

JUDICIAL DISPUTE RESOLUTION NETWORK COUNTRY REPORT:

ONTARIO SUPERIOR COURT OF JUSTICE

September 17, 2024

Overview of the Canadian legal framework

The legal system

Canada is a bijural state. It has a common law system and a civil law system.

The common law system applies everywhere except in private law matters in the province of Québec. Québec's civil law is based on the French Napoleonic Code.

The common law and civil law mostly operate separately. However, national-level legislation in Canada must be drafted in a way that accounts for both systems.

Indigenous law also contributes to the fabric of the country's legal system. Indigenous rights, including title and treaty rights, are recognized and protected under the *Constitution Act, 1867* and the *Constitution Act, 1982*.

Court Structure

Broadly speaking, Canada's judicial system has four parts: the Supreme Court of Canada, federal courts, provincial courts and territorial courts.

Supreme Court of Canada

At the apex of Canada's judicial system is the Supreme Court of Canada. It is the final court of appeal. It consists of nine judges, three of whom must be from the province of Québec.

The Supreme Court hears appeals from the Federal Court of Appeal and from provincial and territorial appellate courts. It also provides its opinion on certain constitutional issues when requested by the federal government or a provincial government.

Federal Court System

The federal court system operates in parallel with the provincial and territorial court systems. Its courts have jurisdiction over certain matters specified by statute.

The **Federal Court of Canada** is a trial-level court. Its jurisdiction includes immigration and refugee matters, intellectual property cases, maritime law, intergovernmental disputes, and judicial review of federal tribunal decisions.

The **Tax Court of Canada** determines cases arising from federal tax and revenue legislation.

The **Federal Court of Appeal** hears appeals from the Federal Court and the Tax Court. It also conducts judicial review of certain federal tribunal decisions.

The **military courts** and the **Court Martial Appeal Court** determine issues arising under military law. The Supreme Court of Canada hears appeals from the Court Martial Appeal Court.

Provincial and Territorial Court Systems

Except for the territory of Nunavut, each province and territory has three levels of court: provincial/territorial court, superior court and court of appeal. Provincial/territorial and superior courts often contain specialized courts covering specific types of matters.

The **provincial/territorial courts** have jurisdiction granted by provincial statute.

- This generally includes certain criminal offences, youth criminal justice, family matters not involving divorce, child protection, regulatory offences, and small claims.
- The precise jurisdictional boundaries between the provincial/territorial court and the superior court vary across Canada.

The **superior courts** have inherent jurisdiction, allowing them to hear any matter brought before them unless a statute provides otherwise.

- They generally determine civil matters, family matters involving divorce, more serious criminal offences, and reviews of provincial/territorial tribunal decisions. They also have jurisdiction to determine constitutional issues.
- In certain parts of Canada, the superior court operates a Unified Family Court with jurisdiction over all family matters.
- The Ontario Superior Court of Justice has three specialized branches: Family Court, Divisional Court (for judicial review and certain statutory appeals) and Small Claims Court (claims for money or return of personal property under \$35,000).
- Superior court judges are appointed by the federal government.

Courts of appeal hear appeals from provincial/territorial and superior courts. They also provide their opinion on certain constitutional issues when requested by the corresponding provincial/territorial government.

In Nunavut, all trial-level jurisdiction is exercised by a single court: the Nunavut Court of Justice. Appeals lie to the Nunavut Court of Appeal.

Implementation of Judicial Dispute Resolution

Except for the Supreme Court of Canada, courts across the country use judicial dispute resolution (JDR) to resolve or streamline cases. Different courts use it in different ways.

JDR may be authorized under legislation, rules of court, or a directive or notice issued by a court.

Objectives of the JDR Process (Ontario Superior Court of Justice)

From this point forward, this document will only cover matters related to the Ontario Superior Court of Justice.

JDR in the Ontario Superior Court of Justice has two broad objectives: to settle as many issues as possible, and to ensure that subsequent hearings are as efficient as possible.

Rule 50.01 of Ontario's *Rules of Civil Procedure* states that the purpose of the Rule governing civil pre-trial conferences is:

to provide an opportunity for any or all of the issues in a proceeding to be settled without a hearing and, with respect to any issues that are not settled, to obtain from the court orders or directions to assist in the just, most expeditious and least expensive disposition of the proceeding, including orders or directions to ensure that any hearing proceeds in an orderly and efficient manner.

This applies to general civil matters and to matters on the Toronto Region's Commercial List, which has special procedures and a team of specialized judges to ensure matters are dealt with expeditiously.

Construction lien actions can be referred to an associate judge or to a third-party neutral selected by the parties. The referee conducts a hearing process and prepares a report that the referring judge may or may not adopt.

A judge may order individual or corporate bankruptcy proceedings to undergo mediation, whether by another judge or a third party.

Settlement conferences in the Small Claims Court – a branch of the Ontario Superior Court of Justice – have the following purposes¹:

¹ *Rules of the Small Claims Court*, r. 13.03(1).

- (a) to resolve or narrow the issues in the action;
- (b) to expedite the disposition of the action;
- (c) to encourage settlement of the action;
- (d) to assist the parties in effective preparation for trial; and
- (e) to provide full disclosure between the parties of the relevant facts and evidence.

In family matters, JDR is fundamental to the pre-trial case conference and settlement conference. The purposes of those conferences include exploring the chances of settling the case and narrowing or resolving the issues in dispute, along with ensuring the matter is ready to move efficiently through subsequent stages of the process.²

In 2021, the Ontario Superior Court of Justice began its Binding Judicial Dispute Resolution Pilot Project in family matters in certain locations. It is “a party-initiated, consensual, and flexible process that allows parties to obtain final orders in family cases without the need for a trial. The parties ask the same judge to try to assist them to settle their issues on consent and to make final orders about unresolved issues at the same hearing.”³

JDR helps to ensure that court time is used efficiently and that the court can help parties resolve their dispute more quickly and at less expense than a trial.

Alongside direct JDR, case management is an important part of the Superior Court’s trial processes. In case management, judiciary actively intervene to bring a case to conclusion in a timely way. JDR is one of the Court’s critical tools for case management (along with directions, scheduling orders and other measures).

Sources of Authority for JDR

Most JDR mechanisms in the Ontario Superior Court of Justice are based on rules of court. Those mechanisms and their corresponding rules are:

- Civil pre-trial conference (Superior Court of Justice): Rule 50 of the *Rules of Civil Procedure*

² *Family Law Rules*, O Reg 114/99, rr. 17(4)(a)-(c), 5(a)-(b).

³ Ontario Superior Court of Justice, *Practice Advisory Concerning the Superior Court of Justice’s Binding Judicial Dispute Resolution (JDR) Pilot Project*, online:
<<https://www.ontariocourts.ca/scj/practice/regional-practice-directions/p-a-scj-binding-jdr/>>.

- Small Claims Court settlement conference: Rule 13 of the *Rules of the Small Claims Court*
- Family case conference and settlement conference: Rule 17 of the *Family Law Rules*.

The Binding Judicial Dispute Resolution pilot project for family matters is based on a province-wide practice advisory⁴ that is supplemented by region-specific notices in the regions where it is implemented. The practice advisory was issued in 2021 and has been amended from time to time since then.

Beyond explicit JDR mechanisms, the SCJ engages in JDR through its case management function.

In civil, case management is formally available under Rule 77 of the *Rules of Civil Procedure*. The rule allows a judge or associate judge in the high-volume jurisdictions of Toronto, Ottawa and Windsor to assign certain matters for case management. This can be done without the parties' consent.

While the Commercial List in Toronto does not formally have case management, the tools and ethos of case management are integral to its processes. Cases are overseen by a single judge to promote efficiency and consistency.

In family, the rules provide that the court must actively manage cases. The relevant *Family Law Rules* provision includes the following as examples of active case management:

- at an early stage, identifying the issues, and separating and disposing of those that do not need full investigation and trial;
- encouraging and facilitating the use of alternatives to the court process; and
- helping the parties to settle all or part of the case.⁵

Details of JDR processes in the Ontario Superior Court of Justice

In the Ontario Superior Court of Justice, JDR processes can take place online or in-person at the courthouse.

Civil

Pre-trial conferences in civil matters are mandatory. They are primarily about two goals: facilitating settlement and, on issues that cannot be settled, managing the future trial.

⁴ *Ibid.*

⁵ *Family Law Rules*, r. 2(5)(a)-(c).

Judges will provide early neutral evaluation, facilitate negotiations and use mediation as appropriate in each case.

The same range of JDR modalities is used in Small Claims Court settlement conferences, which are also mandatory.

In the busy locations of Toronto, Ottawa and Windsor, certain civil, estates, trusts and substitute decision-making matters must undergo mandatory mediation, usually within 180 days after the first defence is filed. These mediations are conducted by private sector mediators.

The judicial official who conducts the JDR process is generally barred from presiding in the trial. In civil matters, the pre-trial conference judge may preside over the trial with all parties' written consent.⁶

Family

In family matters, case conferences and settlement conferences are mandatory unless a judge orders otherwise. Judges will provide early neutral evaluation, facilitate negotiations and use mediation as appropriate in each case, always actively managing the case.

On motions to change orders for child and/or spousal support, family litigants may be referred to the court's Dispute Resolution Officer (DRO). DROs conduct an early neutral evaluation with a focus on mediating settlement where appropriate. They are senior lawyers appointed to the role by the Regional Senior Judge.

Parties have the option of participating in the court's Binding Judicial Dispute Resolution pilot project for family matters. A request to participate in binding JDR may be made at any stage of the court process.

The binding JDR process is designed to be flexible. The judge conducting the hearing may rely on any information they consider credible or relevant. Judges have discretion in determining how long the hearing should last, how evidence is to be presented, and whether to make temporary orders. At any time, the judge may decide to suspend the binding JDR and return the case to the regular process under the *Family Law Rules*.

Training of Judges

The Chief Justice of the Superior Court of Justice oversees training for the Court's judges. The training is coordinated in large measure through the National Judicial Institute (NJI). The NJI organizes twice-yearly conferences for the Court's judges and a wide range of

⁶ *Rules of Civil Procedure*, r. 50.10(1).

topic-specific seminars and other resources for judges across Canada. These cover matters including JDR in the Canadian context.