

COMMISSION MOVES TO IMPROVE DISPUTE RESOLUTION

The Canadian Human Rights Commission has taken steps to significantly improve resolution of human rights disputes. The Commission has listened to all of its stakeholders, including employers, unions, service providers and advocacy groups, who told us that steps had to be taken to ensure an effective and timely process to protect, enforce and promote human rights and equality.

“The Commission is expanding alternative dispute resolution (ADR) so that cases will be settled as fairly, respectfully, quickly and efficiently as possible,” said Chief Commissioner Mary Gusella. “ADR enhances human dignity. Often, it can help restore relationships and promote healing in the workplace.”

ADR is a non-adversarial way of resolving disputes that is being increasingly used in the public and private sectors, and the most common form of it is mediation. The Commission launched a pilot mediation program in 1999. In 2002, parties agreed to mediation in 42 per cent of the cases and 64 per cent of those settled successfully. The

settlements came within three or four months—significantly less time than it takes to conduct an investigation.

“ADR enhances human dignity. Often, it can help restore relationships and promote healing in the workplace.”

The Commission offers ADR at all stages of the complaint process. This will allow parties to explore win-win options consistent with the public interest. ADR is suited to finding innovative and tailored solutions to individual and systemic complaints. Because it allows parties to find solutions that meet their needs, ADR “puts the human back in human rights” said Mrs. Gusella.

ADR helps parties resolve their differences without resorting to a more confrontational adjudicative process. It looks at needs, interests and solutions, and allows parties to choose a solution which may not be available at a tribunal hearing the case. It is voluntary, timely, confidential and based on mutual agreement. It is most effective when it involves an experienced mediator.

The Commission created a new branch—the Alternative Dispute Resolution Services Branch—in February 2003 to manage the expanded role of ADR. The branch will provide experienced mediators without cost and encourage complainants and respondents to consider ADR. It will also be independent of the investigation process to ensure impartiality.

A key element of the Commission’s new ADR strategy is to establish an ongoing consultation process to ensure the success of the ADR

process. To this end, the Commission is scheduling meetings with key stakeholders. It recognizes that many stakeholders at the federal level have played an important role over the years in protecting and promoting equality rights. Employers and trade unions particularly have been pioneers in using ADR to resolve disputes in the collective bargaining context. We look forward to hearing their advice and any

recommendations concerning ways to make ADR a key part of an effective human rights resolution process.

Finally, it is in the same spirit that the Commission has created an Advisory Council of eminent jurists and ADR specialists who will give advice on how to use ADR as effectively as possible in the context of human rights and the public interest.

WHY CHOOSE ADR?

By Mary Gusella
Chief Commissioner

There are at least two good reasons to choose alternative dispute resolution—it works and it works quickly.

That appeals to us at the Commission. I hope it appeals to you, too.

Many specialists—and participants—say that ADR is better for participants and their future relationships than the confrontation of

“In my view, human rights complaints can be well suited to resolution through the use of ADR. These matters often involve injured feelings and much emotion on the part of the persons involved. ADR opens doors to people to deal personally with their own hurt.”

John Sanderson, lawyer, arbitrator, mediator and co-author, *Innovative Dispute Resolution: The Alternative*

adjudication. It helps people to get at the real interests and needs behind a dispute. Used early enough in the dispute process, it can lead to much quicker settlements, helping to heal a fractured workplace.

Participants set the agenda themselves. With the help of a professional and experienced mediator, they

present their views, listen to the other party and try to work out an agreement. An agreement isn't always possible, but the success rate is good.

Having completed courses in advanced negotiation and mediation in the Program of Instruction for Lawyers at Harvard Law School, I have a personal interest in ADR. There is also a strong commitment on the part of Commission staff to use this most useful tool to resolve

conflicts that are so destructive, both from the complainant and the respondent perspective.

The Commission became convinced in the late 1990s that ADR was potentially a very valuable approach to addressing disputes. A pilot program on mediation, launched in 1999, has produced positive results.

While this was going on, the Commission, disputing parties and Parliament became increasingly concerned about the length of time it took to go through the adjudicative process. The average was about two years. For some parties, that was a real hardship. By contrast, ADR might take three or four months to complete.

So, my colleagues and I have decided on a major expansion of ADR. We will offer ADR to parties at every stage of the dispute process.

The Commission will continue to ensure that the process is fair to all parties and that the results are consistent with the public interest. In implementing this expanded initiative, we will greatly benefit from the expertise of an Advisory Council of eminent jurists.

ADR is not the answer to every human rights issue. But I believe it is a healthier route to take than adjudication in a great many cases.

I am enthusiastic about ADR. It works! ■

HOW DOES ADR WORK?

How will alternative dispute resolution work at the Canadian Human Rights Commission?

Here's a step-by-step guide tracing a complaint from the moment it is filed with the Commission:

- The complaint will be screened. If it is deemed appropriate for the Commission to consider the case, it will be forwarded to the Alternative Dispute Resolution Services (ADRS) Branch.
 - The ADRS Branch will offer mediation to the complainant and the respondent.
 - If parties accept, the ADRS Branch will appoint a mediator. If parties refuse, the case will be sent to the Investigations Unit to begin the investigation process.
- If a settlement seems possible, they will negotiate an agreement.
 - If they reach an agreement, it will be referred to the Commission for final approval. Normally, the Commission will approve a settlement quickly, unless the agreement is contrary to the public interest.
 - If there is no agreement, the case will be referred to investigation. To speed up the process, the parties may agree to submit a joint statement of facts to the Investigations Unit. Once the investigation is completed, the matter may be referred by the Commission to the Canadian Human Rights Tribunal, where it will be heard in a court-like process.

“ADR can be an important tool to enhance the effective and timely enforcement of human rights.”

Mary Cornish, senior partner of a leading Canadian public interest law firm and recognized expert on human rights, pay equity and employment equity issues

Assuming the parties have agreed to mediation, the mediator will meet with the parties to work out how the process will unfold. The mediator will assure them that the proceedings will be kept confidential.

One feature of the new approach is that parties refusing ADR or unable to settle at the outset may change their minds at any point in the process and ask to meet with a mediator. Finally, the Commission may choose to send a case to conciliation—another form of ADR—before it reaches the tribunal stage. ■

- The parties may meet together or separately with the mediator during the discussions.
- The parties will present their views, outlining their fundamental needs and interests.

EMINENT JUDGES TO ADVISE COMMISSION

Four leading Canadian jurists have been appointed to a council to advise the Chief Commissioner on alternative dispute resolution.

The distinguished members include: former Supreme Court justice Gérard La Forest of Fredericton, former Supreme Court justice Claire L'Heureux-Dubé of Québec, former chief justice of Ontario Charles Dubin of Toronto, and former Alberta Court of Appeal judge Roger Kerans of Victoria.

The retired judges will give their views on ADR to Mary Gusella, Chief Commissioner of the Canadian Human Rights Commission. Their role will be to provide advice on ADR as it relates to human rights and public interest issues at meetings twice a year. In addition, the Commission may ask them to act as mediators in special cases, yet to be determined.



On June 16, the recently formed Advisory Council met for the first time in Ottawa for a round-table discussion on the Commission's ADR program. ■

For more information about the Commission's ADR services, please contact:

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QUESTIONS?

How will the new initiative improve handling of human rights cases?

- The Commission now offers ADR at all stages of the complaint process right up to the referral to the tribunal.
- That means parties can have direct discussions aimed at a timely and satisfactory settlement even after complaints have entered the investigation process.
- This should benefit the disputing parties by helping them settle their problems more quickly. And, in some cases, it may permit them to restore broken relationships.

How can you ensure that the results will be fair to the parties?

- We will use experienced mediators who will help parties talk through their differences.
- There will be no pressure on parties to enter an agreement that is against their will.
- Parties will be free to withdraw from ADR and continue with the investigation process which could go as far as a tribunal hearing.
- The branch will operate independently of other branches involved in complaints (e.g. Investigations and Legal Services) so that it is clearly seen to be impartial.
- Final settlements will be reviewed by the Commission to ensure that the public interest is preserved.