



AFOA CANADA

Building a Community of Professionals

EXPLORING ALTERNATIVE DISPUTE RESOLUTION (ADR)

*& Indigenous
Approaches*

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INTRODUCTION

Alternative Dispute Resolution (ADR) serves as a pathway to resolving conflicts outside traditional legal frameworks. ADR methods such as negotiation, mediation, and arbitration offer flexible and collaborative approaches to dispute resolution. While these ADR methods are popular, concerns remain that these Western-centric tools can create challenges with cultural differences or exploitation when used in Indigenous contexts. Here's a deeper look:

WHAT IS ADR?

ADR encompasses a variety of methods designed to facilitate dialogue, negotiation, and agreement between disputing parties. These methods aim to empower disputing parties to reach mutually beneficial solutions while avoiding the adversarial nature of litigation.

CHALLENGES IN ADR

Despite their popularity, Western-centric ADR methods may not fully align with Indigenous cultural norms and traditions. For instance, conventional mediation practices might overlook the significance of involving Elders or other respected community members in dispute solution processes.


INDIGENOUS DISPUTE RESOLUTION (IDR)

IDR represents a combination of ADR principles and Indigenous values. It prioritizes culturally appropriate approaches to conflict resolution, recognizing the importance of community involvement and traditional wisdom in the process.

IDR differs between communities based on culture and traditions. It is unique as it prioritizes solutions consistent with the culture of the groups involved and makes the groups central to the decision making. The use of circles is a traditional way of solving problems. Circles are a tool used to hold people accountable as well as facilitate decision-making. They are used to build and maintain relationships, and are meant to be collaborative, engaging, and to encourage input and opinions. The intent is to deepen people's understanding of one another. Symbolically, the circle has no beginning and no end (ever-evolving relationships) and no points (no positions of power within it). Facilitation style and purpose can differ between circles.

Here is a non-exhaustive list of circles that may be used during conciliation:

- **Talking Circle:** a safe environment for sharing points of view.
- **Teaching Circle:** an educational circle that encourages dialogue, respect, and the co-creation of learning content and social discourse.
- **Sharing Circle:** an opportunity to express feelings and identify what supports are needed. A facilitator would gather and combine ideas to the end goal of keeping people safe, healthy, and happy.

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- **Healing Circle:** an opportunity to guide emotional release by encouraging participants to let go of their negative feelings. A facilitator would identify what experiences are triggering negative emotions and what experiences can lead to positive emotions.
 - **Ceremonial Spirit Circle:** a circle to practice a symbolic ceremony and an opportunity to evoke energies to create change, to honour, and to acknowledge.

IDR IN WORKPLACE SETTINGS

As part of the introduction of Workplace Harassment and Violence Regulations by Bill C-65 into the Canada Labour Code in January 2021, it is the responsibility of the employer to receive, investigate, and resolve complaints of violence or harassment in the workplace. This requires the employer to make every reasonable effort for an early resolution to complaints of violence or harassment through negotiation or conciliation. This responsibility is consistent across each provincial and territorial legislative mandate as well. Be sure to review the legislation that governs your organization.


By creating culturally relevant and secure resolution spaces, IDR ensures that the needs and perspectives of all parties are respected and addressed in a more culturally relevant way. IDR is a voluntary process, and employees are not required to meet with someone who has abused or caused harm to them.

IDR may also be used as part of the outcome of an investigation, as the investigation may recommend that the employer address the interpersonal, team, or workplace conflicts to eliminate or minimize the future risks of similar occurrences, restoring the collective harmony and health and safety of the workplace.

ROLES IN IDR PROCESS

Central to the IDR process are individuals fulfilling specific roles and each role carries responsibilities for upholding privacy, confidentiality, and cultural sensitivities throughout the resolution process.

- **Chief and Council or Board of Directors:** provide the resources for the IDR conciliation process, and respect the privacy and confidentiality of the situation.
- **Elders/Trusted Community Members:** lead IDR processes, drawing upon their wisdom and experience to guide discussions and foster mutual understanding. Their involvement ensures that the resolution process remains grounded in cultural traditions and values.
- **Employer/Human Resources:** take quick action on occurrences, and keep a list of potential IDR conciliators that meet the needs of employees, the organization, and the community.
- **Disputing Parties:** respect the privacy and confidentiality of the situation, and determine whether or not to participate in negotiation or conciliation based on their experiences and needs.

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- **Colleagues/Coworkers:** respect the privacy and confidentiality of the situation, participate in IDR conciliation as invited, and respect the culture and traditions of the process.

- **Witnesses/Bystanders:** respect the privacy and confidentiality of the situation, participate in IDR conciliation as invited, and respect the culture and traditions of the process.

When an Elder or an individual respected in the community takes on the role of facilitating a circle, the steps are generally:

1. Introduction to the circle process.
2. Mediator begins discussion, establishes ground rules.
3. Sacred “talking item” is introduced and held by the speaker.
4. Everyone speaks once before anyone else speaks again.
5. No responses in the first circle, just speaking and bearing witness.
6. Responses allowed in second go-around.
7. Discussion summary created.
8. Unresolved disputes set agenda for next round of discussion.

By embracing ADR methods and integrating Indigenous perspectives, we promote inclusive and culturally respectful approaches to conflict resolution. This holistic approach acknowledges the diverse worldviews present within Indigenous communities, fostering healing, reconciliation, and stronger community relationships.



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