



**SUMMATIVE EVALUATION OF
THE DISPUTE RESOLUTION FUND**
Summary, Recommendations and Management Response

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**Evaluation Division
Policy Integration and Coordination Section**



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1. PURPOSE OF THIS EVALUATION

This report describes the summative or final evaluation of the Dispute Resolution Fund (1998-2002) (the Fund). 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 at the time of this evaluation and the time constraints within which the evaluation needed to be conducted, in-depth research and analysis were limited.

Interviews were the primary information source for this evaluation. A total of 42 individuals who represented DR Services (DRS) staff, DR Committee Members, recipients of funding, applicants denied funding and senior managers or other knowledgeable senior staff from Justice, Treasury Board Secretariat (TBS) and other government departments were interviewed.

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

2. OVERALL PURPOSE OF THE FUND

For this report, the range of solely interest-based (non-litigious) dispute resolution methods and processes were termed “alternative dispute resolution” (ADR), while dispute resolution (DR) was used to refer to the full continuum of rights-based and interest-based methods for resolving disputes. The overall purpose of the Fund was to support the development, implementation, monitoring, and evaluation of ADR programs and processes within federal government organizations, including the provision of ADR training.

3. 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; and

- 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.

4. FUNDING FOCUS

The funding focus was on “early intervention” projects and ADR mechanisms/processes to streamline existing litigation.

5. EXPECTED OUTCOMES

The expected outcomes of the Fund were as follows:

- Funded 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 within existing budgets;
- Funded organizations would see satisfaction with the manner in which disputes were resolved, both within these organizations and with the parties involved in these disputes;
- The success of programs and projects supported by the Fund would serve as models for other federal organizations, and that the Fund would stimulate and encourage widespread DR implementation;
- The Department of Justice would realize cost and timesavings such that it could ultimately see litigation and litigation costs decrease; and
- 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.

6. GENERAL FINDINGS

- Overall, the expected outcomes of the Fund were not fully realized. The relatively small size of the Fund, three operating years, annual project funding, and no actual resources dedicated to the administration of the Fund limited its ability to fully realize assigned objectives.
- Nevertheless, the Fund was found to have served its original purpose of supporting, developing, and implementing ADR programs and processes within federal government

organizations. The Fund was less effective when it came to monitoring and evaluation of funded projects.

- It is important to emphasize that 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. There are a number of reasons for the lack of evaluation reports on the part of fund recipients. First, notwithstanding the Fund's Terms and Conditions, there was a general lack of awareness of this reporting obligation. Second, the necessary administrative support to follow up with Fund recipients was missing. Thirdly, Fund recipients were not provided with a reporting framework to assist them in completing their reporting requirements. Finally, there has been insufficient time for 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 those 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, as a result of inadequate resources and a general lack of project evaluation data from funded projects, it is not possible to fully demonstrate that the Fund has resulted in the efficiencies and cost savings that all parties involved would have liked to see.
- Similarly, while some supporting information from projects exists, there is currently insufficient evaluation data 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 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, and, in particular, ADR as defined in this report.

7. SPECIFIC FINDINGS

- There is reasonable evidence that the Fund contributed to a better understanding of the potential of ADR within organizations that received funding. However, a lack of reporting 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 of the potential benefits of ADR. People directly involved with projects gained a better understanding,

however, had lessons learned by Fund recipients been more widely disseminated beyond this fairly small group, a far larger audience could have profited from their experience.

- There is ample evidence that the Fund has contributed to increased adoption of proven ADR approaches by a range of federal organizations.
- Most of the evaluations of funded projects that were submitted 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 have been 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, 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 submit status reports and final evaluations pertaining to their respective projects.

8. RECOMMENDATIONS AND MANAGEMENT RESPONSE

The short timeframe (3-4 years), the relatively small size of the Fund, and the lack of resources assigned to the administration of the Fund significantly hampered the Fund's potential for success.

While this evaluation has not been able to conclusively demonstrate that the Fund has resulted in the efficiencies and cost savings anticipated, the indications of those efficiencies and savings are promising. The combination of the growing demand experienced by the Fund, the commitment and enthusiasm among the majority of the people interviewed for ADR practices and processes, the expansion of these practices and processes within their organizations and across government, and the preliminary results strongly support the continued promotion of ADR.

While the Fund was an important catalyst, it might have been more cost effective if the Fund had been part of a more pro-active approach that also featured:

- A communications capacity with 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; and
 - A central directory and broker of ADR connections.
1. While ADR practices and processes and DR strategies generally show enormous potential, without a concerted effort and appropriate resources, this potential will only be realized incrementally across the federal government. To encourage departments and agencies to adopt and fully utilize ADR, new means and mechanisms of promotion would be required.

When all funded projects submit their final evaluation reports, there should be sufficient information to support a business case for greater investment in ADR. One important potential mechanism for the promotion of ADR that is worth further consultation is the creation of some form of inter-departmental partnership in ADR, for instance, in a Centre of DR Excellence. Should the Fund be renewed, it could then become a key component of a federal DR Centre of Excellence.

Recommendation: DR Services should pursue a consultation within the Department of Justice and with the TBS, key departments and agencies on the value of ADR and the means and mechanisms (including a renewed DR Fund) to promote its use across the federal government.

Management Response:

Since this evaluation was completed, additional project evaluations and assessments have been gathered to supplement the information in the summative evaluation. A summary of available results information for all funded projects is available under separate cover.

Once Dispute Resolution Services (DRS) has received and reviewed all of the evaluations from the funded projects, Management is extremely confident that an impressive business case can be made for the renewal of the Fund.

DRS fully agrees that the Fund should be renewed. Why? In short, the Fund has been, and can continue to be, a cost-effective mechanism for assisting organizations to manage disputes more effectively at a time when they are being called upon to do business differently. Notwithstanding the vast cultural shift that must occur within federal organizations, through the interviews conducted and the review of the limited number of evaluations that have been provided to DRS to date, it is clear that considerable benefits can be achieved by focusing an organization's efforts

on early resolution of disputes. The demonstrated efficiencies in terms of time and cost savings should be a sufficient reason to support the renewal of the Fund. Yet, the preliminary findings also highlight the intangible benefits, such as greater client satisfaction with dispute outcomes and increased staff morale through training, that have been reported by fund recipients.

One fund recipient's success story provides an example of the importance of the Fund. The Canadian Food Inspection Agency (CFIA) evaluation concluded that its ADR project achieved the following: reduced costs and time; produced more satisfactory and inclusive outcomes; enhanced on-going relationships; and, avoided future disputes. The CFIA interviewee reported that 33 of 34 cases were resolved which resulted in up front cost savings of \$2.5 million.

It is important to emphasize that over the course of the Fund to date, demand for funding has exceeded supply. The continued relevance of the Fund has been demonstrated. In other words, there are still numerous federal organizations that could benefit from funding assistance for the development of ADR pilot projects. While the dissemination of lessons learned from other organizations can certainly help in the sense that the wheel will not need to be reinvented, there are many federal organizations that require, *inter alia*, specialized ADR systems design to support their activities.

The shortcomings of the Fund that have been highlighted in this Summary should not be used as a justification for the termination of the Fund. All of the players involved in the Fund experienced a learning curve. The deficiencies identified, such as the low rate of reporting, and the lack of dissemination of lessons learned, can be rectified, albeit with the provision of financial and staff resources to the Department of Justice and, in particular, DRS.

While a DR Centre of Excellence within the federal government is perhaps a longer term ideal at this point, a reasonable first step, however, is the renewal of the Fund. The second step is the formation of a federal government steering committee to consider various ways of leveraging DR expertise. The continued existence of the Fund, with its relatively modest budget, can continue to serve as an impetus for achieving this important future milestone.

If the Fund is Renewed

2. The Fund had a life span of three operational years, over a four-year period. This timeframe would not seem to be long enough to implement nor reap the rewards from the kind of federal government-wide change envisaged by those who approved the Fund. The level of

the Fund itself, the resources dedicated to administration and, in particular, the amount of time allocated were only adequate for small-scale achievement.

While the \$2.3 million allocated to the Fund each year is not insignificant, it does not appear to be commensurate with potential disputant satisfaction and savings that might be realized system-wide, if and when ADR approaches are more fully integrated into the way the federal government resolves disputes.

Recommendation: The level of the Fund itself be increased, that adequate resources be committed for project monitoring, research, evaluation and communication and that the time allocated to the Fund be increased to a minimum of 5 years.

Management Response:

Management fully endorses this recommendation.

As both the March 2000 Formative Evaluation and the 2002 Summative Evaluation have noted, one of the key deficiencies of the Fund has been the lack of reporting by and provision of evaluations from funding recipients. This deficiency can be traced to a number of causes, including the method of funding (discussed *infra*). The Department of Justice was responsible for covering costs associated with the administration, monitoring, research, and evaluation of the Fund from within existing budgets. DRS was unable to sufficiently monitor the numerous funded projects with the resources at its disposal. However, if the Department of Justice and, more particularly, DRS had been provided with sufficient resources, both staff and financial, to undertake the necessary follow-up with funding recipients, it is likely that this deficiency could have been largely avoided.

From its inception, there was no formal communications strategy for the Fund. The primary vehicle for raising awareness of the Fund was the dissemination of call letters. Ongoing communication activities included: internal communications within the Department of Justice; and, external communications through presentations, consultations with fund recipients, symposia, and the Internet. Notwithstanding these initiatives, a renewed Fund would benefit from the support of a formal communications strategy.

To achieve the purpose, objectives, and outcomes of the Fund, a minimum lifespan of five years is essential. The majority of interviewees confirmed that a three-year timeframe was undoubtedly insufficient to change a long-standing corporate culture. One of the primary

objectives of the Fund was 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.” Implicit in this objective is the realization that, in all likelihood, many organizations had not turned their corporate minds to the implications of this major change in policy. As time passes, and the full implications of this policy change reach the departmental or agency level, the incentive to pursue new ADR methods and approaches may well become critical. Recipients need adequate time to assess the impact of a major policy change such as this on their respective operations.

3. As highlighted by its Terms and Conditions, one of the key focuses of the Fund was innovation and proposals that emphasized innovative approaches to ADR. After three years of funding projects with an innovative approach, it may be time to lessen the focus on innovation and make a greater investment in the development and promotion of pilot tested approaches among departments and agencies that remain unfamiliar with the advantages of ADR.

For instance, through the Legal Risk Management Scanning regime, opportunities may be identified, and focus provided, for implementation of tested ADR approaches for perceived risk types or classes and/or key departments where an investment in an ADR strategy might be appropriate.

Recommendation: The Terms and Conditions of the Fund should be modified to provide more focus on proposals that offer to implement proven ADR approaches.

Management Response:

Management agrees that it may be time for a shift in some of the emphasis of the Fund from stressing innovative projects to the implementation and evaluation of these projects. The monies provided to organizations in the first three years of the Fund appear to have been spent largely on the development of ADR projects. It may well be that Fund recipients will require further funding to assist in the proper evaluation and monitoring of their respective ADR initiatives.

It is noteworthy that, as an interim measure, DRS has engaged two law students in a research project pertaining to the development of an evaluation tool designed to measure levels of success in funded projects. Two of the primary tasks of the students will be to identify those Fund recipients that have yet to submit an evaluation as stipulated in the Fund’s Terms and Conditions, and review evaluation methods of existing Fund project evaluations. A key anticipated product

of this research is the creation of a generic evaluation tool to be used as a template for Fund project evaluation purposes.

As highlighted in this Summary, the Summative Evaluation, and the Formative Evaluation, the lack of status reports and, for the most part, formal evaluations by the individual fund recipients tend to support the findings of how the funding has generally been allocated. Provision of further funding to qualified recipients to complete formal evaluations will lead to the ability of DRS to disseminate the lessons learned from these projects and work with federal organizations to develop best practices for use by far more organizations than have received funding to date.

Having said this, Management does not believe that the specific objective of the creation of innovative ADR approaches should be abandoned at this point in the life of the Fund. The field of DR and, in particular, ADR, is an evolving one and, often, must be examined in light of the culture and functions of the particular organization. Moreover, it is important not to lose sight of the input from interviewees who suggested that the impact of the Fund might have been most dramatic for smaller organizations, many of which reported that they would have been unable to proceed with their projects without the Fund.

As noted, the emphasis of the Fund has been on **innovation** in the area of ADR. The idea of the Fund from its inception was to provide “seed money” to federal entities to encourage them to develop innovative ADR processes for resolving their respective disputes. Once the recipient’s project was evaluated and, if the evaluation was positive, the idea was that the fund recipient itself would then use its own budgetary resources to implement the ADR system initiative.

Creativity is a fundamental component of ADR system design. Proven ADR approaches may well be what a federal entity requires to assist in its transition to doing business differently. However, the federal organization looking for funding assistance may be very unique and proven ADR approaches may not be appropriate for that particular organization. While wholeheartedly endorsing a call for organizations to fully consider proven ADR approaches, Management would not wish to see recipients implement recognized ADR approaches without a full exploration of the organizational culture and types of disputes that the organization is called upon to resolve. In other words, Management remains of the view that a focus on innovation should remain one of the key components in assessing applications for funding.

4. The cyclical process of sending call letters, receiving proposals, assessing proposals and notifying recipients featured very short timeframes for proposal preparation, and much longer periods for assessment. This process may have had a negative impact on the quality of

proposals that were submitted, and might also have discouraged potential applicants from preparing proposals. This issue was raised in the March 2000 evaluation.

Recommendation: Timelines for proposal preparation should be long enough (minimum six weeks) to promote interest and facilitate participation among a wide variety of recipients.

Management Response:

Management fully agrees with the need to extend the timelines for proposal preparation. The problems associated with the tight timeframe have been well-documented in the Formative Evaluation. As the Summative Evaluation reiterated, the very short time period available for proposal preparation had a negative impact on the quality of proposals that were submitted. Moreover, the timelines may well have discouraged many who might otherwise have been interested in exploring ADR possibilities for their organizations. The fact that many of the recipients of funding from 1998/99 through 2001/02 were repeat recipients makes one question whether other equally deserving organizations simply were either insufficiently aware of the Fund, or decided that the timelines were too tight to provide adequate project proposals to the Funding Committee.

5. In addition to the amount allocated to the Fund, the method of disbursing those funds also deserves attention. Many funding recipients, particularly smaller departments, experienced difficulties because they could not get the allocated funds from Treasury Board until late in the fiscal year (through the Supplementary Estimates). The March 2000 evaluation noted that this funding process delayed funding to fiscal year-end requiring departments to cash manage in the interim. Arguably, this method of allocation did not seem to create an incentive to apply to the Fund. Moreover, for small departments unable to cash manage, the allocation method was clearly a disincentive.

Recommendation: The Fund should have sustained multi-year funding and would allow and encourage proposals to be submitted at any time for consideration during the next funding cycle.

Management Response:

Management agrees with this recommendation. Implementing this recommendation would not only serve to remove an unnecessary barrier to smaller organizations, it would allow the Fund

Committee to have greater flexibility in administering its review process. For example, in funding year 2001/02, the deadline for receipt of proposals was June 22, 2001. The Fund Committee proposal review period was June-July 2001.

6. With few resources and the pressure of managing an annual funding program, the administrative requirements of the Fund suffered. This may have been compounded by the number of projects approved for funding, particularly in the latter two years of the program.

Recommendation: The number of projects funded in any given period should be commensurate with the resources available to effectively administer/monitor them.

Management Response:

Management agrees that there is a direct relationship in terms of capacity between the number of funded projects and the level of resources available to administer and monitor these projects. Both the Formative Evaluation and the 2002 Summative Evaluation have emphasized the difficulties experienced by the Fund administrators as a result of inadequate resources. Having said this, Management would fully support an increase in the number of projects provided that a corresponding increase in administrative resources were available

7. A key challenge for the Fund has been to demonstrate through funded projects increased effectiveness, efficiency and satisfaction with ADR approaches to dispute resolution. Several recommendations included in this evaluation attempt to improve the prospect of developing and producing performance information.

While the evaluation found the Fund Committee's application of its Terms and Conditions to be rigorous, there is some doubt with respect to the contribution some smaller funded projects can make to fulfilling the overall purpose of the Fund.

Recommendation: To improve its prospects of producing performance information and lessons learned relevant to a wide variety of departments, the Fund should consider establishing a minimum level of project funding.

Management Response:

DRS Management has concerns about this recommendation. From Management's perspective, limiting the Fund to a minimum level of project funding may defeat one of the principal

objectives of the Fund, namely, to encourage and assist “organizations in managing disputes effectively, with innovation and without resorting to litigation.” It is very problematic to assume that funding smaller projects may be inconsistent with this principal objective. Intuitively, one can envision a smaller funded pilot project leading to the development of an innovative ADR process that may have a significant benefit for the organization as a whole.

By way of example, during fiscal 1998/99, Correctional Services Canada was provided with a modest amount of funding to develop and implement a strategy to establish four regional pilot projects in federal penal institutions to address conflicts within these institutions. This initiative led to a considerably larger funded project the following year to support the development and implementation of 17 Dispute Resolution programs in federal penal institutions across Canada, as administered and overseen by a national steering committee convened for this purpose.

Management does not agree that future Fund initiatives should be limited to large expenditure ADR projects. Management is not convinced that the relevancy of lessons learned can be directly correlated to the amount of funding provided to a recipient. Granted, as noted in the previous recommendation, there is an administrative burden associated with the allocation of smaller funding amounts and the corresponding need to oversee a greater number of projects. Yet, arguably, rather than eliminating projects which fail to meet a certain monetary threshold, the answer may lie in increasing the resources available to properly administer the Fund. One of the dangers of placing such a limitation on the Fund is that valuable potential lessons for federal organizations, irrespective of size, may be lost.

The problem has been the lack of proper assessment and/or evaluation of the funded projects, whether large or small, and the dissemination of lessons learned in a meaningful way. Since funding is tied to evaluation under the terms and conditions of the Fund, the solution may well lie in more due diligence to ensure that the life of any project, large or small, will be directly tied to performance in the sense of the provision of ongoing status reports and final evaluations from the recipients. Again, the feasibility of administering smaller funded projects depends on the level of resources available to properly carry out such functions as monitoring and disseminating information.

8. While the Fund included and applied measures to ensure funded projects were in keeping with and directly supported and advanced its objectives, the somewhat large number of funded projects and, in cases, somewhat small amounts of funding provided may have served to diffuse its focus and dilute its ability to produce performance information and lessons learned.

A potential partnership that could contribute focus to the Fund’s efforts would be with TBS analysts charged with monitoring the performance of their respective client departments. TBS analysts would have unique information that could help to more effectively target funding where needed.

Recommendation: The Fund should consider extending the call letter to TBS program analysts and including TBS program oversight in project selection.

Management Response:

Management agrees with this recommendation on a qualified basis. Given that TB is the principal funding source for the Fund, it should have a greater say in project selection. Moreover, TBS is ideally positioned to assess the operational needs of the myriad departments and agencies of the federal government. Having said this, if TB is to provide program oversight in terms of project selection, TBS must be prepared to invest the significant time and effort in effective responsive oversight efforts. Further, it will be important to determine who has final responsibility concerning approval of a proposed ADR project. DRS would note that the DR Committee approval process worked well.

9. The fact that funds were disbursed as a “lump sum” late in the fiscal year eliminated the potential for “milestone deliverables” and as a way of ensuring that funding recipients lived up to their commitments – specifically, for progress reporting and evaluation.

Recommendation: Funds should be issued in installments throughout the fiscal year, based on milestones achieved, and the final payment contingent on delivery of the evaluation report.

Management Response:

Management fully agrees that funding should be advanced by installment. Pursuant to the terms and conditions of the Fund, fund recipients were required to submit detailed ongoing status reports of their respective projects to enable the Fund Committee to effectively monitor the recipient’s progress. The Formative Evaluation of March 2000 highlighted this lack of general reporting by fund recipients at this initial evaluation stage. Unfortunately, this lack of reporting was a continued trend in the ensuing funding period.

Moreover, the Fund Terms and Conditions called on fund recipients to make a commitment to provide the Fund Committee with a final assessment or evaluation at the conclusion of the project. As stated, very few final evaluations have been provided to DRS.

It is clear that the method of disbursement of funds to recipients provided neither incentive nor accountability on the recipients' part to fulfill these important terms and conditions of the Fund. Tying funding to reporting and the dissemination of a final evaluation to DRS should ensure the requisite level of accountability.

10. In 2001/02, the Fund developed a Results-based Management and Accountability Framework (RMAF). The RMAF describes the roles and responsibilities of the main partners involved in delivering the Fund. The RMAF should represent an understanding between the partners on what they aim to achieve, how they plan to work together to achieve it, and how they will measure and report on results.

Recommendation: At the outset, a renewed Fund should review its RMAF and develop appropriate monitoring and reporting tools to support it.

For instance, the RMAF should be developed and provided to applicants and funded projects as a reference tool and as a (mini evaluation) framework for project-level evaluation reports. Project proposal evaluation work could then devolve from and, in turn, support this framework.

Management Response:

Management agrees that the Fund should provide recipients with an evaluation framework that they could utilize as a template in assisting them with the completion of both interim reports and final evaluations of individual projects. The importance of this initiative is twofold. First, recipients will understand and be held to their reporting obligations more easily. Secondly, and equally importantly, such an evaluation framework or template will assist DRS in subsequent evaluations of the Fund since it should provide consistency in reporting and evaluations from Fund recipients.

As noted in Management's response to Recommendation # 3, DRS is taking active steps in this regard. Law students will be working with senior counsel in DRS to develop an evaluation tool (evaluation framework) to be used as a template for DR Fund project evaluation. The evaluation

framework will be specifically designed to enable DRS to measure the relative success of the numerous projects funded through the DR Fund.