



SUMMATIVE EVALUATION OF THE DISPUTE RESOLUTION FUND

June 2002

**Evaluation Division
Policy Integration and Coordination Section**



TABLE OF CONTENTS

1. INTRODUCTION.....	1
1.1 Objective of this Evaluation.....	1
1.2 Structure of this Report.....	2
2. HISTORY OF THE FUND.....	3
2.1 Background and Terminology.....	3
2.2 History of the Fund	5
3. PROGRAM DESCRIPTION.....	7
3.1 Objectives and Outcomes	7
3.2 Structure and Relationships.....	8
3.3 Relevant Activities	9
3.4 Resourcing.....	14
4. FINDINGS AND ANALYSIS	15
4.1 Structure of this Section.....	15
4.2 Evaluating the Fund's Success	15
4.3 Evaluating the Fund's Relevance	20
4.4 Evaluating the Fund's Cost Effectiveness	22
5. SUMMARY	27
APPENDIX A: Reported Outcomes of Funded Projects	
APPENDIX B: Findings of the Mid-Term Evaluation (March 2000)	
APPENDIX C: Terms and Conditions of the DR Fund	
APPENDIX D: Evaluation Methodology	
APPENDIX E: Interview Guides	
APPENDIX F: File Review Guide	

1. INTRODUCTION

The people interviewed in the course of this study consistently expressed enthusiasm, commitment, and hope when they discussed what has already been achieved, and could yet be achieved by weaving non-litigious dispute resolution (ADR) approaches into the fabric of their organizations.

The Dispute Resolution Fund (the DR Fund, or the Fund) was a modest initiative. Because of a lack of project evaluation data, it has not been possible to conclusively demonstrate that it has resulted in the efficiencies and cost savings that all parties involved would like to see. But the indications of those efficiencies and savings are convincing. And the level of commitment and high expectations consistently heard through this evaluation were certainly disproportionate to the modest monies allocated to the Fund. This speaks compellingly to the culture change that the DR Fund was designed to help achieve.

1.1 Objective of this Evaluation

This report describes the evaluation of the DR Fund. This is a final evaluation, intended to assess the results of the Fund from its inception in 1998. More specifically, the objectives of this evaluation are to assess:

- The success of the Fund: Has it been effective in meeting its objectives, within budget and without negative outcomes?
- The relevance of the Fund: Is it consistent with departmental and government-wide priorities, and does it realistically address an actual need?
- The cost-effectiveness of the Fund: Have the most appropriate and efficient means been used to achieve its objectives (relative to alternative design and delivery approaches)?

1.2 Structure of this Report

The remainder of this report is organized as follows:

Part 2 describes the background and history of the Fund and also includes a discussion of key terms used in this report.

Part 3 is a program description that includes information on:

- Objectives and outcomes
- Structure and relationships
- Relevant activities
- Resources allocated to the Fund

Part 4 presents the findings, analysis and observations, organized according to the following evaluation issues:

- Contribution to a Better Understanding of ADR's Potential
- Contribution to Increased Adoption of Proven DR Approaches
- Reduced Reliance on Litigation and Lower Costs to Resolve Disputes
- Promotion of ADR as a Continuing Priority
- Need to Continue the DR Fund
- Cost Effectiveness Compared to Alternatives
- Reasonableness of Resources

Part 5 presents a summary of evaluation findings.

2. HISTORY OF THE FUND

2.1 Background and Terminology

In the past few years, the federal government, its departments and agencies have witnessed a dramatic increase in the volume and complexity of civil litigation. Existing legal resources and systems are seen to be overtaxed - so much so that there are concerns that the ability to manage legal policy issues is at risk and that a failure to handle these risks effectively could jeopardize government programs and public confidence.

Concurrently, there has been a growing call in the public and private sectors for a greater capacity to resolve disputes quickly, effectively, and with a minimum amount of adversity. Public policy has responded with a number of initiatives designed to provide Canadians with a more accessible and responsive justice system. Among these initiatives is a significant increase in the use of non-litigious dispute resolution mechanisms at the federal level and beyond.

As the volume, complexity and costs of civil litigation increase, the need for alternative and defensible ways of managing disputes becomes more urgent. Departments and agencies want to extend their ability to foresee the implications of litigation decisions, improve their ability to identify risks associated with those decisions and develop a wider range of options for dealing with those risks. More and more government organizations are looking to non-litigious DR mechanisms as a means to prevent problems from resulting in legal proceedings and improve the effectiveness and efficiency of legal proceedings once they have been instituted.

From the growing number of court-annexed DR programs, which provide litigants with an opportunity to have court-based DR services, to the variety of programs being implemented by provincial and territorial governments; from the teaching and study of DR whether in elementary or in L.L.M. programs in law schools, to the proliferation of private DR service-providers; from the innovative work being done in many federal departments and agencies to the implementation of DR programs in private business, individuals and institutions are recognizing the need and utility of alternatives to traditional adversarial approaches.

In particular, there is an emerging body of knowledge and growing evidence which indicates that non-litigious DR approaches can:

- Reduce the time and money spent on dealing with conflicts
- Yield higher levels of satisfaction with resolution, and thus improve morale
- Contribute to a culture change within organizations, helping them move to a more participative operational style.

Throughout this evaluation study, there has been considerable discussion about the best terminology to use to distinguish between:

- a) The entire continuum of methods available for resolving disputes, which includes litigation; and
- b) Dispute resolution methods and processes other than litigation within that continuum.

For this report, the range of dispute resolution methods and processes other than litigation will be termed "non-litigious dispute resolution" (ADR). This terminology is intended to avoid the use of the term Alternative Dispute Resolution which implies that traditional alternative dispute resolution processes and litigation are mutually exclusive where, in fact, they can be used individually or in combination, either within or outside traditional dispute resolution fora.

Dispute Resolution (DR), the current terminology at the Department of Justice to describe the continuum in point a) above is used. In this report, the phrase "dispute resolution" is intended to encompass the entire continuum of resolution options and thus would include for example, both litigation and mediation. This terminology is consistent with the department's DR Policy which states that: "Dispute resolution (DR) includes all possible processes for resolving a conflict, from the consensual to the adjudicative, from negotiation to litigation."

While having the potential of being unconventional, this terminology is an attempt to bridge advances in the field of DR since the Fund was created, somewhat inconsistent terminology among practitioners today and the fact that, while the term "Dispute Resolution" encompasses the whole continuum of dispute resolution methods, the Fund was designed to focus only on the non-litigious (ADR) methods within that continuum.

2.2 History of the Fund

The DR Fund was approved in 1998 and was intended to complement a new framework for the gradual implementation (over a five-year period) of the federal government's *Claims and Ex Gratia Payment Policy*. This policy was already planned when the fund was established, though it did not become effective until August 26, 1999. Until that date, judgments from cases sent to litigation were centrally funded, while negotiated settlements in disputes were the responsibility of the accountable federal department or agency. When the new framework became effective, there was no longer any differentiation between how negotiated settlements or judgments were funded - both became the responsibility of the accountable department. With this change, a significant disincentive for ADR was removed. The establishment of the DR Fund was intended to be more pro-active - providing a positive incentive, rather than simply removing a disincentive.

The Treasury Board approved the Fund within the Department of Justice on April 30, 1998. The Fund was initially given a two-year mandate, which expired on March 31st, 2000. The size of the Fund as approved was \$4.6 million dollars over two fiscal years. Of that amount, \$600,000 was provided from existing Department of Justice reference levels. The Department was responsible for covering costs associated with the administration and evaluation of the Fund from within existing budgets. Funded projects were responsible for cost sharing by providing at least 20% of the project costs (through either direct funding or in-kind contributions).

During the first fiscal year of operation of the Fund, 23 projects were funded. Only one application was denied funding completely. Funded projects received between \$26,000 and \$358,930. For 1999/2000, 56 applications were received and 20 of those were approved for funding. Of those, 14 were continuations of projects initially approved for funding in 1998/99. The range of funding for projects in the second year was \$19,200 to \$212,420.

A formative evaluation was required and conducted at the end of the Fund's initial two-year mandate. As a "formative evaluation", this study addressed issues relating to the Fund's implementation that might have a bearing on eventual success¹. The Summary and Lessons Learned from the formative evaluation are included as Appendix B to this report.

Following a one-year hiatus, the fund was re-established and approved for one more year by Treasury Board on April 5, 2001. The size of the Fund as approved for this year was \$2.3

¹ While the Fund was found to be well designed to meet its objectives, some design and administrative issues identified at that time endured through the final year of the Fund and re-emerge in this evaluation.

million. Of that amount, \$.3 million was provided by the Department of Justice, and funded organizations were again responsible for cost sharing at least 20% of total project costs. A condition of approval was that the Fund develop a Results-based Management and Accountability Framework (RMAF) and deliver a final evaluation at the end of its operating year.²

Forty-four proposals were received in 2001 and 28 of them were awarded funding. Of these, half were projects that had previously been supported by the Fund and the other half were new projects. Funding to projects ranged from \$11,000 to \$164,000.

This is the final evaluation report mandated when Treasury Board approved 2001/02 funding, and the Results-based Management and Accountability Framework has informed it. The Fund ended on March 31st, 2002.

² An RMAF drafted in June 2001 was used to guide this evaluation. While Justice received feedback on the RMAF from TBS officials in February 2002, this feedback could not be incorporated into this evaluation, as it was near complete at that time.

3. PROGRAM DESCRIPTION

3.1 Objectives and Outcomes

Objectives

The overall purpose of the DR Fund was to support the development, implementation, monitoring and evaluation of dispute resolution programs and processes within federal government organizations. For the purposes of the Fund, eligible federal government organizations included departments and agencies. Funding was to support dispute resolution projects that provided for non-litigious means of dealing with disputes, including the provision of training in dispute resolution.

The specific objectives of the DR Fund were to:

- Provide, through a newly created pool of operating monies, encouragement and assistance to organizations in managing disputes effectively, with innovation and without resorting to litigation
- Assist organizations in their transition to doing business differently, as they are called upon to be responsible for the payment of both settlement amounts and court judgments.

Funding Focus

The Terms and Conditions for the DR Fund expanded upon or clarified the stated objectives by further describing the types of projects that would be considered for funding. The Terms and Conditions specified that funding would be provided for:

- Projects which focused on "early intervention" with respect to disputes; and
- Dispute resolution for litigation that was already underway (in situations where dispute resolution would streamline the issues that eventually proceeded to trial).

Expected Outcomes

The expected outcomes of the DR Fund were that:

- a) funded organizations would:
 - reduce costs and time spent in managing disputes and handling litigation;
 - experience increased satisfaction with resolution outcomes, both within the organization and with other parties involved;
 - serve as catalysts and models for other federal organizations, and thus stimulate and encourage widespread DR implementation;
- b) the Department of Justice would realize cost and time savings that would ultimately result in decreased litigation and decreased litigation costs, and gain credibility as a leading center of DR expertise in Canada.

3.2 Structure and Relationships

DR Fund Staffing

There is no organizational unit within DOJ called "The DR Fund", and throughout its lifetime, there were no dedicated staff for the Fund. Instead, the Fund was simply one of many projects handled by Dispute Resolution Services (which reports directly to an Associate Deputy Minister).

Though there was no dedicated staff for the Fund, there has been a designated DR Fund Chair, who is the counsel responsible for the management of the Fund, for each year of its operation. DR Services' staff estimates the Chairs to have spent approximately 30% of their time on tasks related to managing the fund. In addition, in FY 2001/02, a Senior Program Officer was added to the DR Services staff, and approximately half of that officer's time has been devoted to helping to administer the Fund.

Dispute Resolution Committee

A Dispute Resolution Committee was appointed when the DR Fund started, and a new committee was appointed for each ensuing year of the Fund's operation. The DR Committee was responsible for reviewing proposals received, deciding which applicants would get funding, and deciding the amount of funding to be awarded. The Deputy Minister of Justice selected committee members.

Efforts were made to assemble a creative and eclectic group, well versed in DR theory and practice. This was reflected in the DR Fund terms and conditions specific to the committee, which stated that:

- There would be a minimum of 5 members on the committee.
- Committee members would be selected based on their knowledge of traditional and alternative dispute resolution mechanisms.
- At least one Committee member would be a DR expert who was not a public servant.
- At least one member would also be a member of the federal dispute resolution network, and would not be from the Department of Justice.
- At least one member would be an employee from Dispute Resolution Services at the Department of Justice.

3.3 Relevant Activities

The Proposal Cycle

There has been a common cycle of activities involved in proposal preparation and selection for each year of the Fund's operation. It includes:

Obtaining Treasury Board Approval: Treasury Board approved the DR Fund for a two-year mandate in 1998. Approval for the third year (which would have been 2000/01) took up to 10 months and it was necessary to put the Fund into hiatus for that year. 2001/02 was the third year of Fund operation.

Sending out Call Letters: Call letters were prepared and delivered after Treasury Board approval was granted. In the first year of the Fund's operation, call letters were sent only to Deputy Heads for all federal government departments, agencies, and tribunals. Because it often took a long time for these call letters to filter down through an organization, in 1999/2000 the call letters were also copied to senior financial officers for each organization. In 2001/02, call letters were again directed only to the Deputy Heads.

The call letters included contact information for the DR Fund Chair and invited applicants to contact the Chair if the applicant needed information or clarification. The DR Fund Terms and Conditions were also appended to each call letter to provide applicants with information about

the Fund, and guidance on proposal preparation. A copy of the 2001/02 Terms and Conditions (which are almost identical to those for the previous years in which the Fund operated) are included as Appendix C to this report.

Receiving Proposals: Each call letter included a clearly stated deadline for the receipt of proposals.

Reviewing Proposals: The DR Committee met a number of times during each review period to consider proposals. The review process was relatively informal and was often iterative. Committee members would contact applicants for clarification or additional information if needed. As required by Treasury Board, the review process was complete and the Committee's recommendations were submitted to Treasury Board by the end of September, for each year in which the fund operated.

Notifying Applicants: In the Fund's last year of operation (2001/02) applicants were verbally notified of the outcome of their applications as soon as the proposal review period was completed. For all three years, formal notification was sent once the recommendations were submitted to Treasury Board.

The chart below shows the cycle of proposal preparation and review activities and the dates associated with each step in the process.

Activity	1998/1999	1999/2000	2001/2002
Fund approved by TB	April 30, 1998	April 30, 1998	April 5, 2001
Call letters sent	May 11 & June 3, 1998	April 14, 1999	May 28, 2001
Deadline for receipt of proposals	Early June 1998	May 12, 1999	June 22, 2001
Proposal review period	June – Sept. 1998	July – Sept. 1999	June –July 2001
Applicants notified	Oct. – Nov. 1998	Oct. – Nov. 1999	Verbal: July 2001 Written: Aug. – Oct. 2001

Disbursing Funds to Successful Applicants

Through each year of the Fund's operation, Treasury Board made payments to successful applicants through an annual adjustment of these organizations' reference levels. These adjustments came close to fiscal year-end (generally in the last quarter of the year), as part of the Supplementary Estimates process.

Communication Activities

There was no formal communications strategy for the Dispute Resolution Fund. However, there was a range of activities undertaken to "get the word out".

The Call Letter and Terms and Conditions

The primary vehicles for raising awareness of the Fund and engaging the interest of potential applicants was the call letter and the Terms and Conditions for the Fund, which were attached to it. Both had a very limited distribution (to Deputy Heads, primarily), based on the assumption that the key recipients' offices would ensure a rapid and widespread dissemination through their own organizations.

Internal Communications

The DR Fund has been described by DR Services staff as a "flagship initiative of the Department". As such, information about the fund was communicated fairly regularly to the Heads of Legal Services and lawyers within the Department of Justice. For example:

- Reference to the Fund has been a regular feature of Justice's annual Business Plan, as well as of the annual departmental Plans and Priorities reports.
- DR '98 (a message from the Deputy Minister to lawyers in the Department of Justice, on the department's efforts in the area of DR) included a reference to the Fund.
- The Deputy Minister has included references to the DR Fund in a number of addresses to the Department
- In November of 2001, the DR Fund Chair sent a brief status report on the Fund to the Deputy. This was then circulated to all heads of Legal Services.

External Communications

Efforts have been made to promote a general awareness of the Fund, outside of the Department of Justice. For example:

- The Department of Justice has trained over 1,000 of its staff (lawyers and others) in ADR principles and techniques. Thus, the lawyers who have received training bring their knowledge and awareness of ADR methods to the departments to which they are assigned.

- A description of the DR Fund is included as part of the DR Legal Awareness Module, a formal training session given to client departments and agencies as part of Justice's Continuing Legal Education Program.
- Information about the Fund was also included in the materials used in the Canadian Centre for Management Development's "Law and Public Management" program, which was delivered until 1999 as part of governmental executive training.

Consultation and Guidance

There have been two individuals who have served as DR Fund Chair. Both have been actively involved in the design and development of a number of funded projects, they have provided extensive informal consultation and guidance to individuals and organizations, and were aided in these efforts by other members of Dispute Resolution Services. For example, the DR Fund Chair has:

- sometimes served as a "broker" bringing together individuals from two or more organizations who can help one another based on their own ADR-related experiences
- been involved in frequent informal communication with funding applicants, both to provide help while they were in the process of preparing proposals, and also to seek information and give counsel during the time that a proposal was being reviewed.

Presentations

The DR Fund Chairs have also been involved in making presentations to highlight the Fund. For example:

- At least two presentations on the Fund were presented at Managers' breakfasts (to which all senior managers of the Department of Justice are invited).
- In the fall of 2001, the DR Fund Chair attended a retreat of the Regulatory and Business Portfolio DLSU managers, in order to showcase DR Fund activities. While there, the Chair moderated a panel of presenters, each of whom represented an organization that was a Fund recipient.

The Symposium

In June of 2000, DR Services sponsored a Symposium at the University of Ottawa, to which all applicants to the DR Fund were invited. Approximately 80 people attended the full-day session, which featured presentations by recipients, small-group sessions, and a panel discussion on lessons learned. When discussing it with members of the evaluation team, interviewees who attended the symposium reported a high level of satisfaction. Another symposium is planned for June 2002.

Websites

The Fund's Terms and Conditions are on both the Internet and Intranet sites for the Department of Justice. In addition, the Department of Justice Internet website has a link to Dispute Resolution Services, from which a further link connects to DR '98 (a message from the Deputy Minister, which refers specifically to the Fund).

Plans to develop a federal DR Information Site are on going. The site is intended to provide information on a wide range of relevant federal programs.

Monitoring and Evaluation

The Terms and Conditions provided to each funding applicant specified that proposals had to include:

- an evaluation design specifying how the applicant would assess or evaluate its success against the project's objectives
- a commitment to provide regular status reports
- a commitment to submit a financial report at the end of each fiscal year and/or upon project completion.

However, among the key findings of the formative evaluation of the Fund (March 2000) was that:

- many recipients of DR Funding professed to be unaware of the need to submit these reports
- very few reports were submitted

- the lack of impact-related data (even in the few documents that were submitted) was not always due to a lack of relevant data. Many organizations had at least some relevant data but didn't include it in their reports to the Fund.

Lacking any staff dedicated to the DR Fund, little if any follow-up on missing reports was initiated. The evaluation team received approximately a dozen evaluation reports submitted of approximately 29 projects funded during the first two years of the Fund's operation. (As of the period of research for this report - February/March of 2002 - it would be unrealistic to expect to have received final evaluation reports from projects funded in 2001/2002).

3.4 Resourcing

As previously noted in this report:

- The DR Fund received \$2.3 million for each year of its operation. Of that \$2.3 million, \$.3 million was contributed by the Department of Justice.
- The Department of Justice was responsible for covering costs associated with the administration and evaluation of the Fund from within existing budgets.
- There were no dedicated staff for the DR Fund, but a designated DR Fund Chair dedicated approximately 30% of his or her time to the Fund, and in 2001/02, approximately 50% of the time of a Senior Program Officer was also devoted to Fund administration.

4. FINDINGS AND ANALYSIS

4.1 Structure of this Section

This evaluation was designed to answer questions about the Fund's:

- success;
- relevance;
- cost-effectiveness.

Specific evaluation questions relate to each of these major issues. Findings and analysis are presented for each of those evaluation questions.

Appendix A includes a discussion of Reported Outcomes of Funded Projects, designed to augment findings that were directly responsive to the evaluation questions.

4.2 Evaluating the Fund's Success

Contribution to a Better Understanding of ADR's Potential

Has the DR Fund contributed to a better understanding of the potential of ADR to manage disputes more effectively and with less reliance on litigation?

To respond to this question, we need to consider what is meant by "effectively". In the context of this evaluation, effectiveness can and should be seen to encompass these elements:

- Preventing disputes and resolving those that arise before they escalate
- Developing conflict and dispute resolution skills
- Managing disputes in a way that helps build staff morale
- Managing disputes to build positive relationships with client groups and increase client satisfaction.

Taken collectively, these elements of effectiveness speak to the potential for changing the culture of an organization.

There is reasonable evidence that the Fund did indeed contribute to a better understanding of ADR's potential within organizations that received funding. The vast majority of interviewees from funded organizations responded positively to this question, referring to many of the elements of effectiveness cited above. Further evidence was provided through the file review and the review of available project evaluation reports.

However, it is important to note that this question focuses on *understanding ADR's potential* - not on determining the extent to which it was actually effective, or reduced litigation. The limited information sharing that took place throughout the lifetime of the Fund circumscribed the degree to which the Fund could contribute to the development of a better understanding. People directly involved with projects gained a better understanding of ADR's potential. However, that was a fairly small group, when compared to the much larger group that could have profited from their experience had lessons learned by Fund recipients been widely disseminated. Certainly, more widely publicized findings like those presented in Appendix A of this report would probably have contributed to a greater overall knowledge of ADR's potential. For example:

From the Evaluation of the Pilot Grievance Mediation Project conducted by the Public Service Staff Relations Board:

- There was a settlement rate of 52% of mediated cases, compared to a rate of 25.2% of non-mediated cases
- "The PSSRB's pilot mediation project has achieved a high degree of credibility and party satisfaction with a large majority of participants indicating that they considered the process to be a fair and constructive approach to dispute resolution. [...] Mediated outcomes have included practical solutions that were not otherwise available through the Board's adjudicative proceedings and both grievors and employers report a greater interest in using informal dispute resolution processes in the future".

From the ADR Pilot Project Evaluation at the Immigration Appeal Division of the Immigration Refugee Board:

- Average time per ADR case was one hour, compared to 3.4 hours for the comparison group

- Processing time for the ADR group was 146 days for case completion, compared to 401 days for the comparison group.

In the context of this question, projects with unexpected outcomes are as necessary for understanding ADR's potential, as were projects that lived up to expectations. It seems very likely that other groups with similar mandates could have profited from these kinds of lessons learned:

- At the Human Rights Tribunal, participants expressed a very high degree of satisfaction with the mediated process being piloted. But despite how well received the process was, the Tribunal did not continue with a mediation program because confidentiality requirements attendant upon mediation were seen to countermand the Tribunal's role in educating the public about the depth and breadth of discrimination.
- At the Pension Appeals Board (a unit within the Canada Pension Plan), where the primary objective in introducing ADR interventions was to reduce the number of adjournments, the intervention actually increased the number of adjournments (because appellants were better informed due to the ADR intervention and thus more likely to seek counsel, and seek an adjournment in order to do so). Despite the increase in the number of adjournments, the degree of client satisfaction with the process has been so high that the ADR intervention is continuing.

While neither example above achieved expected outcomes, within the context of the Fund, both projects are considered as successes in that they serve to enrich the general understanding of the potential of ADR, its appropriateness in different organizations, and its ability to respond to different sorts of objectives.

The limited sharing of lessons learned will re-emerge elsewhere in this report. Certainly the Symposium and other efforts made by the staff managing and administering the Fund were good and effective information-sharing efforts - laudable in light of the very limited resources assigned to the DR Fund.

Contribution to Increased Adoption of Proven ADR Approaches

Has the DR Fund contributed to increased adoption by federal organizations of proven ADR approaches?

There is ample evidence that the Fund has contributed to increased adoption of proven ADR approaches by a range of federal organizations. There is considerable anecdotal evidence showing not only adoption, but also integration of ADR approaches in some recipient organizations. While culture change takes a long time, the degree of ADR integration illustrated below seems to indicate that a long-term change has in fact already started. For example:

- Correctional Services Canada now has dispute resolution as a corporate objective
- Health Canada's Hazardous Materials Information Review Commission describes ADR as a pillar of its renewal
- Canada Customs and Revenue Agency (CCRA) includes ADR skills as a core competency
- The Pension Appeals Board of the Canada Pension Plan now features an ADR intervention prior to a hearing
- The Canadian Food Inspection Agency now has mandatory DR training for all managers.

Based on input from interviewees, the impact of the Fund may have been most dramatic for smaller organizations, many of which reported that they would not have been able to proceed with their projects without the DR Fund.

Even in much larger organizations that already had DR programs or had planned them, the infusion of funds was significant. This year for example, CCRA put \$900,000 into their Dispute Resolution System, of which \$100,000 came from the DR Fund. Even though this was a relatively small percentage of the overall monies devoted to the system in this organization, the senior staff member interviewed believed that it allowed a depth in their system that would otherwise not have been present.

In responding to this question, a number of interviewees discussed the "leverage" provided by funding, as another element of how the Fund increased the take-up of ADR approaches within their organizations. They maintained that they were able to leverage the credibility endowed by the very existence of a Treasury Board approved DR Fund, and having received monies from that Fund, to raise the level of interest and support within their own organizations.

Though the Fund undoubtedly contributed to increased adoption of proven ADR approaches in funded organizations, the impact could likely have been expanded to include a much wider group (which would include organizations that were not funded) had more effective measures to share lessons learned been undertaken.

Reduced Reliance on Litigation and Lower Costs to Resolve Disputes

Has adoption by federal organizations of proven ADR approaches led to reduced reliance on litigation and lower costs to resolve disputes?

A brief semantic analysis of the evaluation question may be useful here. The question asks if there was "...reduced reliance on litigation **and** lower costs to resolve disputes" not if there was "...reduced reliance on litigation **and/or** lower costs to resolve disputes". The underlying assumption seems to be that reduced reliance on litigation **will** result in lower costs. That assumption may not always be correct. But a lack of cost-savings should not overshadow other benefits that may be achieved by avoiding litigation (like increased satisfaction, or improved client relationships).

Having said that - though few evaluations of funded projects were submitted, most of those that are available demonstrate **both** reduced reliance on litigation and lower costs for resolving disputes (see Appendix A of this report). A few choice examples are highlighted below.

Canadian Food Inspection Agency

The evaluation report, dated June 2001, examined a sample of 6 closed cases that were successfully resolved over 2 years. Cases with ongoing or potential litigation were excluded. In 5 of the 6 cases, CFIA avoided costs associated with potential unfavourable court judgments. When compared against average costs of litigation, CFIA avoided some \$375,000 as well as undetermined amounts of staff time.

The evaluation report concluded that the ADR project:

- Reduced costs and time
- Produced more satisfactory and inclusive outcomes
- Enhanced on-going relationships
- Avoided future disputes and taught parties to resolve their own issues.

The findings from this report were further strengthened by information obtained from a CFIA interviewee, who reported that so far, 33 out of 34 ADR cases have been resolved. The agency estimates this represents a savings of \$2.5 million in court-related costs, without factoring in possible judgment amounts (that were likely to have been significant).

Immigration Appeal Division - ADR Pilot Project Evaluation

For this evaluation, 300 current appeal cases were compared with 300 cases concluded in the 6 months prior to the start of the Pilot Project. Key findings included:

- Timing: The average time per ADR case was 1 hour. In contrast, the average time per case for the comparison group was 3.4 hours.
- Outcomes: Out of 275 cases (25 were still pending) 148 (54%) of the appeals were resolved without resort to litigation. For the comparison group - only 32% were so resolved.
- Processing time where appeals are resolved without litigation: 146 days from record received to completed case for ADR, 401 days for comparison group (Pilot cases thus took only 37% of the time required for the comparison group)
- Processing time where full hearing was required:

Days from record received to hearing's first sitting:	pilot: 214 other: 330
Days from first to last sitting of hearing:	pilot: 6 other: 19
Days from record received to completed hearing	pilot: 232 other: 349
Hours of hearing sitting time:	pilot: 2.1 other: 3.4

Information like this, which was gathered from evaluation reports, is both compelling and is well-supported by anecdotal evidence gathered from interviewees. However, the small number of formal evaluation reports renders these findings considerably less convincing than they would otherwise have been. This weakens DR Services' ability to speak confidently about an important aspect of the Fund's success. And this weakness appears to have been deeply entrenched. As previously noted, the formative evaluation of the Fund (March 2000) cites numerous reporting failures.

4.3 Evaluating the Fund's Relevance

ADR Promotion as a Continuing Priority

Is promotion of ADR a continuing priority of the Department of Justice and Treasury Board?

The evaluation team received a very positive response to this question from Justice and Treasury Board Secretariat interviewees.

Most compelling is the pride of place assumed by ADR as a key component in the Legal Risk Management (LRM) framework. LRM is a joint Treasury Board and Department of Justice initiative, designed to provide a systemic approach to managing the burgeoning wave of litigation that started to sweep over the government in the late 1990s. LRM is intended to detect legal risks early, avoid problems that can be prevented, and mitigate or manage the remaining risks strategically and efficiently. ADR methods are consistent with all of these goals, and are seen by both the Department of Justice and Treasury Board as powerful tools to be employed in risk management.

Apart from the prominent profile of ADR in the LRM Initiative, specific actions have been taken that show that ADR is a continuing priority. At the Department of Justice for example:

- The passion, commitment, ability, and effort of DR Services staff has created an ADR "profile" with far more visibility than could have realistically been anticipated, given the limited resources involved
- Two DR Specialists (who are also lawyers) have been retained to support the department's commitment to LRM, by encouraging litigators to use ADR in lieu of or in addition to litigation
- Over 1000 DOJ lawyers and other staff have been trained in ADR principles and techniques. Approximately 200 clients have also been involved in that training, which the Department continues to offer to staff and clients at Headquarters and in regional offices.
- The Department of Justice Policy on Dispute Resolution clearly establishes the *"responsibility of all its employees to make every effort to prevent disputes from arising and, where they do arise, to address them as early and effectively as possible, in order to avoid the courts becoming our only avenue of recourse"*.

Need to Continue the DR Fund

Is there a continuing need for the DR Fund?

Culture change is written into the Fund's objectives ("assisting organizations in their transition to doing business differently"). The Fund was intended to function as "seed" money - spurring organizations to develop programs that will then continue on their own, independent of external

funding. Though the process of change has started, and some funded organizations have integrated ADR into their way of doing business, the evaluation team agrees with a majority of interviewees who said, in essence, three years would not seem long enough to change a long-lived pre-existing corporate culture.

Whether the vehicle is the DR Fund or some other initiative, it would seem a catalyst is still needed to promote ADR in federal organizations.

4.4 Evaluating the Fund's Cost Effectiveness

Cost Effectiveness

Is this program the most cost-effective way of promoting ADR in federal organizations?

If the question was *"Is the DR Fund an effective catalyst of ADR approaches in federal organizations?"* then the response would be an unequivocal "YES". Most interviewees credited the Fund with allowing them to start programs they otherwise would not have been able to launch. And many of those interviewees were very eager to launch such programs - because they were already ADR proponents, either by personal inclination, training, or previous experience.

The existing commitment of many applicants is important. The time available for proposal preparation was very short (due to a combination of slow trickle-down from a small mailing combined with an already meager time between dissemination of a call and the deadline for the receipt of proposals) that it really did not allow individuals new to ADR concepts to:

- learn about the potential benefits
- explore possible applications within their own organizations, and then
- prepare thoughtful proposals.

So take-up was most likely to occur in organizations that already had staff eager to try ADR. In this sense, the administrative underpinnings of the Fund contributed to the call letter generally serving to "preach to the converted".

That would be all right, if the objective of the fund was simply to be a catalyst for the development of ADR approaches in federal organizations. But if the focus was on *promotion* - which has a considerably more pro-active nuance, then both the timelines and contents of the call

letters and terms and conditions (which did not appear to have a significant educational value) failed to deliver the information and provide the time required to win the attention, interest and commitment of people and organizations new to ADR approaches.

When asked the evaluation question as phrased (*Is this program the most cost-effective way of promoting ADR in federal organizations?*"), interviewees consistently responded that a generally more pro-active approach would have rendered the Fund more cost-effective. The following ideas were ones that were often advanced as the kinds of measures that would render a similar program more cost-effective in the future:

- A wide range of information-sharing activities
- A research capacity, bolstered by comprehensive evaluations of funded projects
- A strong focus on lessons learned
- A pool of experts, to provide guidance and consultation on all aspects of ADR concepts and application
- A central directory and broker of ADR connections.

DR Services within the Department of Justice is designed along the lines of a centre of excellence and, generally, provides the types of services listed above. As its custodian, DR Services, with limited capacity, had attempted to extend these services to the Fund itself. All of the activities suggested above would cost money. Perhaps, had DR Services been better resourced to extend its services to the Fund or had a percentage of the monies allocated to funded projects instead been used to support these kinds of activities, it seems likely that there would have been, overall, a greater return on the monies invested in ADR.

Reasonableness of Resourcing

Is the resourcing of this program reasonable in light of its objectives?

Before the reasonableness of resources can be explored, the objectives themselves deserve some consideration.

The DR Fund Objectives

The DR Fund objectives as stated are more clearly focused as activities (provide encouragement, assist organizations) than as ends to be achieved through those activities. If we consider the

activity-focused objectives as they stand, the response could be what was heard from a number of interviewees: that those activities could be carried out with either a lot of money, or with a little money, depending on the extent of the impact one is trying to achieve.

Most interviewees, through their responses to this question, expressed an intuitive understanding of DR Fund objectives as being more like this:

- To promote the integration of ADR approaches into the way the federal government does business, by seeding ADR projects which will then be maintained by the funded organization once DR funding lapses
- To contribute to a government-wide understanding of how ADR can reduce costs, enhance service, and promote culture change, by encouraging departments to:
 - undertake innovative ADR initiatives that focus on reducing the reliance on litigation to resolve disputes, or
 - by employing ADR methods to streamline litigation.

These rephrased objectives are consistent with the understanding formed over the course of this evaluation, and with the expected outcomes (the impact) of the Fund. They should be seen as a clarification of, rather than a deviation from, the previously stated Fund objectives.

The Reasonableness of Human Resources

This issue has been addressed previously, in this report. Despite the energy, ability, and commitment of the DR Services staff involved with the Fund, they simply had too many competing priorities to allow them to deliver the level of administrative support required by the fund. For example:

- Information sharing that would have spread awareness of the benefits of ADR was not viable because there were not adequate resources to undertake that task
- The shortage of staff also meant that it was not possible to follow-up and remind recipients of the need to undertake evaluations and to submit evaluation reports
- The many pro-active tasks identified in the section on Cost Effectiveness could not be undertaken.

In short, the human resources allocated to it were not adequate given the Fund's mandate.

The Reasonableness of Monies Allocated to the Fund

The evaluation agrees with a majority of interviewees, who felt that the monies allocated to the Fund were not adequate, if ADR approaches are as important a priority as they would seem to be (based on emerging strategies like Legal Risk Management). On the most basic level, this is supported by the fact that in years 2 and 3, the Fund received requests for considerably more funds than were available, despite limited dissemination, lack of promotion, and the very short proposal preparation periods.

There are also strategic dimensions to be considered. The amount of money committed to an initiative has symbolic value. The higher the dollar value, the greater the degree of commitment that is likely (and appropriately) inferred. \$2.3 million dollars is not insignificant. But it does not signal the wholesale endorsement a larger amount would. Neither is it commensurate with the potential savings that might be realized government-wide, if and when ADR approaches are more fully integrated into the way the federal government does business.

Literally all of the monies committed to the Fund were expended on project funding. Had at least some monies been devoted to support functions (like communications, promotion, monitoring evaluation, and research) the overall DR Fund monies could have been leveraged to achieve considerably more impact than they have had.

It is appropriate to consider not only how much money was allocated to the Fund, but also *how it was disbursed*. Many funding recipients experienced difficulties because they could not get the allocated funds from Treasury Board through the Supplementary Estimates, until late in the fiscal year. These difficulties were noted in the formative evaluation report. Throughout, this funding approach resulted in an uneasy financial balancing act for some, and in an inability to undertake planned activities until funds were received for others.

In addition to the practical difficulties this funding method entailed, the "symbolic message" is important. Imposing this level of difficulty on funding recipients does not seem consistent with an approach the federal government wants to promote.

Finally, though funds were often disbursed late in the fiscal year, there were generally no conditions that had to be met to receive the funding, beyond the submission of the original funding proposal. This eliminated a potentially powerful means of ensuring that funding recipients lived up to their commitments - for progress reporting and evaluation, for instance.

The Reasonableness of Time Allocated to the Fund

The final resource to consider is time. The Fund had a three-year lifespan (over four years, given the 2000/01 hiatus). Was that enough time to achieve its objectives (recognizing that the focus of the Fund was on getting things started, not on sustaining projects once they were into a maintenance phase)? The evaluation team agrees with a majority of interviewees who felt that more time is required to initiate the kind of federal government-wide culture change envisaged by those who approved the Fund.

Not only was the overall length of the Fund problematic. The cyclic process of obtaining Treasury Board approval (for years 1 and 3), sending call letters, submitting proposals during a very short time period, and selecting proposals during a much longer time period, imposed difficulties on all parties involved - particularly on potential applicants. These difficulties were well-documented in the formative evaluation of March 2000. It is likely that the very short period available for proposal preparation had a negative impact on the quality of proposals that were submitted, and as previously noted, probably discouraged many who might have been interested in exploring ADR possibilities from doing so.

5. SUMMARY

Purpose of this Evaluation

This report describes the summative or final evaluation of the Dispute Resolution Fund (1998-02). As a final evaluation, it was intended to assess, to the extent possible, the results of the Fund from its inception in 1998. The objectives of this evaluation were to assess the success of the Fund, its effectiveness in meeting its objectives, its continuing relevance and cost-effectiveness relative to alternative design and delivery approaches.

This evaluation used two lines of evidence - a document review and extensive interviews. Due to insufficient funded project results information and the time constraints within which the evaluation needed to be conducted, in-depth research and analysis was limited.

Interviews were the primary information source for this evaluation. A total of 42 individuals who represented DR Services staff, DR Committee Members, recipients of funding, applicants denied funding and senior managers or other knowledgeable senior staff were interviewed. A number of interviewees were either unavailable during the interview period or failed to respond to efforts to schedule interviews. Others simply declined to be interviewed. In particular, the evaluation team had hoped to speak with knowledgeable senior managers at the Treasury Board Secretariat, but suitable candidates could not be identified.

The documents reviewed for this evaluation included administrative, correspondence and project-specific files.

Overall Purpose of the Fund

The overall purpose of the DR Fund was to support the development, implementation, monitoring, and evaluation of dispute resolution programs and processes within federal government organizations. Funding was to support dispute resolution projects that provided for non-litigious means of dealing with disputes, including the provision of training in dispute resolution.

Objectives of the Fund

The overall objectives of the Fund were:

- To provide encouragement and assistance to organizations in managing disputes effectively, with innovation and without resorting to litigation.
- To assist organizations in their transition to doing business differently, as they are called upon to be responsible for the payment of both settlement amounts and court judgments.

Expected Outcomes

The DR Fund was intended to respond to the strategic management needs of the wide variety of federal organizations. As the primary beneficiaries of the Fund, these organizations would see their costs and time spent in the management of disputes and the funding of litigation diminish such that they could realize cost savings and perform better (by dealing with more disputes and dealing with existing disputes more effectively) within existing budgets.

Organizations also would see increased satisfaction with the manner in which disputes were resolved, both within these organizations and with the parties involved in these disputes. Also, it was anticipated that the success of programs and projects supported by the DR Fund would serve as models for other federal organizations, and that the DR Fund would stimulate and encourage widespread DR implementation.

For its part, the Department of Justice would, through the Fund, realize cost and time savings such that it could ultimately see litigation and litigation costs decrease. This long-term change would be effected as a result of the improved joint management of disputes by the Department of Justice and its client departments and agencies, which would result, over time, in a decreased reliance on the litigation process to resolve disputes.

The DR Fund also would represent a means for the Department of Justice to provide direct and focused client service in the specialized field of DR, consistent with the Department's efforts to be the leading centre of DR expertise in Canada.

General Findings

- Overall, the time and resources allotted to the Fund were not sufficient for it to fully meet its objectives.
- All the same, the Fund was found to have served its original purpose of supporting, developing, and implementing dispute resolution programs and processes within federal government organizations. The Fund fared less well when it came to monitoring and evaluation of funded projects.
- Also, the Fund was found to have met its specific objectives of providing encouragement and assistance to organizations in managing disputes effectively, with innovation and without resorting to litigation.
- As of this evaluation, most funded organizations have yet to report on the results of their projects. For the most part, time has not been adequate for most funded projects (clearly not for those funded in 2001/02) to run their course and produce results to support the Fund's evaluation of ADR programs and processes or for the development, communication and promotion of lessons learned.
- Of projects that have reported results, most note that costs and/or time spent in the management and resolution of disputes were reduced and that satisfaction among the parties to disputes was improved. However, because of the general lack of project evaluation data, the Fund is not able to fully demonstrate that it has resulted in the efficiencies and cost savings that all parties involved would have liked to see. But the indications of those efficiencies and savings are encouraging.
- Similarly, while some supporting information from projects exists, it is not adequate at this time, and likely too early, to determine the extent of the Fund's contribution to Justice's realization of cost and time savings through decreased litigation and the costs of resolving disputes.
- The DR Fund has served to distinguish the Department of Justice as a provider to government departments of direct and focused client service in the specialized field of DR.

Specific Findings

- There is reasonable evidence that the Fund contributed to a better understanding of ADR's potential within organizations that received funding. However, limited information and limited information sharing over the course of the Fund circumscribed the degree to which it could contribute to the development of a broad understanding. People directly involved with projects gained a better understanding of ADR's potential. However, that was a fairly small group, when compared to the much larger group that could have profited from their experience had lessons learned by Fund recipients been more widely disseminated.
- There is ample evidence that the Fund has contributed to increased adoption of proven ADR approaches by a range of federal organizations. For some funded projects, the integration of ADR approaches into departmental processes is significant enough to indicate that more departments are beginning to assess disputes with a view to the use of the most appropriate dispute resolution method or combination of methods for bringing issues to a conclusion.
- Though the Fund undoubtedly contributed to increased adoption of proven ADR approaches in funded organizations, as above, the impact could likely have been expanded to include a much wider group (beyond organizations that received funding) had more effective measures to share lessons learned been undertaken.
- Though few evaluations of funded projects were submitted, most that are available demonstrate reduced reliance on litigation and lower costs for resolving disputes. However, the small number of formal evaluation reports renders these findings less compelling than they would be, had they been drawn from a larger group of evaluations.
- Despite the energy, ability, and commitment of the DR Services staff involved with the Fund, too many competing priorities did not allow them to carry out the level of administrative support required for the Fund. For example:
 - A level of information sharing and communication that would have spread awareness of the benefits of ADR beyond funded organizations
 - Following up to remind recipients of the need to undertake evaluations and to submit evaluation and other reports.

APPENDIX A

REPORTED OUTCOMES OF FUNDED PROJECTS

REPORTED OUTCOMES OF FUNDED PROJECTS

Though there were few evaluation reports submitted by funding recipients, some of the reports that were submitted include information about measurable outcomes - both in terms of savings (of time and money), and of increased satisfaction. Such outcomes identified in evaluation reports submitted are highlighted below. Some of these have already been cited previously in this report as examples, but many have not. In some cases, findings from evaluation reports are bolstered by information obtained through interviews and through the file review.

Canadian Food Inspection Agency (CFIA)

The report submitted by the CFIA was titled *Review of the Canadian Food Inspection Agency's Appropriate Dispute Resolution Service* and was dated June, 2001.

The reviewers examined a sample of 6 closed cases that were successfully resolved over 2 years. Cases with ongoing or potential litigation were excluded. In 5 of the 6 cases the CFIA avoided costs associated with potential unfavourable court judgments. When compared against average costs of litigation, the Agency avoided some \$375,000 of costs as well as an undetermined amount of staff time.

The reviewers concluded that the ADR project:

- Reduced costs and time
- Produced more satisfactory and inclusive outcomes
- Enhanced on-going relationships
- Avoided future disputes and taught parties to resolve their own issues.

More recent information obtained through an interview augmented the review findings. The CFIA interviewee reported that:

- 33 out of 34 cases were resolved. This resulted in up front cost savings of \$2.5 million, when compared to costs that would have been incurred had those cases gone to court.
- An audit indicated that the satisfaction with the process was very high, both from directors and managers.

Canadian Customs and Revenue Agency - Office of Dispute Management

This group submitted two reports. The first was titled *Preliminary Review: Pilot Testing of Interest-Based Approaches for Conflict Resolution* and was dated January 2000. The second was titled *Report on the CCRA's Pilot Dispute Resolution System: Comparison of Sydney TSO to Charlottetown TSO, and Summerside TC Client Rebates Services Division* to the Enquiries and Adjustments Division and was dated May 2001.

Preliminary Review: Pilot Testing of Interest-Based Approaches for Conflict Resolution

The pilot program featured training of employees and managers in communication and conflict management skills. The objective of this review was to obtain opinions from employees and managers at pilot sites to assess how interest-based approaches had been received. Information was gathered through focus groups and a mail-back survey.

Review findings:

- 91% -- completely or generally satisfied with information received
- 72% -- generally satisfied with training, 18% completely satisfied
- 17% -- had resolved an office dispute using ADR. 87% of those resolved the dispute "unassisted"
- Most -- were supportive of the pilot approach and would recommend it to others.

Report on the CCRA's Pilot Dispute Resolution System: Comparison of Sydney TSO to Charlottetown TSO, and Summerside TC Client Rebates Services Division to the Enquiries and Adjustments Division

This pilot assessed the effectiveness of the Dispute Resolution System (DRS) in two different tax service offices. Each pilot site was compared to a similar site that had not participated in the pilot project.

Findings:

- 39% of comments from the pilot sites attributed significant changes to the pilot
- in one pair of offices (a pilot site, and its control group office), DRS employees had more confidence in their ability to deal with conflict. In the other pair there was no difference

- Both DRS sites reported fewer relationship-based conflicts but no difference in task-based conflict than their paired sites
- One DRS site had fewer high-level conflicts than their paired site
- Both DRS sites negotiated more than their paired sites
- One DRS site avoided conflicts more, used third party assistance and resolved conflicts more than their paired site
- DRS sites - no reduction in post-conflict negative consequences nor increase in post-conflict positive consequences compared to paired site
- 1 DRS site reported dramatic culture change compared to its paired site.

Canadian Human Rights Tribunal (CHRT)

The report submitted by the CHRT was titled *System Change and Private Closure in Human Rights Mediation - An Evaluation of the Mediation Program at the Canadian Human Rights Tribunal* and was dated April, 2001.

Prior to presenting findings, the reviewers noted that critics of the project felt that mediation and ADR methods are tantamount to a private justice system that doesn't protect public interest in procedural fairness or disclosure of how disputes were resolved. Critics feared that these approaches might fail to bring to light the depth and breadth of discrimination.

The evaluation focused on the Tribunal's process and outcome objectives, including consideration of the mediation program's consistency with the Act's public mandate. Methodologies featured a survey, telephone interviews and a focus group.

Key findings:

- In 1996-2000, 62 cases were referred to voluntary mediation. On average mediations lasted 1-2 days, and achieved settlement in 71% of cases.
- An informal poll confirmed that parties were generally satisfied with the mediation process.
- 90% of complainants indicated they would definitely or probably use mediation again in the future. A high value was placed on "putting the dispute behind me".
- 56% said the process was very fair, 22% "somewhat fair".
- Anecdotal evidence from the focus group included participants citing thank you letters and testimonials from participants on the value of mediation.
- *"In summary, complainants, respondents and CHRC counsel all have strong incentives for using the Tribunal mediation program. All parties recognize the value of a face-to-face*

discussion and appreciate the reduction of costs and additional stress and the consequent preservation of resources".

The reviewers recommended that the mediation program (which had ceased at the time the report was submitted, because of the concerns that it countermanded the Tribunal mandate) be reintroduced subject to appropriate safeguards.

Canadian Human Rights Commission (CHRC)

The *Systems Design Team Initial Report* submitted in July 1999 by the CHRC included background on a mediation pilot project funded by the DR Fund. It established that between the fall of 1998 and July of 1999:

- Parties agreed to mediation in 94 complaints.
- 40 mediations had been completed and 25 of those were resolved. The complaints had not been resolved in 15 of the completed mediations. 54 mediations were still pending or on-going.

Correctional Service of Canada

A Power Point presentation titled *National Steering Committee on Restorative Justice and Dispute Resolution - Evaluation Report* and dated February 2001 reported the following more concrete outcomes (from among a much larger group of outcomes, most of which documented the accomplishments of an early stage program, like for example, having developed and delivered training):

- A course package called "Making Things Right" was delivered to 57 offenders through 6 pilot sessions. Participants demonstrated increased understanding of restorative justice, increased understanding of the impact of their crimes on victims, and a high level of willingness to participate in future restorative justice processes.
- The Prairie Regional Training Project was delivered to 105 participants, through 3 pilot sessions. Participants demonstrated increased understanding of restorative justice, increased understanding of impacts on victims, and an increased interest in restorative justice.
- The Ontario Region ADR project, which included providing mediation training to key staff, resulted in a decrease in staff grievances by 30% from 1998-99 to 1999-2000, and a willingness of staff to consider alternatives to grievance procedures and other formal dispute resolution processes.

- The Quebec Inmate ADR Project, which featured a review of inmates' complaints and grievances in close cooperation with peer counselors and with staff and management involvement, resolved 162 complaints as of May 2000.
- Approximately 90% of respondents to a Self-Assessment Survey reported that their work on the National Steering Committee on Restorative Justice and Dispute Resolution had an impact on other areas of their work lives. That impact appeared to be very positive, based on these types of comments:
 - *I've used both the principles and the techniques in a positive way.*
 - *It has broadened my perspective and has allowed for greater information sharing.*
 - *I have brought restorative justice into different community groups to help solve community justice issues.*

Human Resources Development Canada - Canada Pension Plan Disability Dispute Resolution Project

This group submitted an evaluation report titled Technical Evaluation of the Canada Pension Plan Disability Dispute Resolution Project - Regional Pilots dated August 2000. In 1998, Income Security Programs identified the impersonal nature of client management as one of the critical issues that needed to be addressed. A recommendation was made to create a Client Centered Service Delivery approach to business, involving regular client contact throughout the lifecycle of a benefit claim. The project was established to test and evaluate the use of DR techniques that would support the CCSD approach at initial and reconsideration levels in the CPP disability process, in three Regional Processing Centres. Specialized training was delivered to staff.

The stated objectives of the regional pilots were:

- To develop, implement, test and deliver improved business processes that are more cooperative and less adversarial than the overall adjudication process;
- Where possible, to prevent and resolve disputes early in the process and provide for more creative ways for resolution later in the process;
- To ensure a better informed more knowledgeable client through a more user-friendly service which emphasized timely and clear communications;
- To provide tested best practices and lessons learned for future refinements of the CPP disability business process
- To establish and/or improve partnerships with stakeholders;
- To provide staff, through DR training, with a broader range of competencies; and

- to provide an improved service through better decision-making early in the process, possibly resulting in a more efficient, timely and less costly process with fewer appeals.

Key findings:

- Using data from the National Statistics for the six months pre-pilot period (July-Dec 1998) and the pilot testing period (July to December 1999) to compare national and pilot rates, the reviewers found that while appeal rates at the reconsideration level increased by an average of 25% nationally, there was a decrease in all three pilot sites. In Chatam there was a 15% decrease, in Newfoundland 35% and in Manitoba 50%.
- Client responses from telephone surveys indicated the most important determinant of overall satisfaction was whether benefits were granted or denied. Over 85% of clients granted benefits and over 35% of clients denied benefits felt that direct contact had increased satisfaction.
- Staff response six months into the pilot indicated that 70% of adjudicators and over 40% of analysts felt that direct client contact was having a positive effect on job satisfaction.
- 90% of participants rated pre-pilot training as good, with the majority rating it as excellent.

Conclusions as they relate to the stated objectives included the following:

- Improved business processes were developed, implemented and tested which will provide a more cooperative and less adversarial approach to adjudication at the initial and reconsideration levels.
- A streamlined process model was successfully developed that provides regular opportunities for dialogue and will aid in the prevention and resolution of disputes earlier in the process
- Customized DR training in communications and conflict prevention and resolution was successfully developed and delivered to staff.
- The pilot results could be interpreted in two ways in terms of efficiencies: 1) speed of service in two sites slowed down; 2) however, the appeal rates decreased in all three sites even though nationally the rates increased.

Human Resources Development Canada, Nova Scotia Region

This group submitted an evaluation report titled *Evaluation of the Alternative Dispute Resolution Pilot Project* dated March 31, 2001. This ADR pilot project was initiated to improve service quality for clients appealing a decision about Employment Insurance claims. The primary

objective of the program was to resolve appeals without the client having to appear before the Board of Referees.

Findings for the period of January - December 2000, covered 203 cases (which comprised only 25% of appellants):

- 114 cases (59%) were resolved without going (on) to the Board
- Of those 114 cases, 52 were withdrawn by the client and 59 rescinded by HRDC (the party that withdrew was unknown in 3 cases).
- 89 cases went on to Board
- Of those, in 61 cases the HRDC decisions were upheld, and in 17 HRDC decisions were rescinded. (The disposition of 11 cases was unknown.)

Compared to the preceding year:

- The volume of appeals was up 27%, but cases heard by the Board decreased 22%.
- The total number of cases withdrawn/rescinded without board hearing was 120 in 1999 (20% of resolved cases.) In 2000, that number tripled to 385.

The reviewers thus found that even with the ADR process only directed at ¼ of appeals in Metro in 2000 - the effects were apparent. They reported that clients, regardless of the outcome of appeals saw ADR as valuable and that ADR clients were more satisfied overall with services received than non-ADR clients.

They also reported that: *"While some key informants were of the opinion that the ADR Project is cost neutral, insufficient data is available to provide analysis of this issue. It is recommended that further analysis be conducted to determine actual cost of ADR and the minimum level of funding required to implement this initiative in other areas".*

The Pension Appeals Board (PAB) of the Canada Pension Plan

The report submitted by this group was titled *Evaluation of the Pension Appeals Board Dispute Resolution Project* and was dated March 9, 2000. It stated that the PAB's overall objective was to achieve more efficient and effective service by reducing the number of adjournments of PAB hearings for CPP benefits, by ensuring that claimants arrived properly prepared and ready to proceed. The report findings were organized according to a number of more specific objectives:

- *Objective - Reduce number of adjournments:* The DR intervention actually increased the number of adjournments (completely opposite the intended effect) because claimants who were previously unrepresented instead looked for new representation at the time of the hearing.
- *Objective - If adjournment is granted outside the 20 day window by this intervention, a replacement will be scheduled:* this objective was partially met for claimants who reported not being available at next hearing date, and who were thus appropriately rescheduled.
- *Objective - Expedite the number of cases being heard because claimants will be better prepared, and will result in a reduction in costs and time lost for case preparation.* Reviewers didn't know if more cases were being heard but did conclude that no adjournments were due to clients being unprepared.
- *Objective - Increase claimant satisfaction from an increase in human contact from PAB.* The reviewers concluded that this objective had been achieved, based on qualitative feedback from the PAB interviewers themselves.

In an analysis document submitted May 20, 2000, which focused on these evaluation findings, it was noted that while the main objective of the PAB project was to reduce adjournments, ADR produced the opposite effect - the adjournments increased. It was posited that after speaking with ADR people, appellants realized the seriousness of the situation and more of them sought counsel. This caused delays. The analysis also posited that a better understanding of proceedings also frightened people and they procrastinated.

Public Service Staff Relations Board

This group submitted an evaluation report titled *Negotiating Solutions to Workplace Conflict: an Evaluation of the Public Service Staff Relations Board Pilot Grievance Mediation Project* dated March 2001.

Through this pilot project, mediation was offered in every grievance case filed with the Board for a twelve-month period. The objectives of the grievance mediation were to:

- Enhance credibility of the grievance mediation program
- Achieve time and cost efficiencies
- Improve conflict resolution climate in the workplace
- Enhance effectiveness of mediators

Key findings:

- The settlement rate for mediated cases was 52%, compared to a settlement rate of 25.2% for non-mediated cases.
- Participants expressed strong satisfaction with the overall fairness of mediations. Grievor representatives, who have most experience with mediation, gave the highest approval ranking in all areas.

The evaluation report was augmented by the following comments from the evaluators, which the Board also submitted: *"The PSSRB's pilot mediation project has achieved a high degree of credibility and party satisfaction with large majority of participants indicating that they considered the process to be a fair and constructive approach to dispute resolution. An overwhelming majority also said that in the future they would be willing to participate in mediation at the PSSRB should the need arise. Mediated outcomes have included practical solutions that were not otherwise available through the Board's adjudicative proceedings and both grievors and employers report a greater interest in using informal dispute resolution processes in the future."*

Immigration Appeal Division

This group submitted two reports. The first, titled *Alternative Dispute Resolution Pilot Project of the Immigration Appeal Division - Pilot Project Final Report (undated)* compares 300 then-current appeal cases to 300 cases concluded in the 6 months prior to the start of this project.

Key Findings:

- Timing: average time per case on ADR = 1 hour. Contrast for Comparison Group = 3.4 hours.
- Outcomes: (out of 275 cases - 25 of the 300 still pending) 148 (54%) appeals resolved without resort to litigation. Comparison group - only 32% so resolved.
- Processing time where appeals are resolved without litigation: 146 days from record received to completed case for ADR, 401 days for comparison group (pilot = 37% of time required for comparison group)
- Processing time where full hearing is required
 - Days from record received to hearing's first sitting : 214 pilot 330 other
 - Days from first to last sitting of hearing: 6 pilot 19 other
 - Days from record received to completed hearing 232 pilot 349 other

- Hours of hearing sitting time: 2.1 pilot, 3.4 other
- 82% of participants (appellant and counsel) were very satisfied with how the DR Officer dealt with the appeal (92% were very or somewhat satisfied)
- 71% of participants (appellant and counsel) were very satisfied with the ADR process (89% were very or somewhat satisfied).
- 90% of responding appellants/counsel reported that the ADR process was fair - *even though 43% of them did not have their appeal resolved through ADR.*
- 71% of the responding appellants/counsel would always recommend the process to others, while 85% would recommend the process on at least some occasions.
- 94% of the responding Hearings Officers indicated strong or moderate satisfaction with the actions of the DR Officer. No response indicated a strong dissatisfaction.
- 75% of the Hearing Officer responses indicated satisfaction with the process - 49% were strongly satisfied and 26% were somewhat satisfied.
- All Hearing Officer responses indicated that resources were saved through cases that were resolved through ADR.
- *"In the 2 months since the pilot mediations ended one DRO has been conducting mediations. In this period she has dealt with 93 appeals, of which 70% have been resolved without litigation. This is representative of the capacity for productivity which DROs can sustain. If 2 DROs were operating on a full-time basis in Toronto, they would be able to conduct mediations in about half of the sponsorship caseload, or over 900 appeals. This is considerably more productive than the 300 appeals which were dealt with in the course of the experimental pilot project, but a level which was demonstrated as feasible in two months of the pilot, as well as during continued ADR work following the pilot."*

A more recent evaluation, titled *Assessing Efficiency, Effectiveness and Quality - An Evaluation of the ADR Program of the Immigration Appeal Division of the Immigration and Refugee Board* was submitted in March 2002. Its processing performance statistics are consistent with the observations and conclusions of the earlier evaluation. The report evaluates the Program in relation to how well it met its three major objectives of providing a quality alternative to the adversarial hearing process, increasing the speed of dispute resolution, and improving the efficiency of dispute resolution, including reducing the financial and emotional costs of dispute resolution.

Key findings:

From a survey of 100 cases from Toronto and 20 in Vancouver:

- Approximately 40% of the mediations resulted in the appeal being allowed and 4% were resolved through withdrawals.
- In 40% of cases a hearing was scheduled. The remaining cases did not proceed or were withdrawn.
- A very high percentage of respondents (from 81%-94%) found mediation to be fair and worthwhile.
- Most mediations took about 1 hour.

From information gathered from IRB and IAD databases, the disposition rate of sponsorship appeals and average sitting times and processing times for mediations and hearings were compared. A total of 3,347 cases disposed of in the period from Jan 1, 2001 to Sep 30, 2001 were selected for analysis.

Key findings:

- ADR provided an advantage in shorter sitting times - averaging less than an hour as compared to 2.4 hours (Toronto) or 3.3 hours (Vancouver) for non-ADR cases that went to hearing. However cases that were not successfully resolved in ADR took longer in hearings (3.7 hours in Toronto) than those cases that had never been to ADR.
- Cases resolved in ADR are processed more quickly than those going to hearing. In Toronto, ADR resolutions are achieved in an average of 3.5 months as compared to 5.8 months for cases that go to hearing without mediation - a savings of 2.3 months. However, cases that fail in ADR take an average of 10.6 months.

The evaluator concludes *"the IAD'S ADR Program contributes significantly to the efficiency, effectiveness and quality of administrative justice at the IAD. It provides Appellants with a process that is generally viewed as fair and worthwhile and often produces savings in terms of costs and time. Its informality reduces the tension often felt by participants in adversarial proceedings."*

The National Energy Board (NEB)

In its funding proposal of June 2001, the National Energy Board documented tangible results achieved with the previous financial support it received from the DR Fund. These included details about two cases in which landowners agreed to mediation on objections they had filed with NEB.

For both cases, NEB staff underwent special training geared to the objections. One case settled before the date of mediation. In the second case, the parties convened for the mediation but were able to resolve their issues without going through the formal mediation process. However, both parties credited their success to the fact that the NEB had set a date for mediation which brought both parties to the table, which otherwise would not have happened.

"The cost to the NEB for the additional training required was \$2,700 while the cost for a one day hearing was estimated to be approximately \$14,000. Neither of the above figures includes salary dollars, nor does it take into account the overall benefit to the NEB of having only two staff involved compared to the usual complement of ten or twelve staff and members required for a hearing. Similar proportional savings would be expected for the company and landowner."

APPENDIX B

FINDINGS OF THE MID-TERM EVALUATION (MARCH 2000)

SUMMARY AND LESSONS LEARNED³

The main findings and lessons learned from this evaluation of the Dispute Resolution Fund are as follows.

- The Fund's efforts to raise awareness of its availability have been sufficient to generate interest from enough applicants to fully commit its resources. A question remains as to the level of awareness of the Fund among organizations that did not submit proposals.
- In spite of the general satisfaction with the *Terms and Conditions* reported by most applicants, they may not be serving either applicants or the Committee as well as they might. This is demonstrated by the diversity of the proposals in terms of their length, detail and completeness. Clearer guidelines on proposal length, content and especially acceptable costs for common types of project activities (training, consultants) might produce more readily comparable proposals.
- Based on the experience of the first two years of operation of the Fund, the Committee might consider providing clear guidelines to potential proponents of any priorities established for the upcoming year so that they can respond accordingly.
- Ideally, the schedule of events for the program should allow for the Call Letters to be sent early in the calendar year, with the deadline for proposals at least four weeks thereafter, and notification to applicants as early in the new fiscal year as possible. This will assist one-year projects to be completed in a single fiscal year.
- Consideration should be given to funding some projects beyond one year depending on the particular requirements of each project. This would also facilitate reporting and evaluation within the life-cycle of each project.
- The payment mechanism is confusing for many applicants. It may also be effectively excluding some organizations, in which 'cash managing' is difficult, from participating in the program.
- Most successful applicants were awarded significantly less funding than they applied for. To some degree, they made up the shortfall from internal resources, or scaled back on their projects. Most also did little in terms of formal project evaluation and reporting. This may be coincidental. However, it seems plausible that when their proposed budgets were sharply cut

³ *Evaluation of the Dispute Resolution Fund, Technical Report, March 2000.*

by the Committee, their plans for evaluation (if any) were cut disproportionately as being of secondary importance to the organization and/or primarily of interest to the Fund.

- The level of reporting to date by funded projects has, with a few exceptions, been insufficient to enable the Fund to monitor either the individual projects or the program's progress against its objectives. This component of the program needs to be strengthened.
- Information on previously funded projects should be made readily available to interested parties both within government and in the broader ADR community. This could most efficiently be accomplished through a combination of a symposium of project representatives and judicious use of the Internet.
- Based on the very limited evidence available to date and collected as part of this evaluation, information from a few case study projects suggests that positive impacts are starting to be realized through the increased use of more cost-effective settlement mechanisms. The DR Fund therefore appears to offer relevant support to the ongoing transition toward a new framework for the funding of judgements in the federal government.
- A number of the foregoing findings and lessons learned imply a more actively-administered DR Fund. Given the very limited resources committed by Justice to this enterprise, much has been accomplished. If, however, the objectives of the Fund are to be realized, more resources will be needed for administration. It is unreasonable to expect that one individual can monitor the progress of the more than 50 currently-funded projects in 33% of his available work hours.

On this final point, it should be noted that DR Services has been, since this past summer (when the administrative demands increased in response to the rising volume of applications) looking at bringing in a senior clerk or paralegal to provide program administration assistance. As DR Services has a number of programs to administer at this point, it has become necessary to look at more cost-effective means of program administration. As of this writing no decisions have been made on this issue.

APPENDIX C

TERMS AND CONDITIONS OF THE DR FUND

THE DISPUTE RESOLUTION FUND

Terms and Conditions

The following terms and conditions will apply to resources provided through the Dispute Resolution Fund.

1. Purpose of Fund

The purpose of the Fund is:

- to provide, through a newly created pool of operating monies, encouragement and assistance to departments in managing disputes effectively, with innovation and without resorting to litigation; and
- to assist departments in their transition to doing business differently, as they are called upon to be responsible for the payment of both settlement amounts and court judgements.

2. Objectives of the Fund

All requests for financial assistance must be consistent with the following overall objective of the Dispute Resolution Fund:

- to support the development, implementation, monitoring, evaluation, within departments, of dispute resolution programs and processes that provide for non-litigious means of dealing with disputes, and of training in dispute resolution.

3. Types of Funding

Funding will be provided for:

- projects which focus on "early intervention" with respect to disputes; and
- dispute resolution for litigation that is already underway (in situations where dispute resolution will streamline the issues that eventually proceed to trial).

Note: Only new proposals are eligible for resources from the Fund (as opposed to those proposals already underway as at the time of Treasury Board approval of these terms and conditions). Resources will not be provided to departments to assist them in

covering out of court settlements. Also, resources are to be used for operating expenses only (i.e. capital expenditures are not eligible expenses).

4. Funding Profile

The funding profile for 2001-2002 is as follows. The TB Operating Reserve will provide \$2.0 million. The Department of Justice will contribute \$0.3 million over the same period.

	2001-2002
Fiscal Framework	\$ 2.0 M
Department of Justice	\$ 0.3 M
TOTAL	\$ 2.3 M

5. Classes of Recipients

Resources may be provided to the following classes of recipients in support of the objectives of the Dispute Resolution Fund:

- a) departments and agencies of the Government of Canada;
- b) Crown corporations;
- c) federal tribunals and administrative agencies; and
- d) federally constituted courts.

Note: Throughout the text, the term "departments" refers to all recipients noted above. Joint-departmental proposals are eligible.

The Fund will not be used to resource the ongoing activities of the Dispute Resolution Project, Department of Justice.

The Department of Justice will not be eligible to apply directly to the DR Fund per se, but the Department of Justice may be identified as a provider of specialized services at an arms-length to the applicant. In these cases, resources for the Department of Justice shall not exceed 20% of the overall cost of the proposal. The remuneration of the Department of Justice for services rendered will be immaterial to the decision to approve resources from the Fund.

6. Supporting Material Required for an Application

Applications should include:

- a) name, address, telephone and facsimile number, applicant's representative, names of principal personnel and program/project administrators;
- b) a detailed funding proposal including: the amount and timing of financial assistance required, aims, goals and objectives of the proposed activity;
- c) time frame, work plan including activities to be undertaken in support of objectives, as well as activity management structure;
- d) detailed budget of the project including: amount being requested from the Fund and a detailed list of expenditures, including timing;
- e) a commitment that the applicant will cost share (either through direct funding or through in-kind contribution) at least 20% of the total costs;
- f) an identification of any benefits and/or risks associated with the project, both in the short and long terms;
- g) an outline of the tangible results expected from the application of non-litigious dispute resolution - proposals that aim at study or research exclusively will not be eligible for support;
- h) project evaluation design that describes how the applicant intends to monitor the project and to assess or evaluate its success against the project's objectives and goals and includes project outputs and applicable performance indicators; a commitment to report to the Dispute Resolution Committee on such monitoring, assessment or evaluation at the end of the project's duration;
- i) A commitment to provide for regular status reports to be submitted to the Dispute Resolution Committee to ensure that the project continues to be feasible and that progress in implementation is being made (Note: Evidence of significant delay in implementation or of lack of commitment to the project may result in a review of the original funding commitment and a possible withdrawal of funding.);
- j) a commitment to submit a financial report to the Committee at the end of each fiscal year and/or upon completion of the project; the report should outline how the resources were expended, the project surplus/deficit, and provide an explanation of any variances from the original budget;
- k) indication of any previous financial support received from the Dispute Resolution Fund including the amount, how and to what purpose the funds were used and the results achieved; and

- l) a statement that any funds used to retain the services of former Public Servants must be in accordance with the Federal Government's policy entitled *Conflict of Interest and Post-Employment Code for Public Office Holders*.

7. Dispute Resolution Committee

The mandate of the Dispute Resolution Committee will be to:

- review proposals received, assess the relative merits of each, decide on the allocation of funds and propose to Treasury Board the related budgetary transfers to the recipients via the Supplementary Estimates process;
- promote principles of dispute resolution within the federal government through formal and informal means; and
- evaluate the overall effectiveness and impact of the Dispute Resolution Fund.

Committee members will be selected by the Deputy Minister of Justice and will include at least one non-public servant expert in dispute resolution, at least one member of the federal dispute resolution network (from a department other than the Department of Justice) and one employee from the Dispute Resolution Project, Department of Justice. The committee will consist of a minimum of five (5) members. The selection of committee members will be based on knowledge of traditional and alternative dispute resolution mechanisms. To address conflict of interest concerns where a committee member is associated with an organization involved directly in an application for funding, provision will be made for that member to abstain from the committee's selection process.

The Committee will meet on an ad hoc basis, as needed, but at least twice per fiscal year. The Department of Justice will be responsible for the provision of administrative support for the Committee. The Committee will be accountable to the Deputy Minister of Justice.

8. Committee Review Process

A call letter will be sent to all interested parties, requesting proposals. The Committee will meet within 30 days of the call letter being sent to review proposals received.

In reviewing proposals, the Committee will take decisions to fund those proposals that hold out the most promise to improve the handling of disputes with a view to avoiding litigation, saving time, saving costs and providing a higher degree of satisfaction to those

involved in the resolution of the disputes in issue. The Committee will also take into account the potential of the proposal to lead to long-term change in the way the stakeholder deals with disputes. Proposals should be geared, therefore, toward altering the way the stakeholder does business - to improve its effectiveness and efficiency and to institutionalize such change. It is hoped that the proposals approved will lead to better management of disputes by government. See Appendix A for some examples of projects that might be proposed.

Specifically, the Committee will take into consideration the following factors:

- i) a project must be in keeping with and directly support and advance the objectives of the Dispute Resolution Fund;
- ii) the applicant's financial request for funding assistance;
- iii) whether the applicant has committed to cost-share (either through direct funding or through in-kind contribution) at least 20% of the costs;
- iv) the ability of the applicant to carry out the activities within a specific time frame and budget;
- v) the innovative nature of the project, as well as its cost-effective aspects;
- vi) whether the proposal has close similarities to or duplicates previous projects;
- vii) the previous funding provided by the Fund and the recipient's experience and background with respect to its ability to successfully complete and document the proposed project;
- viii) the manner in which the project will be developed, implemented and monitored, as well as its accessibility to be documented for information purposes;
- ix) proposals which demonstrate the potential for further advancing the government's knowledge base with respect to dispute resolution; and
- x) the level of resources remaining in the Dispute Resolution Fund.

The terms and conditions of the Dispute Resolution Fund will be made available to potential applicants. The process by which decisions are made will be transparent, and the decisions themselves will be a matter of written record.

If, after the initial call letter and review, there are remaining resources in the Fund, a second call letter will be distributed to interested parties, the timing of which will be at the discretion of the Committee.

9. Authority to Approve Resources and Sign Agreements

The Dispute Resolution Committee will prepare and approve agreements. The Deputy Minister of Justice will sign the agreements, which will then be forwarded to applicants for review and signature by their deputy-heads.

The agreement will:

- i) identify the recipient;
- ii) state the purpose of the resources;
- iii) state the resources approved from the Fund and the resources to be contributed by the recipient;
- iv) indicate the effective date of the agreement and duration of the agreement;
- v) include a detailed budget;
- vi) identify the financial responsibilities of the recipient;
- vii) include a description of the evaluation work that will be conducted;
- viii) describe the type and frequency of reports that will be provided to the Committee;
- ix) state the responsibilities of both parties and all conditions attached to the funding;
- x) include a 30-day written notice of termination clause; and
- xi) include provisions for written acceptance of the terms and conditions and signing by both parties.

10. Maximum Amount of Funds

A maximum amount of \$500,000 in any one year shall apply for any one recipient, based on the amount available in any given fiscal year.

11. Monitoring and Evaluation Procedures

Recipients will be required to submit detailed report(s) on various aspects of the project in order that the Committee can assess the viability, impact and utility of funded activities. Also, Committee members or their designates may conduct on-site visits or request additional information reports as they deem appropriate, to monitor the progress of funded activities.

In order to determine the overall effectiveness and impact of the Dispute Resolution Fund, an evaluation framework will be developed and an evaluation study of the Fund

undertaken. The Committee will be accountable for the preparation of the framework and study.

The evaluation framework will identify the performance indicators and data collection elements to be captured to support the on-going monitoring of the objectives of the Fund.

The evaluation study will assess the overall utility of the DR Fund approach and the achievement of its objectives. The study will draw upon status reports, assessments and evaluations provided for each funded proposal (see above).

A final report assessing the effectiveness of the Fund in relation to its objectives will be prepared by the Committee and forwarded to the Deputy Minister of Justice and Treasury Board Secretariat at the end of fiscal year 2001/02. This report will include a description of "best practices".

The cost of the evaluation framework and study will be borne by the Department of Justice.

12. Method of Payment

Once a project is successfully selected, the amount of funding will be proposed by the Committee to Treasury Board, to seek authority for the related budgetary transfers to recipients via the Supplementary Estimates process. The Committee's proposal will include a list of the projects, the funds to be allocated to federal organisations and a short description of the projects.

13. Recovery of Surpluses

If the project fails to be implemented or is implemented such that a surplus of funds results, Treasury Board Secretariat can recommend to Treasury Board Ministers that a frozen allotment equal to the surplus amount be frozen in that department's reference levels. This information must be confirmed to Treasury Board at the time of confirming year-end allotments.

14. Number of Years over which Terms and Conditions will Apply

The terms and conditions shall apply from April 1, 2001 to March 31, 2002 subject to Treasury Board Secretariat review.

Should changes to the terms and conditions be deemed necessary, such changes will be brought to the Treasury Board Secretariat for its review and/or approval.

Appendix A

Examples of projects that might be proposed, include:

- providing a mediation program to deal with disputes, as an alternative to the courts;
- instituting a service to help disputants, within a judicial or quasi-judicial process, to resolve their disputes without the necessity of a trial or hearing;
- establishing a programme to resolve disputes early (e.g. grievances or complaints) thereby avoiding a protracted dispute and possibly court proceedings;
- providing for the streamlining of cases in litigation with a view to reducing the number of issues that must proceed to trial; and
- training and communications activities in support of a specific programme to promote non-litigious dispute resolution.

APPENDIX D

EVALUATION METHODOLOGY

EVALUATION METHODOLOGY

Lines of Evidence

This evaluation used two lines of evidence - a document review and extensive interviews.

Document Review

The documents reviewed for this evaluation included:

- Administrative files
- Correspondence files
- Project-specific files.

The initial file review used a File Review Guide, which is included as Appendix F to this report. This initial review was conducted with an eye to developing an understanding of the chronology of events and to aid in the identification of issues to explore further through interviews. A file review report (approximately 25 pages in length) was developed and circulated to all members of the evaluation team.

A separate review of all communications materials was also conducted and informs the analysis of communications activities included in the report.

Finally, a separate review was conducted of all available evaluations of funded projects. The focus of this review was on identifying concrete and/or quantitative results identified in those reports. Again, an internal document was prepared and circulated to all members of the evaluation team.

Interviews

Interviews were the primary information source for this evaluation. Based on information provided by DR Services Staff (and supplemented by information from the file review) the evaluation team developed five different interview guides. They are included in Appendix E to this proposal. A total of 42 individuals were interviewed out of 46 originally planned. A number of interviewees were either unavailable during the interview period or failed to respond

to (repeated) efforts to schedule interviews. Others simply declined to be interviewed. In particular, the evaluation team had hoped to speak with knowledgeable senior managers at the Treasury Board Secretariat, but was unable to identify suitable candidates. The breakdown of interviewees is as follows:

DR Services staff involved with the Fund	3
DR Committee Members	5
Recipients of funding	20
Applicants denied funding	4
Senior managers or other knowledgeable senior staff	14

Note also that some interviewees are double-counted, since they fit into multiple categories.

The interviews were semi-structured. Each interviewer attempted to ensure that the questions in the relevant guide were answered. The interviewees were encouraged to be expansive and were allowed significant latitude in their responses. Most of the interviews were done by telephone, but some (particularly with DR Services staff) were conducted in person. Interviews varied from between a half-hour and 2.5 hours in length.

After each interview, the interviewer prepared detailed notes (2 to 5 pages) that were circulated to all other team members. This allowed each interviewer to quickly identify emerging issues, which other team members could then also pursue.

Analysis and Observations

After each team member had reviewed all of the internal reports and interview notes, the evaluation team met for a full-day session in which:

- Findings were identified
- The findings were analyzed
- Observations were recorded

APPENDIX E

INTERVIEW GUIDES

EVALUATION OF THE DR FUND

Interview Guide

Recipients of Funding

1. Can you provide a brief description of the ADR program implemented in your organization, and of the role you play in that program?
2. Have you assessed the success of the DR program in your organization?
 - What were the results? (Please provide any reports you may have.)
 - Have you shared your "lessons learned" with other organizations? How?
3. Have you learned from the experience of other organizations that have implemented ADR programs?
 - How did they share that information with you? (e.g. meetings, evaluation reports, symposium)
4. Do you think senior managers in your organization have become more aware of:
 - the availability of ADR services and/or approaches
 - the benefits to be derived from using ADR approaches?
5. Do you think staff in general have become more aware of:
 - the availability of ADR services and/or approaches
 - the benefits to be derived from using ADR approaches?
6. What evidence have you seen in your organization (or others):
 - that ADR is working to decrease dependence on litigation?
 - that there has been a reduction in costs directly related to the ADR initiative?
 - that conflict is being reduced, and formal disputes are being prevented and/or resolved more quickly using ADR approaches?
 - that parties to an ADR process are more satisfied with this approach than with the previous approaches?
7. To what extent do you think the DR Fund contributed to the effectiveness of, or problems with, the ADR program in your organization? (e.g. did the Fund criteria affect the design of

your program? Did the level of funding approved mean that some aspects of your program were not what you had hoped they would be?)

8. To what extent did receiving funding from the DR Fund affect your organization's decision to proceed with an ADR program?
9. Do you have any comments to make about the communications materials and processes used (e.g. timing, completeness, usefulness):
 - in informing you of the DR Fund
 - during the course of your funding?
10. Is the DR Fund (or a similar program in the future) the most cost-effective way of promoting ADR in federal organizations? Can you suggest other ways?
11. Is the size of the DR Fund reasonable in light of its objectives?
12. Do you think there's still a need for a funding mechanism like the DR Fund? Why?
13. If the DR Fund were renewed in some way, do you think any changes should be made to make it more effective in the future? (e.g. objectives, selection criteria, level of funding)

EVALUATION OF THE DR FUND

Interview Guide

Organizations Denied Funding

1. Can you explain how you were involved in applying to the DR Fund?
2. Although you didn't get any funding from the DR Fund, has your organization set up an ADR program?

IF YES, CONTINUE. If not, go to Q. 8

3. Can you give me a short description of your program?
4. Have you assessed the success of the ADR program in your organization?
 - What were the results?
 - Have you shared your "lessons learned" with other organizations? How?
5. Have you learned from the experience of other organizations that have implemented ADR programs?
 - How did they share that information with you? (e.g. meetings, evaluation reports, symposium)
6. Do you think senior managers in your organization have become more aware of:
 - the availability of ADR services and/or approaches
 - the benefits to be derived from using ADR approaches?
7. Do you think staff in general have become more aware of:
 - the availability of ADR services and/or approaches
 - the benefits to be derived from using ADR approaches?
8. What evidence have you seen in your organization (or others)
 - that ADR is working to decrease dependence on litigation?
 - that there has been a reduction in costs directly related to the ADR initiative?
 - that conflict is being reduced, and formal disputes are being prevented and/or resolved more quickly using ADR approaches?

- that parties to an ADR process are more satisfied with this approach than with the previous approaches?
9. To what extent did not receiving funding from the DR Fund affect your organization's decision to proceed with an ADR program?
 10. Do you have any comments to make about the communications materials and processes used in informing you of the DR Fund?
 11. Is the DR Fund (or a similar program in the future) the most cost-effective way of promoting ADR in federal organizations? Can you suggest other ways?
 12. Is the size of the DR Fund reasonable in light of its objectives?
 13. Do you think there's still a need for a funding mechanism like the DR Fund? Why?
 14. If the DR Fund were renewed in some way, do you think any changes should be made to make it more effective in the future? (e.g. objectives, selection criteria, level of funding)

EVALUATION OF THE DR FUND

Interview Guide

DR Fund Staff

1. Could you explain your involvement with the DR Fund? (include focus on when they became involved, and the role they play.)
2. How successful do you think the DR Fund has been in raising awareness of ADR approaches overall?
3. Have "lessons learned" been shared with other organizations (recipients of funding and others)? How?
4. Do you think senior managers have become more aware of:
 - the availability of ADR services and/or approaches
 - the benefits to be derived from using ADR approaches?
5. Do you think staff in general have become more aware of:
 - the availability of ADR services and/or approaches
 - the benefits to be derived from using ADR approaches?
6. What evidence have you seen:
 - that ADR is working to decrease dependence on litigation?
 - that there has been a reduction in costs directly related to the DR Fund?
 - that conflict is being reduced, and formal disputes are being prevented and/or resolved more quickly using ADR approaches?
 - that parties to an ADR process are more satisfied with this approach than with the previous approaches?
7. To what extent do you think the DR Fund contributed to the effectiveness of, or problems with, the ADR program implemented? (e.g. did the Fund criteria affect the design of programs?)
8. Do you have any comments to make about the communications materials and processes used:

- in informing organizations of the DR Fund
 - during the course of the program?
9. Is promotion of ADR a continuing priority of the Department of Justice and Treasury Board?
 10. Is the DR Fund (or a similar program in the future) the most cost-effective way of promoting ADR in federal organizations? Can you suggest other ways?
 11. Is the size of the DR Fund reasonable in light of its objectives?
 12. Do you think there's still a need for a funding mechanism like the DR Fund? Why?
 13. If the DR Fund were renewed in some way, do you think any changes should be made to make it more effective in the future? (e.g. objectives, selection criteria, level of funding)

EVALUATION OF THE DR FUND

Interview Guide

Senior Managers

1. Could you briefly explain your role as it relates to ADR within the federal government?
2. What progress do you think has been made in encouraging federal organizations to implement ADR programs?
3. What do you think are the main factors that have contributed to success so far?
4. What have been the major impediments to ADR's success so far?
5. In your opinion, is promotion of ADR a continuing priority for the Government of Canada?
6. Do you think senior managers in government departments and agencies have become more aware of:
 - the availability of ADR services and/or approaches
 - the benefits to be derived from using ADR approaches?
7. What evidence have you seen:
 - that ADR is working to decrease dependence on litigation?
 - that there has been a reduction in costs directly related to ADR initiatives?
 - that conflict is being reduced, and formal disputes are being prevented and/or resolved more quickly using ADR approaches?
 - that parties to an ADR process are more satisfied with this approach than with the previous approaches?
8. Is the DR Fund (or a similar program in the future) the most cost-effective way of promoting ADR in federal organizations? Can you suggest other ways?
9. Do you think there's still a need for a funding mechanism like the DR Fund? Why?
10. If the DR Fund were renewed in some way, do you think any changes should be made to make it more effective in the future? (e.g. objectives, selection criteria, level of funding)

EVALUATION OF THE DR FUND

Interview Guide

DR Fund Committee Members

1. Could you give us some background on the role of the DR Fund Committee and your role on it?
2. Do you think senior managers, as a result of the DR Fund, have become more aware of:
 - the availability of ADR services and/or approaches
 - the benefits to be derived from using ADR approaches?
3. Do you think staff in general have become more aware of:
 - the availability of ADR services and/or approaches
 - the benefits to be derived from using ADR approaches?
4. What evidence have you seen:
 - that ADR is working to decrease dependence on litigation?
 - that there has been a reduction in costs directly related to using ADR approaches?
 - that conflict is being reduced, and formal disputes are being prevented and/or resolved more quickly using ADR approaches?
 - that parties to an ADR process are more satisfied with this approach than with the previous approaches?
5. To what extent do you think receiving/not receiving funding from the DR Fund affected organizations' decisions to proceed with an ADR program?
6. Do you have any comments to make about the communications materials and processes used (e.g. timing, completeness, usefulness):
 - in informing organizations of the DR Fund
 - during the course of the program
7. Do you think promotion of ADR is a continuing priority of the Department and Treasury Board?

8. Do you think the DR Fund (or a similar program in the future) is the most cost-effective way of promoting ADR in federal organizations? Can you suggest other ways?
9. Do you think the size of the DR Fund was reasonable in light of its objectives?
10. Do you think there's still a need for a funding mechanism like the DR Fund? Why?
11. If the DR Fund were renewed in some way, do you think any changes should be made to make it more effective in the future? (e.g. objectives, selection criteria, level of funding)

APPENDIX F

FILE REVIEW GUIDE

EVALUATION OF THE DR FUND

File Review Guide

Administrative Files

- History of the DR Fund
- Resources assigned/used (administrative and projects)
- Communications after initial decisions
- Issues/problems

Project Files

All projects:

- In line with DR Fund objectives
- Did funding continue over more than one period? If yes, rationale?
- Evidence of results
- Evidence of communications after initial decision
- Sharing of results (methods?)
- Monitoring reports

Projects in 2001/02 include the following elements:

- propose to explore and implement the use of DR as a means of dispute prevention;
- "early intervention" with respect to disputes that do arise
- DR for litigation that is already underway.
- Innovation in DR design and implementation
- potential for demonstrable, measurable results