court decision after the first dispute resolution session, the Early Resolution process is followed by a family management conference, an initial meeting between the parties and a judge aimed at resolving disputes and narrowing the issues for trial. A Report about the Victoria experience indicates that about 65% of applications that would have gone to court are resolved through front-end processes, reducing court time and the adversarial nature of disputes.



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5.2 Adapting to meet the needs of Indigenous families: Aboriginal Family Healing Case Conferences (BC Provincial Court)

To address the overrepresentation of Indigenous children in foster care, the Provincial Court of British Columbia worked with various provincial government departments and Elders to develop the [Aboriginal Family Healing Case Conference](#) (AFHCC) pilot project, which started in New Westminster in March 2017. An AFCC is a culturally-adapted version of a family case conference where the process is conducted in a healing circle, allowing Indigenous families to share their stories in a culturally respectful and supportive environment. Families work with Elders to create a healing and wellness plan, aspects of which may be incorporated into any consent order issued by the judge during the case conference. Once the goals outlined in the healing and wellness plan are achieved, a cultural ceremony is held to honour families' dedication and success. A more detailed description of the AFHCC project is included in the Action Committee's [Repository of Indigenous Practices in the Courts](#).

5.3 Non-Binding Opportunities to Settle: Judicial Dispute Resolution (Alberta Court of Justice)

The Alberta Court of Justice maintains a long-established [JDR process](#) focused on direct judicial involvement to mediate disputes across family law and child protection cases. This hands-on, non-binding approach encourages parties to settle disputes collaboratively before trial. JDR sessions are generally informal, taking place in conference rooms without extensive legal briefs or witness testimony. Binding JDRs are rare, but are an opportunity for parties to elect that the judge will make the final decision where necessary.

The court has recently introduced a process in which there will be two JDRs in each child protection case: one after the initial custody determination and another three months before trial. The recent implementation of Alberta's Family Justice Strategy is shifting family law towards a more collaborative model, with mandatory ADR processes in place before court appearances. This, in turn, is contributing to a significant reduction in family law filings across the province. Despite the reduction in filings resulting from pre-court ADR, JDR remains a robust part of Alberta's judicial system.

5.4 Opportunities to settle Civil and Criminal matters at the Appellate Level (Quebec Court of Appeal)

The Quebec Court of Appeal offers two JDR streams to parties represented by counsel: [settlement conferences](#) in civil, commercial and family matters, and [facilitation](#) in criminal and penal matters. Both processes require the consent of all parties to the dispute and can occur at any stage of the appeal proceedings. During JDR under either stream, appellate time limits are suspended, unless the Court decides otherwise or the parties ask that they not be suspended. Settlement conference and facilitation services are based on a flexible procedure and are free and quick. In both cases, confidentiality is an essential component of the process.

If the parties arrive at an agreement during a settlement conference, the judge presiding over the session may submit the agreement to the Court for homologation.



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Any issue related to an appeal in a criminal or penal matter, including sentencing, may be considered during a facilitation session. The solution adopted by the parties is submitted to the Court. If the Court accepts the proposal, it renders a judgment terminating the appeal, in which it mentions that a facilitation session was held and explains the Court's reasons for accepting the proposed solution.

5.5 Binding Opportunities to Settle: Binding Judicial Dispute Resolution Initiative (Ontario Superior Court of Justice)

In 2021, the Ontario Superior Court of Justice launched the [Binding JDR pilot project](#) to provide a summary process for parties in appropriate family cases to reach a final resolution without the need for a trial. The pilot currently operates in seven of Ontario's eight regions, and is gradually expanding across the province: right now, it is available in the entire Central East, Central South, Northwest, Northeast and Toronto regions, as well as at court locations in Cornwall, L'Orignal, Ottawa, Pembroke, and London.

Binding JDR is a flexible, party-consensual process where a judge actively helps parties explore settlement options and, if issues remain unresolved, makes binding final orders. Binding JDR is less formal than a trial, with relaxed rules of evidence, no presumptive right to call witnesses, no cross-examination, and a more proactive role for the judge. At the end of the hearing, the judge issues an enforceable court order, addressing both agreed-upon and contested issues. Binding JDR hearings generally do not exceed one day of court and allow parties to avoid lengthy trials, thus reducing the costs and stress for litigants and ensuring an appropriate allocation of court resources.

The Binding JDR pilot project currently operates under a practice advisory which is published on the Superior Court of Justice website.

5.6 Paper-based Resolution: Study Permit Pilot Project (Federal Court)

The Federal Court, in collaboration with the Department of Justice and members of the Citizenship, Immigration and Refugee Law Bar Liaison Committee, has recently launched a pilot project to help address its large immigration docket. The [Study Permit Pilot Project](#) seeks to streamline the adjudication of study permit applications by reducing procedural steps and eliminating the need for a hearing. This simplified process is available on consent for simple cases in which the parties agree on the facts as outlined in the study permit application and neither party would like to introduce new evidence by way of an affidavit. Parties who opt into the pilot file a four-page simplified submission form that replaces all documents, including affidavits and written submissions. The pilot modifies the existing two-step process: instead of the applicant having to request leave and then attend a hearing to bring the application for judicial review, the court will use the documentary evidence to address both steps at the same time. It is anticipated that this pilot will reduce the length of time to hear this type of application from 14-18 to five months.



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5.7 Simplifying the Trial Process: Informal Family Trials Pilot Project (Provincial Court of British Columbia)

As part of their continuing effort to streamline family law proceedings, the Ministry of the Attorney General and the Provincial Court of British Columbia launched the [Informal Family Trials Pilot Project](#) in Kamloops in May 2022. The pilot offers a flexible alternative to traditional litigation that allows judges to tailor trial procedures to meet the needs of the parties and help resolve their issues. In an informal trial, the judge takes an active role in questioning the parties, with relaxed rules of evidence allowing relevant and reliable information that might otherwise be excluded. Since the informal trial is voluntary, it will only be used if 1) each party has filed a written consent form at the court registry before the trial is scheduled, and 2) the trial judge deems it appropriate. Every informal trial is different, and the trial judge may adjust the process to better meet the needs of the parties.