

DISPUTE RESOLUTION
Report and Recommendations

Prepared by

Administrative Justice Project

for the

Attorney General of British Columbia

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FOREWORD

The following report was prepared for British Columbia's Administrative Justice Project. Established in July 2001, the Project is part of the government's commitment to ensure that the administrative justice system is accessible, efficient, fair and affordable.

Since its inception, the Project has examined fundamental questions about the nature, quality and timeliness of administrative justice services in British Columbia. It has also set forth a series of recommendations to address the most significant challenges facing the system today.

This report discusses issues related to the range of dispute resolution processes available to, and appropriate for, administrative tribunals. The phrase "dispute resolution" can be broadly construed as applying to all forms of dispute resolution, including arbitration, litigation, negotiation, mediation or administrative review. Within the context of this report, "dispute resolution" refers more narrowly to consensual dispute resolution.

Although most administrative tribunals were intended to offer an alternative to formal, complicated and costly court processes, many are experiencing problems that parallel those in the court system. In both forums, cost, delay and procedural complexity can impede public access. The adoption of processes for the early, consensual resolution of disputes has come to be seen as a significant component in enhancing public access to justice and in improving the efficiency of administrative tribunals. There are clear opportunities for administrative tribunals to consider adopting consensual dispute resolution processes and, where necessary and appropriate, statutory provisions should be enacted to ensure that tribunals can take advantage of these opportunities.

The analysis and recommendations presented here support the Administrative Justice Project's White Paper. Copies of the White Paper, other background papers, reports and further information on the Project are available through the Internet at: www.gov.bc.ca/ajp.

Interested readers are invited to provide comments on the White Paper and related reports before November 15, 2002 by:

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INTRODUCTION

One of the primary mandates of the administrative justice system is to provide a less formal, complex and costly alternative to the court system. Ironically, over the years, administrative tribunals have come to experience problems that parallel those in the court system, where costs, delays and procedural complexities too often serve to impede public access. In the civil justice system, these problems have been the subject of extensive study and comment – pointing to the need for a much greater emphasis on early, consensual dispute resolution. There is an almost universal conclusion that this is the best way to enhance public access to justice.¹

¹ The main reports are: Access to Justice: The Report of the Justice Reform Committee, B.C. (1988); Civil Justice Review, Ontario (1996); Systems of Civil Justice Task Force Report, Canadian Bar Association (1996); Lord Woolf’s Report on Access to Justice, England (1996) (<http://www.lcd.gov.uk/civil/finalfr.htm>); Managing Justice: A Review of the Federal Civil Justice System, Australian Law Reform Commission (1999) (<http://www.austlii.edu.au/au/other/alrc/publications/reports/89/index.html>).

“ADR” and the Dispute Resolution Continuum

The term “ADR” was originally an abbreviation for “alternative dispute resolution”. In recent years, however, this phrase has been replaced by newer terms such as “appropriate dispute resolution” or simply “dispute resolution”. The changing terminology reflects a growing acceptance of these processes – and a growing recognition that they are not only useful as alternatives to adjudication. Rather, “ADR” processes are part of a continuum of options for resolving disputes, ranging from low cost, straightforward processes such as negotiation to high cost, complex processes such as adjudication, which is seen as a valued but last resort.

In this report, the term “dispute resolution process” refers to the full range of options on the continuum, from which tribunals can choose the most appropriate process for resolving individual cases. The term “consensual” is used to describe dispute resolution processes that do not reflect the traditional adjudicative model (defined below).

Types of Dispute Resolution Processes

Mediation is one of the best known, and most commonly used, forms of consensual dispute resolution. In this process, a neutral, impartial third party tries to facilitate a settlement between disputing parties and does not have the authority to impose a binding decision.

There are two common approaches to mediation:

Interest-based –The mediator encourages the parties to identify their needs, desires, concerns, fears and hopes and to craft an outcome which addresses as many of their underlying needs and interests as possible. The mediator oversees the process and is not responsible for the outcome. (This is the approach preferred by the Ministry of Attorney General’s Dispute Resolution Office and reflected in the ministry’s Alternative Dispute Resolution Policy,² based on a belief that parties are more likely to be satisfied with resolutions based on their interests.)

Rights-based or evaluative –The mediator assumes the parties want and need direction on the appropriate grounds for settlement and takes a more active role in determining the outcome. The mediator frames the dispute in terms of opposing rights and obligations or

² http://www.ag.gov.bc.ca/dro/adr_policy_statement.htm.

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looks to the rights the parties would have in court as a guideline or benchmark for settlement.

Negotiation is any form of unfacilitated communication in which opposing parties discuss potential steps to resolve a dispute. It can occur directly between the parties or indirectly through agents on behalf of the parties, such as lawyers.

Conciliation is difficult to define because the word is used to describe very different types of processes. For example it has been defined as “a procedure like mediation but where the third party, the conciliator, takes a more interventionist role in bringing the two parties together and in suggesting possible solutions to help achieve an agreed settlement”.³ Another source defines conciliation as a process “where a neutral third party serves as an intermediary or messenger between disputing parties who are unwilling to meet. This term is often used interchangeably with mediation and facilitation”.⁴

Facilitation includes techniques to improve the flow of information between parties to a dispute or in decision making.

Negotiated rulemaking or “reg-neg” brings together representatives of various stakeholders to negotiate the body of a proposed rule or regulation. This method is used extensively in the U.S.

Shared decision making is a consensus-based approach that brings together those who have authority to make a decision and those who will be affected by the decision. Both parties are jointly empowered to seek an outcome that accommodates the interests of all concerned.⁵

Neutral evaluation is a process in which parties obtain from an experienced (and possibly expert) neutral third party a non-binding, reasoned evaluation of their case on its merits. The opinion or assessment is expected to have persuasive value, especially because the neutral third party is jointly selected.

Mediation-arbitration or “med-arb” starts as a traditional mediation by a neutral third party. If the mediation does not result in a resolution, the third party becomes an arbitrator and makes a binding decision.

³ The Lord Chancellor’s Department, Consultation Paper: General Pre-action Protocol, October, 2001 <http://www.lcd.gov.uk/consult/preaction/preaction.htm>.

⁴ Pirie, *Alternate Dispute Resolution: Skills, Science, and the Law*, (2000), p. 48.

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Arbitration is a form of adjudication. Disputes are submitted to a neutral adjudicator through the presentation of evidence and arguments and the arbitrator's ruling is binding. Arbitration is generally a private, voluntary method of adjudication. However, government sometimes requires that certain disputes be submitted to arbitration (e.g. disputes under the *Residential Tenancy Act*). Also, a contract may provide that disputes will be resolved by arbitration rather than litigation.

Adjudication refers to any dispute resolution process in which a neutral third party hears each party's evidence and arguments and renders a binding decision. This includes arbitration and litigation.⁶

Case management is not usually considered a dispute resolution process, but it is closely linked to the use of consensual dispute resolution processes. Case management systems promote early and less costly dispute resolution. They often incorporate, early in the process, a method to assess the potential for, and make referrals to, non-binding dispute resolution approaches.

Dispute resolution systems are often designed to be integrated with case management. Many jurisdictions use both to enhance access to justice and respond to concerns about the cost of administering dispute resolution processes.

Settlement conferences, case conferences and pre-trial conferences are case management processes involving an informal dialogue between a tribunal member or members, legal counsel and/or the parties, leading up to a hearing. Objectives can include settling the dispute, expediting the disposition of the action, discouraging wasteful pre-trial activities and improving the hearing's efficiency through more thorough preparation.

DESIGNING DISPUTE RESOLUTION SYSTEMS

Collaborative Problem Solving

Most existing public dispute resolution systems are established on a rights-based, essentially adversarial model, mirroring the court system. Experience in a wide variety of settings has demonstrated that interest-based approaches – with their emphasis on collaborative problem solving and facilitated negotiation – will provide simpler, less expensive, "user-friendly" dispute

⁵ Darling, ed, *Thinking Strategically: Developing Systems to Resolve Conflict* (1998).

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resolution for many cases. This is not to suggest, however, that mediation - or any other form of collaborative resolution - is universally appropriate or able to displace rights-based adjudicative processes. Rather, consensual approaches are an adjunct to adjudicative processes.

Managing to Resolution – Early Resolution

In the court system, the traditional approach has been to place all disputes on a procedural track aimed towards adjudication, relying on the fact that most of them (about 97%) will resolve before they ever reach the hearing stage. In other words, even though we know that most court cases will settle, the system still manages and administers them as if they will be adjudicated.

Many tribunals also manage to adjudication and, while the rate of settlement is lower than in the courts, this may be because the tribunal process has fewer incentives to settle or because the tribunal's culture is not settlement focused. The result can be that some tribunals deal with a majority of cases by adjudication.

Another approach is to start from, and build on, the goal of settling most or many cases. Systems can then be designed and policy created to support settlement at every stage of the case. This kind of approach could allow tribunals to expressly manage for or towards resolution, facilitating earlier settlements.

Integrated and Comprehensive Dispute Resolution Policy Umbrella

Tribunals considering collaborative dispute resolution need to do more than simply add a mediation (or other mechanism) box to their procedural flowchart. As one commentator stated:

Bringing ADR into administrative law involves more than just simply engrafting upon the mandate of an agency additional statutory powers authorizing mediation and arbitration. It requires thinking deeply about regulation, government, law and public administration.⁷

Tribunals should consider policies that support settlement at every stage of the case. This means supporting dispute resolution – not only as a final objective, but at every level and stage in the process, in a consensual fashion. This may mean, for example, training regulatory staff to use a consensual approach to solving problems in their day-to-day work environment; training all tribunal staff who interact with parties to work in a consensual fashion; or using case

⁶ Pirie, p. 47.

⁷ Reid, Alan, "Seeing Regulation Differently: An ADR Model of Policy Formulation, Implementation and Enforcement" (1995), p. 1.

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management tools to identify, early in the process, cases appropriate for non-adjudicative resolution.

Need for Legislated Dispute Resolution Powers

The use of consensual dispute resolution by administrative tribunals is relatively new. As a result, many tribunals do not have express authority in their statutory powers to engage in these types of practices. Of the many statutes governing tribunals, only four refer specifically to mediation or dispute resolution⁸. Where provisions do exist, tribunals do not always have a comprehensive dispute resolution system and dispute resolution powers do not have consistent wording.

In some cases, tribunals have developed consensual dispute resolution processes regardless of the absence of specific enabling powers in their legislation. For example, the British Columbia Utilities Commission has adopted procedures such as technical workshops, pre-hearing conferences and discussion groups to encourage open and flexible discussions among participants in regulatory matters. The commission “also uses ADR to seek agreement among participants about regulatory matters”⁹ before it.

Still, there are a number of reasons why it makes good sense to include dispute resolution powers in legislation. First, there is no consensus on whether the ability to engage in dispute resolution processes is a power that must be conferred by statute – or a procedure, which does not require express statutory authority. Tribunals, advocates and the public need certainty about this issue in order to engage in dispute resolution design creatively and confidently.

Second, conferring specific power on one tribunal may compel a court to conclude that silence in another tribunal’s governing statute means that such a power is not implied.

Third, specific legislative provisions will provide some consistency on key issues and can serve an educative function, highlighting and legitimizing consensual dispute resolution tools and systems.

⁸ *Children’s Commission Act*, R.S.B.C. 1996, c. 11, *Human Rights Code*, R.S.B.C., 1996, c. 210, *Labour Relations Code*, R.S.B.C., 1996, c 244; *Residential Tenancy Act*, R.S.B.C. c. 406.

⁹ Utilities Commission, “A Participants Guide to the British Columbia Utilities Commission, October 1996 (Revised February, 1999).

Benefits of Consensual Dispute Resolution Processes

Administrative tribunals may look to dispute resolution to address a variety of concerns including process dissatisfaction, delay, complexity, cost and lack of accessibility. The potential benefits of using consensual, non-binding dispute resolution processes include:

- simpler, less expensive and more timely dispute resolution;
- better, more enduring resolutions - since parties have the freedom to explore non-traditional and creative solutions that meet their individual needs;
- increased satisfaction with dispute resolution processes, even among parties who 'lose' and those who were not initially in favour of participating;
- a strong likelihood of settlement, even where parties are initially unwilling to participate in a consensual process;
- fewer enforcement problems, compared to decisions imposed by an adjudicator.

Consensual dispute resolution processes may be particularly well suited to an administrative justice system which aims to be accessible, fair, informal, proportionate, efficient and affordable.

Where Consensual Dispute Resolution Processes may not be Appropriate

Although there is scope for most tribunals to use consensual dispute resolution to some extent, certain types of disputes do not lend themselves to such processes. These types of disputes will vary depending on a range of factors and circumstances, but may include disputes in which:

The dispute is over a decision where a statutory decision maker had no discretion. In these cases, there will be no negotiable issue and, therefore, no room for consensual dispute resolution.

A legal precedent is needed to govern similar cases in the future. In these cases, consensual dispute resolution processes may settle the dispute but they cannot create a precedent on which the tribunal can base future decisions.

An issue of law, public policy or interpretation needs to be clarified on the record. As in cases where a precedent is sought, an adjudicative process may be required.

Public access or participation in the decision or resolution is desirable and cannot be accomplished in the non-adjudicative process. It should be noted, however, that consensual dispute resolution has been very successful in multi-stakeholder processes.

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People who are not parties to the dispute might be prejudiced by the outcome. This possibility also exists in disputes resolved through adjudication and there may be more scope within a consensual process to consider the interests of others affected by the outcome.

The constitutional validity of an act or law is challenged. Obviously, a tribunal would not submit constitutional questions to consensual decision making. However, consensual discussions, by focusing on the parties' underlying interests, can sometimes forestall constitutional or other challenges when they are being used in a tactical way.

The case is genuinely frivolous or opportunistic or a party is acting in bad faith. In these cases, tribunals will not want to waste resources, particularly if the hearing process allows for summary determination and dismissal.

There is fear of violence between the parties. It is not always safe to bring disputing parties together and, in some cases, these types of disputes might not be appropriate for consensual resolution. There are, however, ways of conducting consensual processes without having the parties meet face to face.

A final note on the use of consensual processes in the tribunal context: Tribunals that hear appeals from statutory decision makers should give careful consideration to whether or when consensual processes are appropriate for them. In some cases, problems may arise when statutory decision makers participate in particular types of consensual processes on appeals of their own decisions. For example, such participation can undermine the authority of a regulatory scheme, cause undue delay or create too much uncertainty about the finality of the first-level decision.

In this context it is critical that statutory decision makers – and staff making decisions in the first instance – are trained and empowered to engage in consensual decision making. This will improve the quality of and satisfaction with their decisions and so reduce the number of cases that go to a tribunal on appeal.

KEY ISSUES

Tribunals considering consensual dispute resolution must first consider a number of key issues. Many can be dealt with in rules and procedures, while others require statutory authority.

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Discussion of these issues raises many of the typical concerns expressed about the use of consensual processes in the tribunal setting.

Statutory Limitations

The legislation governing many tribunals limits possible outcomes. For example, it may require tribunals to reflect broad statutory objectives, to conform to statutory standards or to act in the public interest. The *Human Rights Code* lists a number of statutory objectives, including preventing discrimination and promoting a climate of understanding and mutual respect. Health licensing regulations, such as those under the *Community Care Facility Act*, require adherence to particular standards.

The presence of such objectives or standards raises two important questions. Should settlements have to conform to the statutory objectives, standards or public interest goals of the tribunal's governing legislation and, if so, to what degree will this undermine the consensual approach by interfering with the parties' freedom to craft their own resolution?

These questions often arise in the course of mediation and can be addressed in a number of different ways.

First, legislation can provide that a tribunal must approve all settlements. This is the approach taken by the Ontario Human Rights Commission and the British Columbia Utilities Commission where settlements are reviewed to ensure they reflect the statutory mandate of the tribunal. Second, the mediator can be required to take a more rights-based or evaluative approach guiding the parties to a settlement that fits within certain parameters.

These two approaches often go hand in hand. If settlements must meet statutory requirements, it makes sense to at least ensure that parties are aware of those requirements, as well as the consequences of crafting an agreement that falls outside their parameters.

Power Imbalances

Some tribunals have expressed concern about consensual dispute resolution in cases where one party has significantly more power than the other. However, all disputes are characterized by some form of power imbalance. Power imbalances arise in many different circumstances including when parties have unequal resources or when one party is more interested in settling.

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Power imbalances may also be inherent in some relationships, such as those between an employer and an employee and a landlord and a tenant.

Because power imbalances are so common, and can shift during the course of a dispute, it is difficult and, to a certain extent, unnecessary to try to screen out categories of cases where power imbalances exist. Instead, experienced and properly trained mediators can work to balance power and the process itself can be designed to address power imbalances through, for example:

- providing information to participants so everyone has a clear understanding of the process;
- providing a “cooling off” period after a settlement is reached, giving the parties time to consider the agreement before they commit themselves to it;
- allowing parties to opt out of the process without penalty;
- requiring or encouraging parties to get independent legal advice on settlements;
- providing that agencies must approve settlements.

Appointment of Neutrals

The term “neutral” is used to describe the person appointed to assist the parties in resolving their dispute. There are at least four sources of neutrals for tribunals using consensual dispute resolution processes: tribunal members, staff, contractors or neutrals whose services are shared with other tribunals. From whatever source neutrals are drawn, it is important that they be properly trained and that the parties understand the differences between the consensual dispute resolution process and the adjudicative work of the tribunal.

Tribunal members – These individuals may have subject matter expertise and be especially aware of the tribunal’s statutory objectives. However, acting as a neutral requires equally specialized skills and training which many tribunal members may not have. If mediating is an important part of a tribunal’s process, policy could require that a certain number of tribunal members be trained mediators.

Even if they are not involved directly in mediation, all tribunal members should have some conflict resolution training. Generally, board members who act as neutrals should be barred from sitting as adjudicators if the matter does not settle. This is the approach taken by the Ontario *Statutory Powers and Procedures Act* (s. 4.8(5)). Exceptions may apply in processes such as med-arb, where the neutral is intended to later become an arbitrator or in cases where the parties consent.

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Staff – Tribunals with sufficient numbers of cases referred to consensual processes could consider hiring specialized staff to act as neutrals. They would develop subject matter expertise over time while developing their skill as neutrals. Whether or not staff are exclusively dedicated to serving as neutrals (and they need not be), tribunals must take careful steps to separate their adjudicative and non-adjudicative functions. Particular care is needed to protect information gathered through consensual dispute resolution processes from spilling over into the adjudicative side of the tribunal without the prior consent of all the parties.

Contractors – For tribunals with only occasional need for neutrals, contracting is a viable option. It may be more difficult to find contracted neutrals with subject matter specialty and knowledge of the agency, but these types of expertise can be developed by using individuals on a regular basis. Contractors can be more expensive but, if they are not required frequently, the cost may not be prohibitive. Tribunals can also rely on established rosters, where appropriate, or develop their own rosters.

Shared services - Another possibility is for groups of agencies to employ or retain neutrals such as mediators and share their services. This can work particularly well for agencies that work in similar sectors or with similar subject matters.

Selecting Cases for Alternative Dispute Resolution

There are a number of ways in which tribunals can determine which cases are resolved through consensual processes. Four approaches are described below.

Voluntary – In a purely voluntary system, the parties to a dispute choose whether to use a consensual process. In many cases, this approach does not attract sufficient participants to have a measurable impact.

Mandatory – In a mandatory regime, there is a presumption that the parties must attempt to settle through a consensual process before engaging the adjudicative system. Studies have shown that mandatory mediation produces settlement and satisfaction rates comparable to those achieved through voluntary mediation. Mandatory systems may use different degrees of coercion and may include broad exemptions or opting-out provisions. It should be noted that mandating participation in case management processes can be a highly effective way to streamline the tribunal process.

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Mandatory by order of administrative tribunal – Administrative tribunals can be given the power to order parties to mediation or other dispute resolution processes. This type of power fits well with a closely case managed system where the tribunal provides oversight and direction for each case.

Party driven – With this approach, one party to a dispute can compel the other(s) to take part in a consensual process. Unique to British Columbia, this “Notice to Mediate” process is available for most civil, non-family actions in Supreme Court. While it has not been used in the administrative justice content, it could provide a viable alternative for those tribunals wanting to go beyond a voluntary process without embracing a fully mandatory model.

Confidentiality

Confidentiality is the cornerstone of certain consensual dispute resolution processes such as mediation. Parties are more likely to engage in a frank discussion of their interests - and be open to considering a range of solutions - if they can be sure that the information shared will not become evidence in an adjudicative proceeding. Many jurisdictions address this matter through legislation with particular attention to the following key issues:

Compellability – Under a typical provision, the neutral and the parties cannot be compelled to give evidence, in any later proceedings, about what happened in the consensual process.

Non-Disclosure – Confidentiality provisions usually prevent the disclosure – in any other proceedings – of information and documents prepared for or used in a consensual dispute resolution process.

Exceptions – Many confidentiality provisions are subject to a number of exceptions, including:

- **Waivers** – There are different approaches to when and how confidentiality can be waived, including by the consent of all involved parties.
- **Proceedings to enforce agreements** – Confidentiality provisions should not apply in proceedings to enforce, amend or set aside an agreement reached through a collaborative process.
- **Pre-existing information** – The consensual process must not be used to shield information from disclosure in later proceedings - if that information would have been subject to disclosure in the absence of a consensual process. This information is often referred to as “otherwise discoverable”.
- **Crime** – Some provisions allow participants to disclose information about crimes or threats of crime.

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Freedom of Information - All information held by provincial government bodies is subject to the *Freedom of Information and Protection of Privacy Act*. This includes information produced by or for a consensual dispute resolution process. Statutory confidentiality provisions cannot protect information from disclosure under the Act, unless the statute expressly states that the Act does not apply. In addition, 10 types of exemptions are provided for under the Act, including exemptions that prohibit disclosures harmful to: the financial or economic interests of a public body, the business in interests of a third party, or personal privacy.

Although information released under the Act may become public, it will continue to be subject to any non-compellability and non-disclosure provisions in the legislation. In other words, just because information is released to a person or organization under the Act, that does not mean it can be used in any other process.

Enforcement of Agreements

Consensual dispute resolution processes are non-binding in the sense that a resolution will not be imposed on the parties. However, parties engaged in such processes often come to agreement about how to resolve their dispute and such agreements then become binding on the parties. There are a number of ways in which these agreements can be monitored or enforced:

Parties may withdraw the case – If a tribunal does not have a legislated mandate to oversee or record settlements, parties who have reached agreement can simply withdraw their case from the tribunal's process. The disadvantage is that they have no recourse if the agreement is breached and must rely instead on one another's good faith.

Parties may file terms of settlement with the tribunal – Filing provides the tribunal with information on the settlement that may be needed for reporting purposes and which allows the tribunal to close the case. Filing may also allow the parties to take advantage of the tribunal's enforcement powers. For example, under s. 29(2) of the British Columbia *Human Rights Code*, parties must provide their settlements to the Human Rights Commission.

Tribunals may issue an order – Settlement terms reflected in a tribunal order are subject to any enforcement mechanisms available under the governing legislation. For example, under the *Human Rights Code*, if the terms of an agreement have been provided to the Human Rights Commission, a party alleging a breach may file the settlement agreement with the chair of the

¹⁰ For example, see section 40(3) of the *Human Rights Code*.

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Human Rights Tribunal. The tribunal can then enforce the agreement as if it were a tribunal order.

Tribunal approval – If a tribunal has a public interest mandate or if the settlement must conform to statutory objectives, legislation can require that the tribunal approve all settlements before they are final. Approval can be issued directly or after a brief hearing. The Utilities Commission, for example, will reject any settlement that does not reflect the public interest.

LEGISLATIVE PROVISIONS

Every administrative tribunal should consider how a full spectrum of dispute resolution processes could improve the quality and efficiency of its work. To support this, the following legislative provisions would be required:

Power to engage in dispute resolution processes – This central provision would empower tribunals to use consensual dispute resolution processes. It would enable rules that allow a range of models – from fully voluntary to fully mandatory – and a range of processes, including mediation and case management.

Confidentiality and compellability – Compellability provisions would protect parties, including neutrals, from being compelled to give evidence in any future proceedings, unless confidentiality was waived in writing by all parties. Confidentiality provisions should, at minimum, prevent parties from disclosing, in any future proceedings, material prepared for or disclosed in the consensual process – unless all parties have consented in writing. Confidentiality provisions should also be subject to some or all of the exemptions discussed above.

The two preceding provisions are essential. Two further provisions should also be considered:

Selecting a neutral – Legislation could include a provision allowing tribunals to appoint a member, or any other person, to act as a neutral – provided that person does not participate in further proceedings unless specifically provided for in the rules governing the process.

Enforcement – Legislation could address when settlements must be reviewed and approved by the tribunal and whether or not the settlement needs to be reflected in an order of the tribunal.

SYSTEM WIDE COORDINATION

The foregoing discussion illustrates that many of the issues related to expanding the use of consensual dispute resolution are not legislative. Accordingly, legislation will not provide guidance on many of the critical issues facing tribunals in this respect.

The Ministry of Attorney General's Dispute Resolution Office has recommended that "consistent expert advice be available to all tribunals so that they have an opportunity to consider all the options and are provided with the tools to tailor the process to their specific needs". Centralized advice on such matters as selecting a neutral, designing a suitable process and selecting cases for consensual resolution will help bring a principled consistency to these matters across British Columbia.

RECOMMENDATIONS

Dispute resolution practices, other than formal adjudication, have been shown to be effective in the courts and in the few administrative tribunals where they have been tested. Better use of these practices will enhance public access to justice and improve the efficiency of administrative tribunals. Accordingly, it is recommended that government encourage broader use of consensual dispute resolution processes within the administrative justice system and that, where appropriate:

Administrative tribunals, as part of their service planning, identify opportunities for adopting early and alternative dispute resolution techniques.

Government contribute to the development of information, expertise and advice on:

- **how and when it would be appropriate to provide consensual dispute resolution processes in individual tribunals;**
- **how to design comprehensive dispute resolution systems that do not rely solely on adjudication to resolve disputes.**

Government amend the enabling statutes of administrative tribunals to include:

- **a power for tribunals to engage in consensual dispute resolution processes;**
- **provisions dealing with the appointment of neutrals, confidentiality and enforcement of agreements.**