

**Alternative Dispute Resolution – An Effective Means**  
**For Tribunals to Achieve Earlier Solutions, Faster Justice**<sup>1</sup>

*The Ministry of Attorney General, together with several partners (including the legal community), has embarked on a plan to ensure British Columbia’s justice system is more accessible, timely and cost effective. The plan is based on the concepts of early solutions and faster justice, to help individuals, families and businesses resolve disputes sooner.*

The Honourable Wally Oppal, Q.C.  
Attorney General of British Columbia<sup>2</sup>

**Introduction**

Government, judges, lawyers and the public all recognize that the current justice system simply does not work as well as it should and that steps need to be taken to adapt justice processes to achieve what people want from their justice system – the fair and just resolution of disputes in a timely and effective manner.

Utilizing organizations other than the courts to resolve disputes is not new; indeed one of the principal reasons for creating tribunals is to provide a more effective way to resolve certain types of disputes. Nor are alternative dispute resolution (ADR)<sup>3</sup> processes a new

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<sup>2</sup> The Honourable Wally Oppal, QC. Earlier Solutions, Faster Justice. Bar Talk – The Canadian Bar Association, British Columbia Branch – online:  
[http://www.cba.org/BC/bartalk\\_06\\_10/12\\_07/guest\\_oppal.aspx](http://www.cba.org/BC/bartalk_06_10/12_07/guest_oppal.aspx).

<sup>3</sup> Although it has been suggested the descriptor “alternative” is not applicable to tribunals’ processes, as tribunals are already an alternative to the courts, it is retained for the purposes of this paper.

idea,<sup>4</sup> with various tribunals and others having already adopted tools to streamline case management and to resolve disputes earlier and faster with higher satisfaction rates.

However, more can and should be expected.

As the costs rise, time delays increase, and British Columbia citizens ask for more efficient resolution of their claims and disputes by tribunals, it has become clear that ADR processes can help provide more cost-effective and timely decisions. Most importantly, tribunals that adopt a supportive ADR approach are facilitating a cultural shift from adversarial, winner-loser scenarios to a cooperative, interest-based approach that looks for productive and durable solutions.

This paper examines how ADR processes can be used by tribunals to support reforms to the justice system and address some of the challenges faced by users in the administrative justice sector. The paper first sets out an overview of the Ministry of Attorney General's justice reform goals and strategies. It then identifies some of the recent work undertaken by the Ministry of Attorney General specific to the challenges faced by tribunals in using ADR and to enhance the broader use of ADR in the administrative justice sector. The paper concludes with a description of the most recent ADR projects currently under development at the Ministry of Attorney General.

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<sup>4</sup> The Dispute Resolution Office (DRO), located within the Ministry of Attorney General, was established in 1996 with the objective of developing and promoting non-adversarial dispute resolution options within the justice system and government. Its website is: [www.ag.gov.bc.ca/dro/index.htm](http://www.ag.gov.bc.ca/dro/index.htm).

## **British Columbia's Justice Transformation**

British Columbia, like a number of other jurisdictions, is taking steps to reform its civil justice system, with the goal of making it more responsive, accessible and efficient. The Ministry of Attorney General is providing leadership across government in this initiative, and is working to build collaborative and innovative approaches to the diverse challenges currently facing the justice system. The intention is not only to improve *access* to justice, but to improve access to *resolution*, so that citizens can solve their problems more simply, quicker and at less cost. The Ministry's fundamental strategy is to provide "earlier solutions and faster justice" in all aspects of the justice system.<sup>5</sup>

A framework for these reforms has been provided by the Justice Review Task Force (JRTF),<sup>6</sup> and more specifically, the Civil Justice Reform Working Group (CJRWG) which is looking for better ways for British Columbia's civil justice system to resolve disputes. The CJRWG committed to focus on users' interests in the legal system and identified six central interests as important:

*Accessibility* - dispute resolution processes (including trials) that are affordable, understandable and timely;

*Proportionality* - procedures that are proportional to the matters in issue;

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<sup>5</sup> Seckel, Allan. Earlier Solutions, Faster Justice: The Future of Administrative Justice in British Columbia. [http://www.gov.bc.ca/ajo/down/ciaj\\_seckel\\_paper\\_may4\\_07.pdf](http://www.gov.bc.ca/ajo/down/ciaj_seckel_paper_may4_07.pdf) at p. 1.

<sup>6</sup> Established on the initiative of the Law Society of British Columbia, in March 2002, the JRTF's objective is to identify a wide range of reform ideas and initiatives to help make the justice system more responsive, accessible and cost-effective. The JRTF provides a forum for its participants to exchange information, engage in mutual consultation respecting proposed administrative, procedural or program changes, and coordinate initiatives where appropriate. For more information, see <http://www.bcjusticereview.org/>. And in particular, see the work of the CJRWG and the proposed new rules, posted on a supplemental JRTF website at [www.bcjusticereviewforum.ca/civilrules](http://www.bcjusticereviewforum.ca/civilrules).

*Fairness* - equal and adequate opportunities for parties to assert or defend their rights;

*Public Confidence* – a civil justice system that parties are confident will meet their needs and consider trustworthy and accountable;

*Efficiency* - the wise and efficient use of public resources, and

*Justice* - the truth, to the greatest extent possible, is ascertained and applied to produce a just resolution.<sup>7</sup>

Identification of these interests has provided the impetus and direction for British Columbia's reforms (including the administrative justice sector which is an integral component of the larger civil justice system) and, collectively, these interests may be seen to support broader use of ADR processes.

The Ministry of Attorney General has adopted five key strategies for its civil justice transformation plan. Those five strategies are:

- *Prevention*: to minimize or avoid conflicts from developing;
- *Integration*: to co-ordinate with systems and services in the community, to the extent possible;
- *Information*: to provide citizens more and better information, advice and guidance on how the justice system, including the administrative justice sector, works;
- *Simplification*: to support and encourage decision makers, including tribunals and others, to streamline their procedures to make them faster, proportional and more user-friendly; and

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<sup>7</sup> Effective and Affordable Civil Justice: Report of the Civil Justice Reform Working Group. Online, at p. 50: [http://www.bcjusticereview.org/working\\_groups/civil\\_justice/cjrwg\\_report\\_11\\_06.pdf](http://www.bcjusticereview.org/working_groups/civil_justice/cjrwg_report_11_06.pdf).

- *Resolution*: to encourage an early resolution focus, through procedures that encourage problem-solving and mediation, reserving adjudication only where no other option makes sense.<sup>8</sup>

What do the proposed court reforms mean for British Columbia's administrative justice sector?<sup>9</sup>

The question was first asked, and answered, by Deputy Attorney General Allan Seckel in his paper "*Earlier Solutions, Faster Justice: The Future of Administrative Justice in British Columbia*". At the most general level, the court reforms will inform and provide a conceptual framework for broader reforms across the whole of the justice system in British Columbia; more specifically, the court reforms may be seen as setting the bar for government's expectations for change with respect to the administrative justice system. The administrative justice sector will need to ensure it, in fact, provides a true alternative to the reformed court system, and to do that, the administrative justice sector must ensure it provides early solutions and faster justice for British Columbia citizens. The administrative justice sector as a whole - tribunals, statutory decision makers, and others - will need to adopt the goal of not only providing easier access to justice, but also to providing easier access to resolution.

For the tribunal sector, it means tribunals will need to re-examine their own processes and practises, to ensure that they are not simply a scaled down version of the courts, but in

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<sup>8</sup> *Supra*, note 2.

<sup>9</sup> *Supra*, note 5.

fact are out front leading the way in terms of developing and implementing opportunities for early solving of problems and resolution of disputes. And tribunals will need to ensure that where early resolution is not possible, they provide streamlined, proportionate and timely adjudicative processes that are simpler, faster and less costly than the new court processes.

These strategies are being applied to reforms in the administrative justice system through several key actions undertaken by the Ministry of Attorney General, in consultation with other administrative justice system stakeholders and community partners. Each of these strategies, either directly or indirectly, will engage ADR processes for the administrative justice sector, in order for it to continue to provide an effective alternative to the high cost, complexity and delays that are common to the court system. The expansion of the available ADR options will make the administrative justice system timely, more efficient, less costly and more user-friendly.

### **Justice Transformation in the Administrative Justice System**

Some might say British Columbia's justice transformation began in the administrative justice sector. In July 2001, then Attorney General Geoff Plant, Q.C. initiated the administrative justice reform agenda by commencing the Administrative Justice Project (AJP), a comprehensive review of the administrative justice system in British Columbia. The Attorney General's vision was an administrative justice system in British Columbia that would:

- provide high quality services to people and communities;

- reflect government’s core values and principles; and
- achieve the right balance between independence and accountability.

With these goals, the AJP’s Terms of Reference called for systemic reform of administrative institutions to ensure that:

- administrative tribunals meet the needs of the people they serve;
- administrative processes are open and transparent;
- the mandates of administrative tribunals are modern and relevant; and
- the legislative and policy framework allows administrative tribunals to carry out their independent mandates effectively.

The AJP carried out a broad consultation process, releasing a number of background papers, and in July, 2002 released a White Paper “*On Balance: Guiding Principles for Administrative Justice Reform in British Columbia*” with more than 50 recommendations to government. A further series of reports included a paper on dispute resolution that discussed issues related to the range of dispute resolution processes available to, and appropriate for, administrative tribunals.<sup>10</sup>

British Columbia has implemented most of the recommendations made in the White Paper to reduce delays and costs and enhance fairness in administrative justice processes, principally through the *Administrative Tribunals Act*<sup>11</sup> (ATA).

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<sup>10</sup> The White Paper, the background papers and reports are all accessible at <http://www.gov.bc.ca/ajo/>.

<sup>11</sup> S. B.C 2004, Chapter 45.

Within the ATA's framework of modern administrative tribunal practices, powers and authorities, special regard should be given to sections 28 and 29, which provide:

### **Appointment of person to conduct dispute resolution process**

**28** (1) The chair of the tribunal may appoint a member or staff of the tribunal or other person to conduct a dispute resolution process.

(2) If a member of the tribunal is appointed under subsection (1), that member, in addition to assisting in a dispute resolution process, may make pre-hearing orders in respect of the application but must not hear the merits of the application unless all parties consent.

### **Disclosure protection**

**29** (1) In a proceeding, other than a criminal proceeding, unless the parties to an application consent, a person must not disclose or be compelled to disclose

(a) a document or other record created by a party specifically for the purposes of achieving a settlement of one or more issues through a dispute resolution process, or

(b) a statement made by a party in a dispute resolution process specifically for the purpose of achieving a settlement of one or more issues in dispute.

And to section 1, which defines *dispute resolution process* as follows:

**"dispute resolution process"** means a confidential and without prejudice process established by the tribunal to facilitate the settlement of one or more issues in dispute.

The combined effect of these sections is that, when incorporated by reference into a tribunal's enabling legislation,<sup>12</sup> the tribunal is permitted to adopt those ADR processes it thinks will best support the resolution of disputes.

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<sup>12</sup> The ATA sets out various powers and authorities for effective delivery of administrative justice. These provisions are then selectively applied to individual tribunals, reflecting each tribunal's particular mandate and needs, by adoption by reference in the tribunal's enabling legislation.

The following statements, made by Attorney General Plant on the second reading of the ATA, are informative in terms of government's thinking on the role of ADR in justice transformation in the tribunal sector:

The move to encourage alternative dispute resolution is an important part of rethinking the justice system, and administrative tribunals have an opportunity to show leadership in this regard. What citizens want more often than not is an outcome and a result rather than a process. They want their problems solved. They want the relationship improved, they want the benefit they believe they're entitled to, and they want government to stop doing what it is that is harming them. Anything we can do to move forward dispute resolution so that it happens sooner is, in my view, a step in the right direction, and we are doing a lot as government to try to encourage alternative dispute resolution not just in the administrative justice system but across the justice system as a whole. In fact, part of rethinking justice involves rethinking the idea of alternative dispute resolution so that it is no longer alternative but, rather, so that mediation, settlement, conciliation and settlement conferences are all part of the basic tools of all dispute resolution so that litigants can in fact have their problems solved as early, efficiently, affordably and — yes — also as fairly as possible.<sup>13</sup>

So what has this new legislation meant for tribunals?

The adoption of ADR processes in the tribunal sector has been varied, reflecting the tribunals' differences in mandates, size and caseload, and their distinct cultural and statutory contexts and, perhaps most importantly, the various professional and experiential backgrounds of their chairs and members. This has resulted in a range of tribunal dispute resolution programs, from limited to comprehensive and from *ad hoc* to more fully integrated. However, the Ministry of Attorney General recognized that additional work was required to support tribunals in considering and, where appropriate, adopting the full range of ADR tools to resolve disputes earlier, affordably and fairly.

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<sup>13</sup> Second reading of the ATA (Bill 56) Hansard, 2004 Legislative Session: 5th Session, 37th Parliament.

### **British Columbia's Tribunal ADR Initiatives:**

The Ministry's Administrative Justice Office (AJO)<sup>14</sup> and DRO have been working collaboratively on a number of initiatives to assist the expansion of ADR in the administrative justice sector. In doing so, the AJO and the DRO recognize that tribunals' ADR programs will typically be context dependent and may need to be tailored to fit their unique environments.

The AJO and DRO also acknowledge and support tribunal ADR processes that are proportionate to the nature and scope of the dispute and the needs of the disputants – ranging from expeditious to comprehensive as required. Proportionate dispute resolution assumes the right tool for the job as opposed to one tool for all purposes, potentially requiring a wider array of services and changes in tribunal case management and service delivery.

### ***Initial Research and Preliminary Assessment***

In December 2005, the AJO and DRO initiated a Tribunal Dispute Resolution Needs Assessment Project to assess the need to enhance or expand dispute resolution capacity in the British Columbia administrative tribunal environment. This initial research, which included a tribunal survey, revealed that the participating tribunals did not generally see a

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<sup>14</sup> The AJO, established in 2003 within the Ministry of the Attorney General, researches and advises government, ministries and administrative tribunals on administrative justice reform initiatives and opportunities for on-going improvements to British Columbia's administrative justice system. Its website is: [www.gov.bc.ca/ajo/](http://www.gov.bc.ca/ajo/).

need to expand or enhance their dispute resolution capacity with the tribunals in the study sample generally indicating that:

- the users of their dispute resolution processes are satisfied; and
- the tribunal's dispute resolution programs are adequate.<sup>15</sup>

These perceptions, together with tribunals reporting limited demand for enhanced or expanded alternative dispute resolution processes, suggested overall satisfaction with the status quo. However, this preliminary indication was qualified by three factors:

- The project's time, budget and resource limitations precluded direct interviews with tribunal chairs, making it difficult to determine the basis for the tribunals' optimism;
- The written survey primarily sought information about the 'quantity' not 'quality' of tribunal dispute resolution services, leaving some gaps in the baseline information; and
- Few tribunals evaluate their dispute resolution programs, and of those who do, most rely on *ad hoc* and informal methods with uncertain data collection and performance measures, making it difficult to objectively substantiate their positive 'self-assessment'.

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<sup>15</sup> Darling, Craig. "BC Tribunal Dispute Resolution Needs Assessment Project: Initial Research and Preliminary Assessment", online: [http://www.gov.bc.ca/ajo/down/report\\_incl\\_app.pdf](http://www.gov.bc.ca/ajo/down/report_incl_app.pdf).

This report recommended that:

- Gaps in the baseline information be addressed through more research and, if possible, in interviews, to permit a more fully informed assessment of the need to enhance or expand tribunal dispute resolution capacity; and
- More work be undertaken on the nature and quality of evaluation, to enable a meaningful assessment of tribunal dispute resolution processes.

In response, the AJO and DRO commissioned further work.

### *Follow-up Research and Updated Assessment*

As recommended, to verify the results of the preliminary assessment with tribunal chairs and complete further research to substantiate baseline data, a second report was prepared,<sup>16</sup> with the following results reported:

- **Integration:** Indications were of ‘threshold’ level integration among the smaller tribunals (in that some form of dispute resolution is considered at some stage of the process, but not necessarily throughout) with the larger tribunals having established ADR programs that appeared to have higher levels of integration.
- **Screening:** The initial survey results had indicated that most tribunals initiated case management with screening, suggesting that dispute resolution processes are

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<sup>16</sup> [http://www.gov.bc.ca/ajo/down/needs\\_assessment\\_report2\\_follow\\_up\\_research\\_mar07.pdf](http://www.gov.bc.ca/ajo/down/needs_assessment_report2_follow_up_research_mar07.pdf)

integrated at the outset. However, the follow-up research revealed that screening is often informal and irregular, implying less integration than indicated by the survey. The exceptions include the Human Rights Tribunal, Labour Relations Board, and Farm Industry Review Board, where early screening appeared to be well-integrated with case management.

- **Pre-Hearing Conferences:** While the initial survey results had indicated that a pre-hearing conference is common to most tribunals, the follow-up research revealed that a number of tribunals use pre-hearing conferences primarily to organize for the hearing and, if possible, to narrow the scope of issues. This implied a lower level of dispute resolution integration with case management than indicated by the survey results.
- **Complaint Management:** The initial research had focused primarily on dispute resolution processes in appeal management. As some tribunals also have a complaint management function, the follow-up research sought to gather more information on the use of dispute resolution tools to facilitate the settlement of those complaints. The Human Rights Tribunal, Farm Industry Review Board and Forest Practices Board<sup>17</sup> were all found to use dispute resolution tools to facilitate the settlement of complaints.
- **Utilization:** The initial research had focused on the nature and scope of dispute resolution processes – what processes are used and how often. The follow-up research sought to gather more information on utilization rates by type of dispute resolution processes (e.g., negotiation or mediation, etc.) and confirm the

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<sup>17</sup> In the case of the Forest Practices Board, complaints are addressed in the context of audit and investigation function, rather than dispute resolution and adjudication.

objective of the processes used (e.g., dispute resolution or administration), however, the participating tribunals confirmed that data on utilization rates by type of dispute resolution process was not currently available.

This report recommended that the AJO and DRO, in consultation with administrative tribunals, articulate a dispute resolution program policy framework to clarify government's expectations regarding the nature and scope of tribunal dispute resolution services, while recognizing the context-dependency of dispute resolution processes in the administrative justice system. It also recommended that administrative tribunals, as part of their service planning, evaluate their dispute resolution programs to optimize service delivery in keeping with program goals and objectives, and overarching government policy. The AJO and DRO have acted on these recommendations, as set out below.

### ***Building Tribunal Dispute Resolution Program Evaluation Capacity***

The next project started the work necessary to develop a generic framework that could be used by tribunals to evaluate dispute resolution programs.<sup>18</sup> The literature on dispute resolution program evaluation was reviewed, with concerns noted that traditional evaluation models were typically too big, too complex and too expensive. A related concern identified in the literature was that evaluation was solely about performance — to prove the success or failure of a program (and its managers) — not a learning tool to provide reflective feedback for program development. Additionally, interviews with the tribunals suggested that program evaluation would likely be a higher priority, if the

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<sup>18</sup> [http://www.gov.bc.ca/ajo/down/needs\\_assessment\\_report3\\_evaluation\\_framework\\_mar07.pdf](http://www.gov.bc.ca/ajo/down/needs_assessment_report3_evaluation_framework_mar07.pdf)

evaluation process was straightforward, relevant, and easy to understand, manage and adapt.

Using these criteria, the search began for a ‘user friendly’ evaluation framework, suitable for small-scale applications in the tribunal environment, which expanded from the dispute resolution field to include other fields. This led to the discovery of an innovative evaluation initiative developed in the Ontario public health system: the *Program Evaluation Tool Kit: A Blueprint for Public Health Management* (the Tool Kit).<sup>19</sup> This was considered to be an excellent example of a self-directed learning resource and step-by-step guide to planning and conducting relatively small-scale evaluations. Although tailored to public health, its emphasis on process evaluation made it generic enough to be adaptable to other fields. Written and presented at a level well-suited to the needs of small- to mid-size organizations, the Tool Kit resources could likely satisfy the criteria identified from the tribunal interviews.

While the Tool Kit, in its present form, could be useful to guide the evaluation of tribunal dispute resolution programs, it would be more effective if adapted for tribunal use, including a menu of performance measures as a resource. Adapting the Tool Kit to the tribunal context could, for example:

- incorporate dispute resolution (instead of public health) examples;
- revise the sample, worksheets and checklists to reflect the dispute resolution environment; and

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<sup>19</sup> The Tool Kit may be viewed at <http://www.phac-aspc.gc.ca/php-ppsp/toolkit.html>.

- integrate existing dispute resolution performance measures (e.g., ADR measures) into the data collection tool inventory as appropriate.

This third report recommended that the AJO and DRO work with interested tribunals to explore the potential for adapting and applying the Tool Kit to tribunal dispute resolution programs and test the framework in a case study or pilot program.

### ***Report on Alternative Dispute Resolution by Entitlement Tribunals***

The most recent research undertaken to support ADR in the tribunal sector is *ADR in Entitlement Tribunals – A Policy Choice*.<sup>20</sup> This report examines tribunals' ability to use ADR processes to resolve disputes about entitlements to statutory rights and benefits.

The report concludes that ADR processes can be used by these tribunals and that dispute resolution theory, statutory authority, government policy, and tribunal practice all support this view, indicating that entitlement disputes can be adjudicated *or* resolved through ADR processes. The report suggests the decision on when and how to do this is a policy choice, and sets out broad, principle-based criteria and indicators to help in making that policy choice. The report recognizes that each tribunal is unique and will need to determine its own referral criteria and processes, but describes an approach to dispute system design to help entitlement tribunals optimize their dispute resolution programs, including both adjudicative and ADR processes.

The report suggests government and tribunals should focus on optimizing tribunal dispute resolution programs, taking into account the tribunal's organizational culture, people,

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<sup>20</sup> [http://www.gov.bc.ca/ajo/down/adr\\_entitlement\\_tribunals\\_a\\_policy\\_choice\\_2\\_8\\_08.pdf](http://www.gov.bc.ca/ajo/down/adr_entitlement_tribunals_a_policy_choice_2_8_08.pdf).

technology and mission and the context dependency of ADR. This approach acknowledges that tribunals (and the ministry responsible for the benefit or entitlement program) are best positioned to determine the appropriateness of ADR in any given case. However, it also assumes that the tribunals and their responsible ministries are willing to take the steps necessary to enhance their ADR processes, offering both adjudicative and ADR processes where appropriate, in keeping with overarching government policy.

The report suggests that the Ministry of Attorney General could implement its justice reform strategy (encouraging early resolution through problem-solving and mediation) by working with tribunals (and their ministries) individually – using a structured organizational assessment and system design approach to create a responsive, accessible, and efficient dispute resolution system -- one tribunal at a time. And such a system design initiative would enable each tribunal to analyze and enhance its dispute resolution program, including a range of appropriate ADR options in keeping with the tribunal's unique mandate and characteristics.

In addition, it suggests the Ministry of Attorney General may wish to consider working with tribunals and their responsible ministries to encourage tribunals to make early dispute assessment (screening and streaming) a mandatory part of case in-take.

The report recommends that:

- government and tribunals work together to optimize tribunal dispute resolution programs, taking into account the tribunal’s unique organizational culture, people, technology and mission; and
- the Ministry of Attorney General consider implementing dispute resolution by working with tribunals (and their ministries) individually, using a structured organizational assessment and system design approach to create a responsive, accessible, and efficient dispute resolution system.

### **Next Steps**

The AJO and the DRO are now working on a system design initiative that will enable tribunals to enhance and evaluate their dispute resolution programs.

### ***Enhancing the use of ADR***

Work has started on a generic “case streaming” guide tribunals can use to determine how and when to implement new dispute resolution processes or to augment the processes already in place. This guide is being developed through pilot programs with the Farm Industry Review Board and the Safety Standards Board, utilizing collaborative processes. Although still very much a work-in-progress at this point, the guide will focus on looking at ways and methods of streaming claims and disputes at the front end of the dispute process.

The guide will include criteria and considerations that may be relevant in an initial assessment of a tribunal’s potential to incorporate ADR. Preliminary considerations may

include the expected goals of a comprehensive ADR program and the nature of the tribunal, the dispute and the disputants. The criteria and considerations related to the referral of both disputes and disputants to an ADR process, such as who makes a referral, when should a referral be made and who should provide the necessary ADR services, will be discussed. And, as each tribunal will need to do its own individual assessment, the guide will presents a range of factors relevant in determining tribunal-specific referral criteria. Considerations will include both principle-based criteria and indicators of success.<sup>21</sup> And while not all criteria will apply to all tribunals, those that are applicable will provide a solid starting point.

### ***Evaluation***

An accepted best practise when implementing new processes is to undertake an evaluation, with the best practise being that the evaluation is part of the process design. The authors of the Tool Kit have indicated a willingness to discuss with the AJO and DRO the adaptation of the Tool Kit by the AJO and DRO, to use as a resource for ADR program evaluation in the tribunal environment. Work on this Tool Kit has started through pilot programs with the Farm Industry Review Board and the Human Rights Tribunal.

Preliminary considerations for such an evaluation should include articulating expected goals of an ADR program, and for the evaluation team to look at the nature of the tribunal, the dispute and the disputants with an awareness of the contextual influences

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<sup>21</sup> Principle-based criteria are essential for determining an appropriate ADR process at the outset. Indicators of success, on the other hand, are factors that will have, some more and some less, a bearing on the ultimate success of ADR.

and their possible impact on the dispute resolution process (and as each tribunal is different, it is expected that context will play a key role in tribunal ADR considerations).

Next steps in the evaluative procedure will be to determine the appropriateness of ADR to the tribunal by examining how the tribunal will make referrals of disputes to ADR. That is, who will be responsible for making referrals, at what point in the disputing process the referrals will be made and, finally, who will administer ADR – in other words, where will the ADR providers come from? Additionally, this step will involve canvassing the principle based criteria and indicators of success in an effort to further refine the idea of appropriateness as it relates to the specific tribunal. By looking at these criteria, a more precise blueprint for implementing ADR processes for their tribunal can be developed.

Also critical will be to identify any organizational or administrative issues that may act as possible disincentives to the implementation of ADR processes. By identifying such issues, the tribunal can then work to reduce the influence these barriers might otherwise have on the creation of more comprehensive ADR response.

## **CONCLUSION**

Justice system issues such as excessive costs, time delays and lack of client satisfaction may be effectively resolved by the adoption of ADR. Public bodies, agencies, ministries and tribunals seeking to improve their processes need to be aware of the full range of ADR options. However, it needs to be understood that not all ADR processes are

universally appropriate, nor can they always completely replace rights-based adjudicative processes. More likely, processes such as mediation and various kinds of settlement conferences will be a useful addition to, not a replacement for, existing processes.

What works for one tribunal may not work for a different tribunal and within a tribunal what works for one kind of dispute may not work for another kind of dispute. But by keeping in mind the overarching interests of accessibility, proportionality, fairness, public confidence, efficiency and justice, ADR can and will be a critical piece in the overall justice system transformation. By offering incredible flexibility and a wide range of options, ADR is eminently applicable in diverse settings and for various reasons; it has the potential to improve, refine and positively transform disputing processes across the administrative justice sector. Through their joint projects, the AJO and DRO are working to support tribunals to provide earlier solutions and faster justice for the citizens British Columbia.