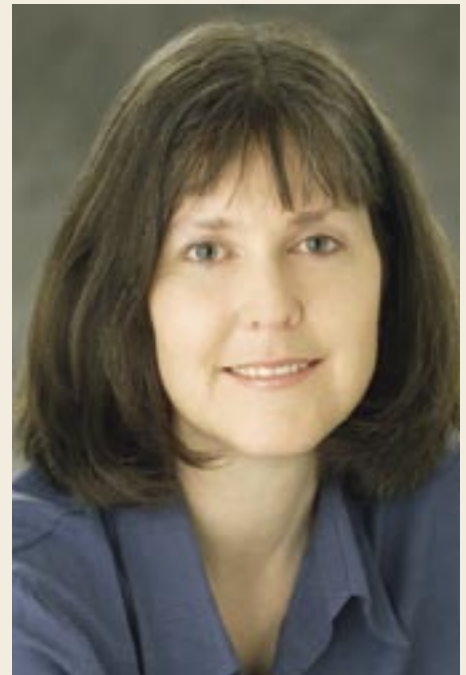


# Mediation: the BC Government's Perspective



In 1996 the Ministry of Attorney General demonstrated its support for ADR by adopting an ADR Policy (<http://www.ag.gov.bc.ca/dro/policy-design/statement.htm>) and establishing the Dispute Resolution Office.

On that foundation the ministry has implemented a strategy to promote the growth of collaborative dispute resolution processes such as mediation in BC, in both the public and private sectors.

Support for collaborative dispute resolution processes has grown as a result of concerns that court processes are overly complex and time-consuming and are unaffordable to anyone but the very rich. The number of trials in the BC Supreme Court has dropped to half of what it was 10 years ago and an increasing number of unrepresented litigants are appearing in both Supreme and Provincial Courts.

System users feel alienated from a justice system in which their problems

often become framed as unrecognizable legal disputes over which they have little control. Reports from around the world have recognized these problems and have universally recommended the increased use of mediation and other collaborative dispute resolution processes to enhance access to justice.

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Mediation is endorsed for a number of reasons.

- It is effective in settling disputes.
- People who participate in mediation are very satisfied with the process and outcomes.
- Mediated agreements are more durable because the parties have crafted them themselves.
- Mediation offers the potential for more creative settlements.

- Mediation can help to preserve post-dispute relationships (business or personal) because it seeks to avoid polarizing the parties.
- It is cheaper and faster than litigation.

To stimulate and support the growth of mediation in BC, the Dispute Resolution Office (DRO) recognized the need to increase opportunities for mediation, to support mediation infrastructure, and to promote culture change in the way we seek to resolve disputes. These objectives were pursued within a framework of:

- working closely with stakeholders to design and implement programs;
- implementing programs incrementally; and
- carefully evaluating program outcomes before expanding.

## Supporting the Mediation Infrastructure

The DRO has actively sought ways to support the practice of mediation and the provision of mediation services within BC. Two key initiatives have contributed to these objectives. First, the DRO initiated a consultation process

that resulted in the establishment of the BC Mediator Roster Society. The Roster Society houses both a civil and a family roster of mediators and is affiliated with the Provincial Child Protection Mediation Roster.

The Society's Website provides access to, and information about, a pool of mediators who meet minimum training and experience qualifications, are insured, and are subject to a code of conduct. More information about the Roster Society can be found at <http://www.mediator-roster.bc.ca/>.

The DRO has also worked with the dispute resolution community to develop mediation practicum opportunities. While excellent mediator training has been available in BC for many years, there have been few opportunities for mediators to gain the practice experience required to qualify for various mediation associations and rosters.

The DRO funds and works closely with the BC Dispute Resolution Practicum Society, which offers a mediation practicum in Provincial (Small Claims) Court as well as a family mediation practicum. The Society is currently working with the DRO, the Ministry of Children and Family Development, and the Law Foundation to develop a child protection mediation practicum.

Graduates of the Society's *practica*, a number of whom are Notaries, now deliver mediation services across the province. For more information on practicum opportunities, see <http://www.courtmediation.com/>.

### **Mediation Opportunities**

The DRO has sought to stimulate the use of mediation using legislation and court rules. In 1998 the Ministry of Attorney General implemented the first Notice to Mediate regulation. The Notice to Mediate process stops short of fully mandatory mediation. Under the Notice to Mediate regulations, one party can compel the other parties to a case to attend a mediation session.

Initially for motor vehicle personal-injuries matters only, the Notice to Mediate is now available for almost all Supreme Court cases. An independent evaluation of the Notice to Mediate (Motor Vehicle) found that in 71 percent of cases, all issues were settled and in 75 percent of cases, all or some issues were settled. It also found that participant satisfaction rates were very high.

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Small Claims Rules 7.2 and 7.3 provide a framework for voluntary, mandatory, and Notice to Mediate-driven mediations. Since 1998 over 8000 Small Claims cases have been mediated through the Court Mediation Program operated by the Practicum Society

The DRO has also had successful partnerships with other government ministries. A good example is the Child Protection Mediation Program delivered in conjunction with the Ministry of Children and Family Development.

The DRO developed a unique model of mediation for these cases that results in high settlement and satisfaction rates. An evaluation of the pilot reported that 92 percent of all issues referred were settled; the overall satisfaction rate was 6.2 on a 7 point scale. With the support of the Legal Services Society, MCFD, and the DRO, the use of child protection mediation is growing across the province.

The DRO promotes the use of mediation within government on many fronts. We work with treaty tables on the development of dispute resolution chapters and with tribunals to integrate

a broad range of dispute resolution methods into their processes. We also facilitate dispute resolution training and support public legal education and information.

### **Promoting Culture Change**

The Australian Law Reform Commission has said that long-term reform of the civil litigation system may rely as much on changing the culture of legal practice as it does on procedural changes. We see culture change as critical to the success of justice reform. This culture change involves changing the way we think about and respond to conflict, focusing on the needs of the users of the justice system instead of those working in it, and openness to changing roles in the justice system.

We have seen significant shifts in attitudes over the last 10 years as the justice system has worked to accommodate the growing interest in collaborative dispute resolution—the next stage.

The next stage, however, will involve more than accommodation; it will involve fundamental shifts in how the system is structured. The recent report of the Family Justice Reform Working Group is a significant example of the call for such fundamental shifts ([http://www.bcjusticereview.org/working\\_groups/family\\_justice/final\\_05\\_05.pdf](http://www.bcjusticereview.org/working_groups/family_justice/final_05_05.pdf)).

For most family law cases, the adversarial system does not work well. The report goes further that proposing increased use of consensual processes such as mediation as alternates to litigation. It proposes that in family cases, consensual processes should become “the norm.”

The DRO continues to work with mediators, judges, legal organizations, and other justice system partners to find better ways to resolve disputes within the court system and across government. ▲

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