7.4.1.

ADRIA MEDIATION ADVOCACY TASK FORCE
WHITEPAPER APPENDIX – DRAFT 5

Table of Contents

Appendix A: ADRIA Mediation Profession Advocacy Task Force Members

Appendix B: A Brief Overview of the Development of Mediation in Alberta

Appendix C: Government Mediation Services Analysis

Appendix D: The Value of Mediation

Appendix E: Mediator Compensation

Appendix F: Resolution Services Roster Mediator and Practitioner Information and Engagement Sessions held in August 2014 in Grande Prairie, Edmonton, Red Deer, Medicine Hat, Lethbridge, and Calgary

Appendix G: Summary of the types of Appropriate Dispute Resolution (ADR)

Appendix H: Professional Associations - Analysis of Survey Results

Appendix J: List of abbreviations relevant to White Paper

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APPENDIX A:
ADRIA Mediation Profession Advocacy Task Force Members

Carlene Stabile, CFP, CIM, FCSI, MBA, C. Med. Carlene is an Edmonton based mediation practitioner who believes individuals have the ability to resolve their issues, and create options for resolution, without litigation. Her mediation practice focuses on conflict within the workplace, between individuals, corporations, and families. She is currently on the rosters for Alberta Justice Civil Claims Mediation program, Alberta Provincial Police Complaint Mediation Roster and Catholic Social Services Parent Teen Mediation Program. Carlene is passionate about alternative dispute resolution and teaches mediation, negotiation and alternative dispute resolution at the university level. Her education includes an MBA from the University of Alberta, more than 250 hours of mediation training, and a number of professional designations, including the C. Med.

Joanne Munro, C.Med (Task Force Co-chair). In addition to her work as a mediator, Joanne is a restorative justice facilitator and an instructor in the fields of mediation, restorative justice, restorative practices, peacemaking circles, conflict resolution, and negotiation. She mediates for Alberta Justice's family mediation and civil claims programs, Catholic Social Services' parent-teen mediation program, and is a member of the newly formed Alberta Provincial Police Complaints Mediation roster. She was a member of the AAMS Board of Directors then joined the ADRIA Board in 2012. Prior to entering the fascinating world of peace making, Joanne was a reporter and editorial writer for the Edmonton Journal.

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Leslie Irwin, BA. Leslie is an entrepreneur with more than 25 years experience in the Information Technology industry in roles ranging from operations and marketing to financial and business development. She has a Conflict Resolution Certificate from Mount Royal University in both mediation and negotiation and is using the skills she has developed in general work situations and in everyday life.

Lorraine Nordstrom, C.Med. Lorraine became a Chartered Mediator in November 2013. She has participated in more than 200 mediations with the Alberta Justice Civil Claims Mediation program and works as a private mediator and conflict coach within her own firm, Alberta North Mediation. Here, she specializes in workplace disputes, municipal affairs and separation and divorce mediation.

Patricia Paradis, BA, M.ED, LLB, C.Med. Pat is Executive Director of the Centre for Constitutional Studies at the University of Alberta and teaches Human Rights Law as a sessional instructor. Prior to becoming Executive Director, Pat managed Paradis and Associates, a dispute resolution firm, where she worked as a mediator and facilitator for government, universities, professional associations and the private sector. She was also a roster mediator with the Civil Claims Mediation program and continues to serve as a mediator with the Mediation and Restorative Justice Centre. She is an Executive Committee member of the Canadian Bar Association's National Alternate Dispute Resolution Section.

Paul Conway. Paul is ADRIA's Executive Director. Paul Conway is an experienced HR Professional and Mediator, and currently serves as the Executive Director of ADRIA. Paul joined ADRIA not long after completing 35 years in the Royal Canadian Air Force (RCAF), including his last position as LCol/Director of Operations for National Defence's Conflict Management Program which employed over 90 mediators and ADR trainers across Canada. He has a Masters degree in Defence Studies, an Undergraduate degree in Engineering, and a passion for creating positive working environments.

Pete Desrochers, C.Med. Pete is the Executive Director of the Alberta Arbitration and Mediation Society (AAMS). He is a Certified Mediator in the United States and a Chartered Mediator in Canada, specializing in both family and corporate mediation. In Georgia he was both a magistrate and criminal court mediator, as well as an instructor/coach with the Justice Center of Atlanta. He occasionally mediated for the U.S. military and has mediated on four continents. Pete now mediates primarily in Alberta and owns a small firm called "The Negotiators".

Sharon Wilson, C.Med. Sharon graduated from the Justice Institute of British Columbia in 1992. She was one of the first formally trained mediators in Alberta. A pioneer in the field of interest-based, principled conflict resolution in the province, she has been providing services as a conflict specialist: facilitating; mediating; consulting; conflict coaching; designing systems; and providing training for other mediators in the field of conflict management. She has been a faculty Coach and Instructor with the Justice Institute of British Columbia since 1992. She has provided training corporately, at the University of Calgary and for ADRIA (formerly AAMS). Sharon has been in business for more than 35 years with the last 23 years working fulltime in the field of conflict resolution. Sharon has successfully mediated hundreds of multi-million dollar cases in all levels of government and private sector business.

draft draft draft

Tammy Borowiecki, Q.Med., Q.Arb. Tammy is a nationally Qualified Mediator and Qualified Arbitrator with specialized training in conflict management, workplace mediation, separation and divorce mediation, restorative practices, negotiation and arbitration. As an ADR practitioner and consultant in Edmonton, Tammy's primary focus is in workplace mediation and facilitation. Tammy is also the Director of Professional Development for the ADR Institute of Alberta (ADRIA), managing training programs for ADR practitioners.

Wendy Hassen, C.Med (Task Force Co-chair) Wendy is a Chartered Mediator and a Certified Professional Facilitator and has operated her own Facilitation practice since 2001. Her years in private practice, professional and executive roles within the public sector, combined with community service have given her a broad range of experience notably in workplace and supporting Multi-stakeholder initiatives. Wendy joined the Alberta Arbitration and Mediation Society (AAMS) Board in 2011 and the ADRIA Board in 2012, and is currently in the role of past president. She volunteers on the civil court mediation roster, with MRJC and SCCM.

APPENDIX B:
A Brief Overview of the Development of Mediation in Alberta

Mediation, both as an alternative to litigation and as a way of helping neighbors resolve disputes, gained a foothold in Alberta in the late 1970's and early 1980's. It is commonly used in Alberta and across Canada as a dispute resolution process for parties who are unable to successfully negotiate collective bargaining agreements. The GOA Ministry of Jobs, Skills, Training and Labor provides mediation services under the Alberta Labor Code and The Alberta Labor Relations Board has similar mediator appointment duties under the Public Sector Employee Relations Act. Mediation is mandatory in Alberta prior to a union being able to take a legal strike vote or an employer to take a lockout poll. Mediation is also required prior to parties being able to proceed to compulsory arbitration.

Mediation at a local, community level was largely a grassroots effort. The Alberta Arbitration and Mediation Society (AAMS) was incorporated as a non-profit society in 1982. Primarily a membership organization at the time, its objectives included educating the public, professional organizations, government, and municipalities about arbitration and mediation, as well as to assist those wishing to use mediation or arbitration to resolve disputes. Edmonton Community Mediation (ECM), a program administered by the City of Edmonton to provide "conflict resolution for the community by the community" was established in 1986. The backbone of these organizations, and other grassroots community-based ADR providers across the province, was a strong core of volunteers. That volunteer component continues to ensure the viability of local/community mediation programs.

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The following information is from a document entitled Overview of Edmonton Community Mediation, provided to the ADRIA Task Force by its first coordinator, Judy McIntyre.

> The concepts that inspired the development of Edmonton Community Mediation were presented at a conference sponsored by AAMS called Mediation Outlook. The 1985 conference presented how the process of mediation could be applied to neighbor/community conflicts and showed what the Community Boards Program in San Francisco had been doing along these lines for over 10 years.
>
> Management and staff from the city's Community and Family Services (CFS) department supported the concept of community building through a program that would help neighbors and neighborhoods communicate about differences and take responsibility for resolving disputes. CFS and AAMS co-sponsored a Community Mediation pilot project between July 1986 and July 1987 whose mandate was to demonstrate the effectiveness of community mediation in several communities in West Edmonton. Its work was guided by a steering committee with representatives from neighborhood organizations,

CFS, AAMS and the Edmonton Police Service. Volunteers were recruited and trained in mediation skills.

The project was successful and CFS created a permanent city-wide community mediation service in Edmonton with a half-time position dedicated to the program. AAMS co-sponsored the second stage of development by providing mediation training for volunteers. Edmonton Community Mediation registered as a non-profit society in 1991 with a board of directors and bylaws. It formed a partnership with Edmonton's FCS.

ECM was instrumental in the establishment of other mediation programs, including the Parent-Teen Mediation program offered by Edmonton Catholic Social Services. (Edmonton Catholic Social Services was the only organization at the time to offer mediators a small hourly rate).

ECM worked with Edmonton Police Service to provide mediation regarding minor complaints against officers. ECM was also involved in the establishment of the Civil Claims mediation program in Edmonton.

According to McIntyre, the impetus for a civil claims mediation program was a 1994 letter from a defendant in a $4,000.00 lawsuit slated for trial. He requested and ultimately received mediation services to help resolve the lawsuit.

FIFTH draft

In 1997 a civil claims mediation pilot project was launched in Edmonton through collaboration between ECM and Alberta Justice. The volunteer mediators came from both the ECM and AAMS. The project was a boon to those volunteers, says McIntyre. "We had a slate of talented volunteers and we didn't have enough mediations for them." After the project was concluded and Alberta Justice decided to continue the civil claims mediation program, mediators were given an honorarium of $50.00 per mediation with the understanding they would also be supported through training opportunities, resources and free parking. The honorarium is now $75.00 per mediation.

Other mediation programs and rosters were being developed across the province at this time. Edmonton's Victim Offender Mediation (VOM), was a grassroots program that also relied heavily on volunteers. Eventually ECM and VOM merged to form the current Mediation and Restorative Justice Centre in Edmonton.

In November of 1993, the Community Mediation Calgary Society (CMCS) was founded as a registered not-for-profit organization of volunteers. It provides conflict management and dispute resolution information and assistance through collaborative services and workshops to neighbors, community associations and other not-for-profit groups. CMCS relies heavily on volunteers.

As mediation became more visible and its effectiveness indisputable, the Government of Alberta instituted several mediation programs through various

government departments. These programs range from Family Mediation Services to mediation services offered to municipalities, to mediations under the Farmer's Advocate program. Other mediation rosters have been implemented at universities, organizations such as the Better Business Bureau and are offered internally by private companies such as Syncrude.

The Alberta Arbitration and Mediation Society continues to be a registered charity, whose purpose is to "promote, inform, publicize, communicate and improve the knowledge of arbitration and mediation," among other objectives. The ADR Institute of Alberta (ADRIA) was created in 2012 as a non-profit organization "dedicated to advancing excellence in the field of Appropriate Dispute Resolution, its practice, and its professionals." ADRIA is a membership organization for Alberta dispute resolution professionals and also offers professional development.

APPENDIX C: Government Mediation Services Analysis

Programs researched through the Task Force Mediation Services Survey	**Programs researched through the internet and informal telephone contact with program holders/mediators working in the program**

A total of 16 programs were surveyed
• 4 civil claim court programs from Alberta, British Columbia, and Ontario. and Saskatchewan. The Alberta and B.C. mediation programs are annexed to the provincial Small Claims Court; The Ontario program is annexed to the Superior Court of Ontario
• 5 Alberta family or child support court related programs
• 1 Saskatchewan family or child supported court related program
• 3 are Alberta non-court related programs:
  ○ Alberta Provincial Police Complaints Mediation Roster
  ○ Municipal Dispute Resolution Service
  ○ Ministry of Jobs, Skills, Training and Labor
	• Alberta Energy Regulator
	• Alberta Environmental Appeals Board
	• Farm Advocacy Office
	• Surface Rights Board
	• Land Compensation Board
	• Farmer's Advocate Office
	• The Saskatchewan Civil Claims mediation program (which is annexed to both the Small Claims and Queen's Bench program)
	• 2 from the Federal Sector
	  ○ National Defence
	  ○ Industry

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The Task Force focused its research on Alberta programs with robust mediation components. Some programs surveyed are not included in this paper. This is not to diminish their importance but rather is a function of the relevance or scope of information as it related to the mandate of the Task Force. We greatly appreciate the support of those organizations participating in the survey.

This analysis looks at different programs in the following groupings:

1. Alberta, Ontario, B.C and Saskatchewan Civil Claim Court programs
2. Family or child support related Alberta programs
3. Other Alberta public sector mediation programs
4. Federal ADR programs

The Government of Alberta Dispute Resolution Network Programs:

- Agriculture Operations Practice Act Nuisance Complaints
- Alberta Environmental Appeals Board.
- Child Protection and Intervention Mediation
- Civil Claims Mediation Program (Provincial Court)
- Civil Claims Mediation Program (Court of Queen's Bench)
- Dispute Resolution Process for Recreational Access to Agricultural Lease Land
- Dispute Resolution Program (Calgary) and Child Support Resolution Program (Edmonton)
- Family Mediation Program
- Farmers' Advocate
- Mediation Services – Job Skills, Training and Labour
- Municipal Dispute Resolution Initiative
- Residential Tenancy Dispute Resolution Service
- Restorative Justice
- Alberta Energy Regulator (AER) (formerly known as Energy Resources Conservation Board (ERCB)
- Surface Rights Board
- Land Compensation Board

A key reference used to identify government mediation programs in Alberta (both court-related and non-court related) was the Dispute Resolution Network. (See insert below)

draft

In 1996, Alberta government employees formed the Dispute Resolution Network (DRN), consisting of Government of Alberta employees from a broad range of departments and agencies. DRN members advance the understanding and use of dispute resolution alternatives and collaborative, consensus-based decision-making processes. They increase awareness of existing programs and resources inside and outside government. Some of the DRN programs are not solely mediation programs, but there may be a component of mediation in their services. Some DRN programs also did not reveal information regarding mediation compensation.

1. Alberta, Ontario, British Columbia and Saskatchewan civil claim mediation programs

In Alberta the civil claim courts are divided into Provincial Small Claims Court and Court of Queen's Bench (QB). Small Claims Court hears claims up to $50,000.00. Claims more than $50,000.00 are filed in QB.

Provincial Small Claims Mediation program

The mediation program in Provincial Small Claims is mandatory for some claims. Rule 2 of the Mediation Rules of the Provincial Court (Alta. Reg. 271/1997) Civil Division provides that at any time after a dispute note is filed the Court or the mediation coordinator may refer the action for mediation. At any party's request, the action may also be referred to mediation. Rule 5(1) provides that all parties receiving a notice under rule 2(1) shall attend at a mediation session, however, parties can apply to the Court for an exemption to attend. There is no mandatory mediation program for QB.

Qualifications

Successful applicants to Alberta's Civil Claims Mediation program must have a minimum 180 hours of non-evaluative conflict resolution training, provide a resume, three references, pass a criminal background check, and successfully complete an interview and roleplay assessment. They participate in a mentorship program that includes successfully completing 10 (or more if necessary) co-mediations with an experienced mediator. There are about 220 roster mediators across the province.

Educational requirements

Mediators are not required to hold designations, experience is not essential in some jurisdictions in the province, and there is also no requirement of membership in a professional organization. If the mediator resides in an area where the program's demand for mediators exceeds supply, 40 hours of interest-based conflict management training is required. If the mediator resides in an area where the supply of mediators exceeds demand, 180 hours of interest-based conflict management training is required.

FIFTH draft

Compensation

Mediators are provided an honorarium to recognize their volunteer services. If co-mediating, each receives $75.00. When mediating solo or with a mentee, the mediator receives $150.00 and mentees do not receive the honorarium. If the mediation is cancelled with 24 hours notice, no honorarium is given. If given less than 24 hours notice, the mediator receives half the honorarium. If the mediator arrives at the office and the coordinators cannot reach the mediator in time to inform them of a cancellation, or if the mediation does not proceed because of non-attendance, the mediator receives the full honorarium. Reimbursement of parking or public transit is provided with receipts. Mediations are not expected to last more than three hours although there are exceptions.

Future

Resolution and Court Administration Services, Justice and Solicitor General, is reviewing its mediation and dispute resolution services as part of a larger initiative to achieve better integration of programs and services. Its goal is to achieve shared outcomes, strategically aligned resources, and increased efficiency and effectiveness

of program delivery for Albertans including consistent access to civil claims mediation. Compensation practices are being examined with a view to ensure practices are consistent across various programs and across Alberta.

Metrics

The success rates of civil claims mediations are measured by the percentage of those that reach agreement, and client satisfaction. Alberta's Provincial Court Civil Mediation program in the fiscal year 2014/15 saw 2337 cases mediated (by 220 roster mediators throughout the province) with 56 per cent being fully resolved and having an 85 per cent satisfaction rating by parties. The Family Mediation program in 2014/15 saw 1413 cases mediated (by 60 staff and roster mediators throughout the province) with 89 per cent of cases being fully resolved and having a 97 per cent satisfaction rating by parties. The province's Child Protection and Intervention Mediation Program has an 87 per cent resolution rate.

Alberta QB Non-Mandatory Mediation Program

There is no legislated mandatory mediation program in QB. However, the Alberta Rules of Court require the use of alternative dispute resolution mechanisms before a trial date can be set. Pursuant to Rules 4.16,and Part 8 of the Rules of Court, in order to obtain a trial date, the litigants need to demonstrate, among other criteria, that they have pursued a form of dispute resolution. This could include negotiation, mediation or Judicial Dispute Resolution (JDR).

FHTH draft

The ADRIA Task Force did not survey litigants with respect to their choice of dispute resolution mechanisms. However, Task Force members noted, in informal discussion with several lawyers and with the Associate Chief Justice J.D. Rooke, that negotiation and JDR appear to be the most popular and well used. The demand for JDR appears to have outstretched the Court of Queen's Bench ability to provide that service. A Notice to the Profession (NP #2013-01) issued February 12, 2013, from the Chief Justice of the Court of Queen's Bench stated that Rules 8.4(3)(a) and 8.5(1)(a) would not be enforced until the judicial compliment of the Court and other resources permit reinstatement. Parties may enter matters for trial without complying with these Rules. A further Notice to the Profession (NP#2014-06) dated May 20, 2014 stated, "due to the ongoing shortage of judicial resources at the Court of Queen's Bench of Alberta, the Court has been in a position where it must curtail some of its services. As a result beginning in the Fall of 2014, and until such time as the Court has sufficient resources, the Court will reduce the number of Justices hearing JDR's in Calgary and Edmonton from 3 to 2 per week."

The result is that there is no enforced legislated mandatory mediation program in Alberta's Court of Queen's Bench. However, notwithstanding the lack of enforcement by virtue of NP #2013-01, the Alberta Rules of Court require the use of alternative dispute resolution mechanisms before a trial date can be set.[1]

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[1] AR 8.4(3)(a) and 8.5(1)(a)

Most if not all Court of Queen's Bench justices have training and/or experience in mediation and dispute resolution services generally as was confirmed by Associate Chief Justice J.D. Rooke on February 2, 2015. The justices use a number of dispute resolution alternatives including negotiation, conciliation, mini-trial and mediation. Counsel for litigants in civil claims generally select a justice for dispute resolution according to the justice's preferred mode of resolution. No fee is charged for this service although clients represented by counsel will certainly pay their lawyers for time and preparation of briefs. The goal of the service is that more claims will be resolved using JDR without the necessity of a trial. Litigants and lawyers in Alberta appear to prefer the use of JDR to the use of private sector ADR services such as mediation. The authority of judges to provide non-binding evaluations of cases, which will assist in moving them forward, and litigants' erroneous belief that JDRs are free, may be reasons for its preference.

By way of observation, members of the Task Force note that the Rules of Court allow for any form of dispute resolution and thus litigants and lawyers could use the private sector for mediation services to meet the requirement and to obtain a trial date. This may indeed be occurring – the scope of this Task Force does not include data on this issue.

FLETH draft

Ontario Superior Court Mandatory Mediation

Ontario has a mandatory mediation program and a roster of mediators to resolve disputes in the Ontario Superior Court (the Alberta Queen's Bench counterpart). Benefits of a mandatory mediation program can be seen in the Ontario example. Key research in this area was by Robert G. Hann and Carl Baar in their March 12, 2001 Evaluation of The Ontario Mediation Program (Rule 24.1) Executive Summary and Recommendations.[2]

On January 4, 1999, Rule 24.1 was introduced on a test pilot project basis. The rule mandated mediation for non-family civil case-managed cases in the Ontario Superior Court of Justice in Ottawa and Toronto. An independent evaluator conducted an intensive and broad ranging evaluation of the first 23 months of the Rules implementation. The Rule required that litigants in Toronto and Ottawa attend mediation within 90 days of the first defence being filed for certain matters.

The following advantages were concluded:

- Significant reductions in the time taken to dispose of cases
- Decreased cost to the litigants
- A high proportion of cases (roughly 40 per cent overall) were completely settled earlier in the litigation process - with other benefits being noted in many of the other cases that did not completely settle

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[2] *Hann, Robert G., Baar, Carl. Evaluation of The Ontario Mediation Program (Rule 24.1) Executive Summary and Recommendations. March 12, 2001. Retrieved from https://www.attorneygeneral.jus.gov.on.ca/english/courts/manmed/eval_man_med_final.pdf*

- In general, litigants and lawyers expressed considerable satisfaction with the mediation process under Rule 24.1.
- These positive findings applied generally to all case types and to cases in both Ottawa and Toronto.
- In both Ottawa and Toronto, a significant proportion of cases - about 4 out of every ten were completely settled at or within seven days of mediation.

The Executive Summary made various recommendations, the Rule was kept, and Mandatory Mediations were maintained in Ontario. Effective January 1, 2010 the Rule was expanded to include all cases commenced in Ottawa, Toronto or Essex and was no longer limited to case-managed or simplified procedure cases. Now mediation is to take place within 120 days of the first defence being filed and mediation may be postponed to a later date if the parties consent to the date in writing and the consent is filed with the mediation coordinator.

The report is extensive and should be read in its entirety. The Rule is not without controversy and there are critics. Some argue the cases would have settled in any event; others worry that mediations are used as a form of discovery.

In contrast, the Albert Rules of Court legislation has no timing requirement other than to seek a dispute resolution process before obtaining a trial date (and as stated earlier, even that requirement is not being enforced). DO WE NEED THIS?

FIFTH draft

Compensation

Mediators on the Ontario roster can charge 30 minutes preparation time per party. A mediation session of up to three hours cannot exceed the following:
Number of parties maximum fees:
2 - $600.00 plus GST
3 - $675.00 plus GST
4 - $750.00 plus GST
5 or more - $825.00 plus GST
If the session is not concluded within three hours, the mediation can continue with consent of all parties at a rate agreed to by the parties and mediator in advance of the session. Mediators may charge expenses agreed upon before mediation begins.

Qualifications

Mediators with the Ontario Mandatory Mediation program need a working knowledge of civil procedures and knowledge of the civil justice system. These requirements are considered guidelines for quality control. There is a points system for determining eligibility to the program, based on education and experience.

Specific statistics on success and failure rates on an ongoing basis have not been maintained by Ontario. This may be because roster mediators do not report back and also litigants may use non-roster mediators.

British Columbia Provincial Court Mediation Program (up to July 31, 2015)
Note: The BC Civil Claims mediation program is being replaced by an online tribunal as defined by the Civil Resolution Tribunal Act (CRTA) and amendments. As such the services of mediators are no longer required. Voluntary at this point, it is anticipated the online tribunal program will be mandatory in 2017 for parties in a lawsuit of less than $10,000.

B.C.'s Provincial Court had a mandatory program, however there were exceptions. Rule 7.4 - Robson Square Provincial Court had mandatory mediation for matters between $5000.00 and $25,000.00 that do not relate to financial debt, so debt collection is excluded. Rule 7.2 in North Vancouver, Surrey, Victoria and Nanaimo allowed for mediations up to $10,000.00. Mediation was mandatory for issues involving construction or renovation of a building. Sometimes there were number limits. Mediation services were provided by Mediate B.C., a third party society with 43 mediators assigned to its court programs.

Qualifications
The qualifications were comparable to Alberta.

Compensation
The standard fee was $250.00 per mediation with mediators typically scheduled for two mediations per day. All current Small Claim Mediators (SCM's) were at the $250.00 (tier three) rate as they had all been with Mediate BC for quite a long time. Tier One rates would be paid to probationary SCMs who were mediating their first 1-10 mediations ($100), and tier two rates were for SCMs with between 11 and 100 mediations ($200). Mentor mediators received Tier 4 compensation for mentoring a session number 1 through 7 ($300). Tier 5 was for mentoring a session number 8, 9 or 10 ($350). The primary rationale for the different payment for sessions 1-7 and 8-10 is that the Civil Roster accepted mentor reports from sessions 8-10 in lieu of reference letters for applicants to the roster, and the feedback forms for these three sessions were longer and required more work than those for the first seven sessions.

Draft

Between 2011 and 2015 – approximately 6100 cases referred to Small Claims mediation and 4200 cases were actually mediated under Rules 7.2 and 7.4. All issues were resolved in approximately 50% of cases.

Civil Resolution Tribunal (CRT)
The BC Civil Claims Mediation program ended July 31, 2015 and is being replaced by an online civil resolution tribunal. According to Lisa Nakamura, Acting Executive Director, Dispute Resolution Office, with the B.C. Ministry of Justice and Attorney General, the civil resolution tribunal is not mediation, but rather a form of multi-step conciliation that will result in adjudication if the parties do not settle. According to Nakamura,

> "The future of resolution processes for Strata Property and Small Claims

cases in British Columbia being defined by the Civil Resolution Tribunal Act and amendments. When brought into force and fully implemented, the primarily online tribunal will provide an end to end resolution process starting with a free online guided pathway with resources and tools and for a fee (expected to be comparable to a court filing fee), use of an online dispute resolution suite that includes party to party negotiation, facilitation by subject matter experts and adjudication. For more information, please see: www.civilresolutionbc.ca.

"In the CRT process model, facilitators (subject to CRT rules and procedures) are expected to have a broader scope than a traditional third party neutral. Adjudicators will decide cases in areas where they have subject matter expertise. The goal of the CRT is to have average resolution times be approximately 60 days (compared to 8-11 months in small claims court). The implementation of the CRT provides an opportunity to utilize technology in a way that will expand the focus on collaborative resolutions and will better meet the needs of participants.

"Report after report on the status of civil justice in Canada calls for fundamental change. The CRT model, with its utilization of an end to end process, focus on early resolution and employing subject matter expertise and utilizing technology is an innovative shift - a model that is more accessible for the vast majority of people, faster, more convenient and satisfactory for participants. (Alternatives to online service will be available.) The technology platform for the CRT will be capable of providing sophisticated business functionality and reporting in order to support modern and agile management. Once built, the technology platform will be utilized by other parts of the administrative justice sector and beyond."

First draft

According to the CRT website, the individuals listed as members of the Civil Resolution Tribunal are all lawyers.

Saskatchewan Civil Claims Mediation Program

The Saskatchewan Civil Claims Program is a part of a larger integrated program that consists of eight mediation programs run by the Saskatchewan government under the umbrella of the Dispute Resolution Office:

1. Civil Claims (Queen's Bench and Provincial Small Claims)
2. Farm debt mediation
3. High conflict family resolution
4. Fee-for-service programs such as for municipalities or in-house workplace issues
5. Child protection mediation
6. Fee-for-service family mediation for lower income parties
7. Early intervention – family law
8. Public and private expropriation

The programs are funded by the government through tax revenues and, with respect to civil claims and some family programs, through the use of filing fees.

All civil claims where a statement of defence has been filed are sent to mediation except for residential foreclosures and class actions. This early resolution system sees cases sent to mediation as soon as possible after a statement of defence has been filed. The system is user-focused in that the primary clients are the people who are in disputes.

There are approximately 5500 claims started annually in the Court of Queen's Bench and 27 trials per year. 100 of these go to pre-trial conferences with a judge and half are default judgments.

In the Court of Queen's Bench Civil Claims program, there were 1009 cases sent to mediation in 2014/15 of which 664 went ahead. In 2013/14 there were 1027cases with 662 mediations held, and in 2012/2013 there were 955 cases with 669 mediations held.

There are 25 mediators (20 contractors) who work for the Dispute Resolution Office. Mediations are delivered in person 95 per cent of the time, with the remainder delivered by video/teleconference. The types of files include contractual disputes, personal injury, wrongful dismissal, medical malpractice, estate, business disputes, product and service disputes.

FIFTH draft

Qualifications

Applicants for staff positions or the roster are screened for education or equivalent work experience in the mediation field as well as for personal attributes. No outside certification is required. Selection of mediators is only one small part of the process as the Saskatchewan program emphasizes developing and training excellent mediators in house.

Training

The majority of applications received are from mediators with a great deal of training but little experience. Therefore the Saskatchewan program provides rigorous training, professional development and mentoring of its mediators. Mediators are expected to co-mediate and then mediate across the range of programs offered in order to be able to 'move gracefully' between them. The belief is that this experience will result in more effective mediators. It takes five years of internal development to gain the type of experience the Saskatchewan Mediation Program prefers to see in its mediators. Mediators are expected to do case-building or pre-mediation work, the mediation itself and then to follow up with clients afterwards.

Mediator Compensation

Entry-level mediators on the roster are paid $35.00 per hour while more experienced mediators are paid $55.00 per hour. Travel is also paid at the hourly

rate. Dispute resolution consultants who are hired to work full time are paid between $38.00 and $48.00 per hour plus benefits.

Private sector mediators are used if there is no mediation service available through the government.

Purpose/Value of the Program (as provided by the survey respondent)
The justice system as a whole exists to prevent and to resolve conflict in society. The value of mediation within the justice system is to prevent and resolve conflicts at the earliest opportunity and at the lowest cost. Cost here is measured as financial, relationship, personal and emotional cost.

Metrics (as provided by the survey respondent)
It is difficult to adequately summarize what constitutes success in a mediation. And specifically with respect to the programs offered by the Saskatchewan government, success can be measured differently depending on the type of program. The resolution rate for all mediations in a program or resolution in one mediation is the least accurate way of measuring success. Success might be measured, for example where children in a custody dispute look forward to a year where their parents are not fighting. This is difficult to quantify. Settlement or resolution should only be one indicator in determining success.

FFTI draft

With those caveats in mind, in respect to the Civil Mediation program, the range of cases in this program is very broad. Anything from medical malpractice to wrongful dismissal claims are included. On an average, 40 per cent of cases settle at the initial stage and of those, approximately 35 per cent have follow-up. In total, 75 per cent of cases that go into mediation are either resolved or there is no further action taken after the mediation.

Comparison of Provincial Civil Claims Mediation Programs

	British Columbia **(prior to July 31, 2015)**	Alberta (Civil Claims of $50,000 or less)	Saskatchewan (Queen's Bench Civil Mediation)	Ontario (Superior Court Mandatory Mediation)
Qualifications (education, mediation training, experience, etc.)	Minimum 180 hours training in mediation theory and skills, and dispute resolution; 14 hours instruction in civil procedures; completed 10 civil mediations in an accepted practicum	Minimum 40-180 hours in non-evaluative conflict resolution training, Resume, 3 References, Criminal Background Check, successful interview and role play, 10 mentored mediations(**UPDATE**)	Mediators are initially screened for education and equivalent work experience. Rigorous training and development of staff and	Up to 100 Points are awarded for: training in mediation; educational background; mediation experience; Familiarity with the

	British Columbia **(prior to July 31, 2015)**	Alberta (Civil Claims of $50,000 or less)	Saskatchewan (Queen's Bench Civil Mediation)	Ontario (Superior Court Mandatory Mediation)
	program; letters of reference; and insurance		roster mediators are provided internally	civil justice system; and three letters of reference that speak to candidates aptitude and skill as a mediator
Compensation	Tier 1: $100/mediation for mediators with 1-10 mediations Tier 2: $200/mediation for mediators with 11 – 100 mediations Tier 3: $250.00/mediation for mediators with more than 100 mediations	$75 per mediation if co-mediation, $150 if solo or mentored mediation	Entry level roster mediators: $35/hour. Experienced roster mediators: $55/hour. Travel is paid at the hourly rate. FT staff mediators are paid between $38 -$48 per hour plus benefits	3-hour mediation can't exceed: $600.00 for 2 parties; $675 for 3 parties; $750 for 4 parties; and $825 for 5 or more parties. If another session is required the rate is negotiated between parties and mediator

FIFTH draft

One observation is that mediator compensation in Alberta's Provincial Small Claims Court is lower than other jurisdictions. Although these are all civil claims mediation programs the court levels vary from province to province which needs to be considered in looking at compensation. Ontario, for example, provides mediation in its Superior Court (the equivalent of Alberta's Court of Queen's Bench) whereas civil claims mediations in Alberta are in the small claims (less than $50,000) division. Note: Need to UPDATE to be consistent with TF Whitepaper)

2. Alberta Family Court Mediation Programs

The Task Force surveyed five Alberta family or child support related mediation programs that mediate issues under the following conditions and criteria:

- separating parents with at least one dependent child and one parent must have an annual income of less than $40,000

- separating parents who have high levels of conflict between them or have reached an impasse and have at least one dependent child and one parent must have an annual income of less than $40,000
- Parents/guardians of children involved in the child protection system and caseworkers
- Albertans who are involved in disputes related to child support and attempts to vary child support and have applied in Provincial Court or the Court of Queen's Bench. (For this mediation program ADRIA received two surveys for essentially the same program – Dispute Resolution Officer – DRO administered in Calgary and Child Support Resolution Officer – CSRO administered in Edmonton).

All programs surveyed used a roster of third party mediators and in two programs there were a smaller number of full time in-house mediators. The GOA funds all programs.

Qualifications

Educational requirements for mediators ranged, however, all programs required at a minimum an undergraduate degree, some identifying specific programs of study such as psychology, social work, education, and nursing. Three programs required a post-graduate degree (two in law, and one in psychology, social work, nursing, or a related field with an emphasis on clinical therapy). Mediation training requirements ranged from none to some training or experience, with two programs requiring 40 hours of mediation training. All programs required membership in a related professional regulatory organization. Two programs required their salaried (versus roster) mediator be a Registered Family Mediator, two programs required the mediator to be a member of the Law Society and one program gave preference to Registered Psychologists or Registered Social Workers. Experience requirements ranged from completing three family mediations to 10 years practicing family law. Internal training ranged from two programs offering mentorship opportunities and three programs providing various in-house and conference opportunities.

FLPPJ draft

Compensation

Compensation ranged from $32.32 per hour for salaried positions (not including benefits) to $250 per half day. Roster mediators (90 per cent of the total mediators in the programs) earned $80 per hour. DRO and CSRO programs that require lawyers on their roster paid $83.33 per hour or $250.00 per half day. Two programs had a total of 19 salaried positions.

Mediations ranged from three hours up to an imposed maximum of 10 hours.

The Family Justice Services roster mediators are compensated higher than the Provincial Civil Claim mediators ($80 and $83 per hour vs $75 per mediation).

Benefits

All survey respondents from the five programs sited benefits of mediation as resolved cases, eliminating the need for trial, saving parties time and money and freeing up the courts for other cases.

Future
All family programs were positive about mediation and anticipate more referrals. These programs are part of the Alberta Justice and Solicitor General ongoing review of its mediation and dispute resolution services.

Metrics
The success rates of civil claims mediations are measured by the percentage of those that reach agreement, and client satisfaction. Alberta's Provincial Court Civil Mediation program in the fiscal year 2014/15 saw 2337 cases mediated (by 220 roster mediators throughout the province) with 56 per cent being fully resolved and having an 85 per cent satisfaction rating by parties. The Family Mediation program in 2014/15 saw 1413 cases mediated (by 60 staff and roster mediators throughout the province) with 89 per cent of cases being fully resolved and having a 97 per cent satisfaction rating by parties. The province's Child Protection and Intervention Mediation Program has an 87 per cent resolution rate.

Private Sector Comparison
The task force surveyed five private law firms that provide mediation services dealing with separation and divorce. The firms reported similar positive benefits from mediation. Private sector mediators often use evaluative versus interest-based mediation when lawyers are the mediators. Government programs are government funded and some are offered to low income families only, whereas the private law firms are client funded and do not identify any real difference in hourly rate if acting as a lawyer or mediator. The Family Dispute Resolution area seems to have a great deal of overlap with the legal profession. This area of Family Dispute Resolution also has a statutory overlay in that all resolutions need to comply with legislation. (FLAGGED FOR COMMITTEE REVIEW)

IMPFIL draft

3. Other Alberta Public Sector mediation programs

A. Municipal Dispute Resolution Services (MDRS)
(MDRS) is governed by The Municipal Government Act (MGA) which provides the legislative framework in which all municipalities and municipal entities across Alberta operate. MDRS delivers programs and services to Alberta's municipalities to help local governments improve inter-municipal collaboration, resolve inter-municipal disputes, and build municipal capacity to manage conflict.

By ensuring all Alberta municipalities have access to and are able to use dispute resolution services, local solutions to local issues are encouraged and supported through mediation services, collaborative governance system design, training programs, peer mentorship, and partnerships with municipalities and local government associations. The program is funded by a combination of Client

Charges, Organization Funded, and Government Funding. The program utilizes in-house mediators (five as of December 2015), and third-party roster mediators (currently 10 with five more under mentorship). In-house mediators do not mediate except in rare circumstances. Instead, they are responsible for case management, convening, DR system design, project management, and training (design and delivery). The roster mediators provide mediations using interest-based approaches.

There are an average of three mediations per year, ranging from four to 40 days in total with an average length of 15-20 days taking place over six to 12 months.

Compensation

Roster Mediators' compensation is negotiated with the Municipality, in the $150-$300/hour range, sometimes more. Mentees are compensated at half pay, usually $100/hour. Staff compensation is $60,000-$110,000 per year.

Qualifications of Roster Mediators

- Membership in a professional association
- 100 hours of recognized ADR/Mediation training
- Designations are not required but are encouraged and recognized as proof of professional ADR training

FFTH draft

Future Predictions

The MDRS is expanding to provide other ADR services. The prediction is there will be more collaborative work, notably more engagement with stakeholders, especially the public vs. municipalities.

The GOA is reviewing the MGA and specifically addressing the following question regarding Dispute Resolution/Mediation in the Municipal Government Act Review Summary of Input and Identified Issues Developed by the accounting firm KPMG for Alberta Municipal Affairs, July 31, 2014:

> "Should the Province mandate additional dispute resolution mechanisms in advance of third party intervention (the Province, appeal boards, or the courts)?"

Metrics

MDRS tracks the overall number of cases sent to mediation as well as evaluations of both outcome and process. Anecdotal measures are collected and success is considered to be saved relationships.

Although the number of mediation opportunities is not high, the program demonstrates a legislative commitment to the mediation process, and a good source of high quality mediation work at strong compensation rates.

B. Ministry of Job Skills, Training and Labor

For many years mediation has been provided for parties who are in collective bargaining disputes chiefly under the Alberta Labor Relations Code. Mediation of labor disputes is a common legislative requirement in both provincial and federal jurisdictions in Canada. The GOA Ministry of Jobs, Skills, Training and Labor provides mediation services under the Code. Mediation is mandatory in Alberta prior to a union being able to take a legal strike vote or an employer to take a lockout poll. Mediation is also mandatory prior to the parties being able to proceed to compulsory arbitration.

Either side in a collective bargaining process can request a mediator. The request is reviewed to ensure criteria are met for the appointment of a mediator. A mediator is then appointed from a Designated Mediator Roster, which currently includes 10 mediators. (The Labor Relations Board, which has similar mediator appointment duties under the Public Sector Employee Relations Act, also typically uses this roster) Once an appointment is made, the mediator works with the parties to help them reach a collective agreement.

The Labor Relations Code provides that the "mediator shall, in any manner that the mediator considers fit, inquire into the dispute and endeavor to effect a settlement" and that mediation will conclude within 14 days unless a longer timeframe is agreed to by the parties. If the parties cannot reach an agreement, the mediation process is concluded unless the mediator chooses to issue the parties recommended terms for settlement which they may accept or reject (within a time fixed by the mediator). The first two days of the mediator's services and expenses are provided by government at no cost to the parties. For the third and subsequent days, mediator fees and expenses are shared equally by the parties.

draft

Mediators on the roster are, with the exception of the Director of Mediation on a fee-for-service contract with the department. In recruiting new mediators, the department looks for people with in-depth understanding of labor relations, contract administration and collective bargaining; knowledge of labor legislation and awareness of current trends and issues that impact the unionized workplace along with a high level of dispute resolution skills. Minimum requirements are at least seven years practical experience in labor relations including negotiation experience in a lead role; completion of post-secondary education in industrial relations, labor economics or related discipline; and a certificate or substantial training or experience in dispute resolution.

Roster mediators are compensated at the rate of $200 per hour, with a minimum of $800.00 per day and a maximum of $2,400 per day (plus GST). The ministry reports approximately 100 mediator appointments annually, with a range normally between 85-120 per year.

In future the Albert Ministry hopes to explore the development of a grievance mediation roster, which would "credential" mediators through a stakeholder review process and be available for the parties to access. This program would be voluntary

(non-statutory) in nature. Other Canadian Jurisdictions (Nova Scotia, Ontario, and Government of Canada, for example) provide grievance mediation as part of their dispute resolution services.

C. Alberta Energy Regulator (AER)

The AER helps balance the interests of all Albertans in the stewardship of efficient, orderly, and economic development of the province's energy resources. While the majority of energy applications submitted to the AER meet the stakeholder involvement requirements, a small number have outstanding concerns. In these situations ADR can be used to balance different interests or reduce the number of issues that may require decision by the AER. The ADR program was developed in response to the desire of AER stakeholders to be more directly involved and have more control in resolving disputes.

According to the 2011 ADR Review Report, at that time there were 20 mediators on the AER roster and five team members located in field centres across Alberta as well as the Team Leader based in the Calgary head office. The 2013 ADR Summary reported an increase in the ADR team member size and the 2014 ADR Summary indicated that the range of dispute resolution opportunities at the AER now incudes ADR by Hearing Commissioner, which is a separate but complementary process. Hearing Commissioners offer an expanded range of ADR options including settlement conferences, evaluative mediation, mediation-arbitration and binding dispute resolution.

FIFTH draft

Key functions

AER "ADR" specialists (staff) are trained mediators. They provide technical information about the regulatory process and policy, bring disputants together, provide coaching prior to dispute resolution meetings, offer consultation and provide feedback. In consultation with the affected parties, an AER mediator will determine if mediation is appropriate and may assist the parties in accessing other ADR options. They co-mediate with other ADR team members and co-ordinate third party mediations which they may attend to provide regulatory or other technical information. They also promote and provide education on ADR process.

Qualifications

There is no requirement for a designation for both roster and staff mediators. Roster mediators must possess "documented experience", and have working knowledge of interest-based dispute resolution techniques and sufficient related training. Staff mediators are required to have five years progressive related experience including conflict resolution experience, a working knowledge of the energy industry, oil and gas drilling, production processing and operations, agricultural operations and practices and responsibility of other regulatory bodies together with a working knowledge of AER legislation. Staff must have an appropriate Technical Diploma or Degree and a Conflict Resolution certificate based on an interest-based model and demonstrated strong conflict resolution skills or a

strong commitment and desire to complete the conflict resolution certificate program.

Compensation
This information is not available to the Task Force at this time.

Benefits
The following is from the AER manual Alternative Dispute Resolution Program and Guidelines for Energy Industry Disputes. The goals of the ADR are to improve stakeholder relations by promoting a better understanding of the issues and identifying common interests, repairing and enhancing relationships, and enabling parties involved in a dispute to take an active role in resolving the dispute. Benefits include:

- Increased face-to-face discussion between affected landowners and company decision-makers, leading to local solutions to local problems
- Ensuring efficient use of time and resources, which can lead to more routine applications for companies
- Achieving a higher percentage of resolved stakeholder disputes without holding an AER hearing
- Partial resolution of concerns supports more effective and efficient hearings by reducing the number of issues that need to be decided when a hearing is required

FIFTH draft

Metrics

Summary of resolution statistics over 4 years: Alberta Energy Regulator Source : Annual ADR Summaries reported on the AER Web site				
	2011	**2012**	**2013**	**2014**
ADR Measures (changed throughout this period)	" Facilitations and 3rd Party mediations"	" Facilitations and 3rd Party mediations"	Mediations not including PADR's	ADR Cases – to include Hearing commissioner, evaluative mediation, Mediation and Binding DR (including Arbitrations)
Total Cases	100	67	61	157
% Resolution Rate	82%	82%	95%	90% of 125 cases completed

D. Alberta Environment Appeals Board (AEB)
The AEB is an independent board giving Albertans an opportunity to appeal certain decisions made by Alberta Environment and Parks under the Environmental Protection and Enhancement Act, the Water Act, the Climate Change and Emissions Management Act, and Schedule 5 of the Government Organization Act. These decisions may include approvals, water licenses, preliminary certificates, remediation certificates, administrative penalties, enforcement orders, and environmental protection orders. The 10 AEB Board members serve as program mediators. The Board encourages participants to use mediation as the primary way to resolve appeals and report that the majority of appeals are resolved through

mediation. Board members also conduct hearings and recommend resolution of appeals to the Minister. The Board may, on its own initiative or at the request of any of the parties schedule one or more mediation meetings prior to a hearing. Mediation is a voluntary, free and confidential service, however participants pay for their own counsel.

Mediation Role and Process

Board Members conducting mediations are supported by staff who conduct pre-mediation work through written and verbal communication, arrange for mediation meetings, and any follow-up. Mediations are generally scheduled for a single day. It is the mediator's role to determine the agenda, discussions and agreement terms and conditions. Agreements are prepared with the assistance of EAB counsel. Interest-based and mutual gains mediation is reported to be the process used by the Board.

Recruitment Process

Board vacancies are advertised and applications required. Appointments are conferred by the Minister Board Recruitment and Appointment Process. This requires a transparent, nonpartisan, and competency based process including a screening panel representing the four main stakeholder groups (Industry, Appellants, Alberta Environment and the Board)

FIFTH draft

Qualifications of Board Members\Mediators

- Demonstrated technical and scientific expertise and substantial practical experience in the area of environmental protection
- Interest in working to advance the protection, engagement and wise use of Alberta's environment
- Strong mediation skills
- good working knowledge of administrative law, the function of administrative boards, and the hearing process
- understanding of environmental law and AB regulatory system
- excellent communication and interpersonal skills
- demonstrated decision- making ability
- demonstrated high standards of integrity and the ability to be impartial, free from bias, and free from conflicts of interest
- interest in serving the people of Alberta

Compensation

Board Members receive the following honorariums

	up to 4 hours\day	**up to 8 hrs\day**	**over 8 hrs\day**	
Chair\–Vice-Chair	219	383	601	
Member	164	290	427	

Source: Section 3 of Order in Council 396/2014 "prescribes the remuneration and expenses payable to the members of the Environmental Appeals Board as that specified in Schedule 1, Part A of the Committee Remuneration Order."	

Metrics
The last statistic identified on the AEB website, as of September 2015, was from 2006 – reporting 22 mediation cases. The AB Environmental Appeals Board business plan to 2012 outlines performance targets for mediation http://www.eab.gov.ab.ca/media/2009-12-Business%20Plan.pdf, however, no results could be found on the AEB website.

Benefits
The following excerpt is from the AEB website in response to the question: Mediation - Why Use It?

Cost effective; timeliness; private/confidential; saves face; participants are more likely to follow-through with an agreement they have crafted; promotes win-win solutions; control over outcome lies with the participants; maintains existing relationships and sometimes forms new relationships; promotes creativity in generating options; and promotes positive communication and understanding.

FIRST draft

E: Alberta Provincial Police Complaints Mediation Roster (APPCM)
One of the province's newest rosters, the APPCM is intended to serve members of the public (police complainants), police officers, police services and police oversight bodies. Mediators on the roster (22 as of August 2015) will be contracted by individual police services or oversight bodies to mediate complaints, and will be paid $80.00 per hour plus reimbursement of expenses at standard government rates. Mediators on this roster are not required to hold designations or membership in a professional organization, however, they must have had at least five years experience on an existing Alberta Justice mediation roster. Other qualifications include having general and professional liability insurance, completion of at least 50 hours of mediation in the past year, successful completion of a criminal records check and having high levels of personal and professional integrity.

The form of mediation to be used is interest-based. As the roster is very new, there are no statistics as to numbers, resolution rates and so on at this point. However, the roster organizers say success would be the reduction of formal complaints against police officers/services that go forward to investigation, a reduction in the number of disciplinary hearings, increased police morale, and increased trust by the public in police services.

4. Other Dispute Resolution Network Programs that use mediation in their DR processes

A. The Surface Rights Board (SRB) is a quasi-judicial tribunal that grants right of entry and assists landowners and operators resolve disputes about compensation when operators require access to private land or occupied crown land to develop subsurface resources such as oil, gas, and coal or to build and operate pipelines and power transmission lines.

B. The Land Compensation Board (LCB) is a quasi-judicial board established by the Expropriation Act and carries out two distinct roles: to determine compensation payable to landowners and tenants where land has been expropriated by an authority and the parties cannot agree and to determine whether expropriation should proceed when there is an objection.

Similar to the Alberta Environmental Appeals Board, SRB and LCB Board members can also mediate should the parties agree. The annual combined reports of the SRB/LCB reported the following number of mediations: 2011- 0; 2012 – 2; 2013 – 1; 2014 – 5.

C. The Farmers' Advocate Office (FAO)

The FAO was established by Alberta Agriculture in 1973 to be a resource for Albertan farmers and ranchers. If a disagreement is brought directly to the attention of the Farmers' Advocate Office, it will work with the parties to resolve the dispute. Examples of disputes addressed include seismic activity, surface rights, mineral leasing, trespassing, farm machinery, and confined feeding operations. FAO will not intervene if legal counsel is involved. FAO staff are trained in mediation. If a complaint is not resolved through mediation, a person who is aggrieved by a disturbance resulting from an agricultural operation, the owner or operator of the agricultural operation, or the Natural Resources Conservation Board may submit a written request to the Minister of Agriculture and Food to establish a three-member Practices Review Committee (PRC) to resolve the dispute. Two of the members must have experience in the type of farming operation to which the application or referral relates and all three members must have experience in administrative tribunals. If the Minister appoints a PRC, the FAO is responsible for the governance of the process and acts as secretariat to the PRC. The PRC may attempt to resolve disputes by mediation or through a review. (The overview of the Agricultural Operation Practices Act Practice Review Committee can be found on the website). The members of a PRC may be paid remuneration for the performance of their duties and for travelling and living expenses at the rates prescribed by the Minister. (The FAO web site links Albertans to the **Farm Debt Mediation Service** operated by the Federal Government which offers financial counseling and mediation services to farmers who are having difficulties meeting their financial obligations. It is a free and voluntary service for both producers and for creditor(s). The service helps bring producers and their creditor(s) together with a mediator in a neutral forum to reach a mutually acceptable solution.

third draft

5. Federal Government ADR Programs

The Government of Canada developed internal ADR programs in response to the 2003 Public Service Labor Relations Act (PSLRA). Some departments, notably National Defence, the RCMP and Canada Revenue Agency began workplace ADR programs in the 1990's, well in advance of any requirements under the PSLRA. The Act mandates the introduction of voluntary Informal Conflict Management Systems (ICMS) for the resolution of workplace conflict and harassment situations, although it does not specify the manner in which such options be delivered by the respective departments. Some have introduced in-house mediation, awareness and training programs, while others have out-sourced for the provision of mediation services. Some departments, such as Treasury Board and Health Canada, are the service providers for workplace mediation services to other departments. For the purposes of this report, data was collected from National Defence and Industry Canada, these being representative of two federal departments. For those departments with internal ADR resources, there are relatively few standard hiring practices, although many recognize and value the ADR national designations. Classifications and compensation also vary widely, with mediators employed within the Personnel Administration, Administrative Services, and Programme Administration groups, and perhaps others. Overall, compensation levels for ADR Professionals in the Federal government are in the $80-100K range including benefits. Efforts to standardize, and perhaps create a common classification and compensation framework within the Federal Public Service continue. Some degree of oversight and standardization is provided by the Chief Human Resources Office within Treasury Board, and there is a degree of self-regulation provided by the Federal ICMS Network (similar in function to the GOA's Dispute Resolution Network).

Draft

External ADR Programs within the Federal Government are less common, perhaps in part due to the lack of an over-arching federal directive such as in US President Bill Clinton's 1998 order requiring each federal agency to promote greater use of ADR in administrative disputes, both internally and with the public. That directive is a powerful example of the long-term impact of a supportive, high-level policy. Subsequent progress reports to the President confirmed that while not appropriate in all situations, ADR was found to provide a cost-effective and time-efficient option that gave the parties more control over the outcome, and involved stakeholders in decisions that affected them. The 2007 report[3] cited significant growth in the use of ADR and positive results, including cost savings, increased workforce productivity, and the efficient delivery of services.

Another example is the 2003 Canadian Federal Public Service Modernization Act, of which an important legislative component is the Public Service Labor Relations Act which required all Federal Departments to establish and promote an Informal Conflict Management System (ICMS) designed to assist departments and agencies:

- build strong relationships

[3] http://www.adr.gov/pdf/iadrsc_press_report_final.pdf

- improve morale
- improve communication
- increase productivity
- build confidence in management
- provide both tangible and intangible savings
- provide a fair, flexible, fast and effective way of handling employee disputes.

That said, many Canadian federal departments offer external ADR to satisfy complaints from the public, through dedicated resources or their Ombudsman. Others, such as the National Energy Board, offer ADR resolutions to satisfy land use complaints and right of way concerns. Contract disputes are often resolved through the Business Dispute Management program offered by Public Works and Government Services Canada. Again, the classifications and compensation paid for ADR Practitioners and Mediators varies from department to department, but annual salaries and benefits are relatively high when compared to annual earnings from an ADR practice in the private (non-lawyer) ADR sector.[4]

FIFTH draft

6. The Western Provincial Court Mediation Task Group

In 2015 a task group[5] was formed with representation from the four western provinces' court mediation programs.

Its purpose is:

- Collaboration and exchange of information
- Learn from each province's experiences and share best practices (identify shared challenges, gaps, and risks)
- Support ADR as a recognized and viable option for the resolution of disputes and for improved access to justice

A guiding principle for continued collaboration was identified as:

> Align with goals of improved access to justice by developing systems that focus on citizen need, that comprehensively transform conflict, and that provide increased access to processes that are timely, cost-effective and proportionate to the issues.

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[4] AS pays scales can be viewed at this link, and ADR Practitioners are employed at the AS-4 thru AS-7 levels (i.e., $63 -102K) https://www.tbs-sct.gc.ca/pubs_pol/hrpubs/coll_agre/pa/pa08-eng.asp#toc288725025

[5] Western Provinces Court Mediation Programs, October 30, 2015 workshop presentation at the ADR Institute of Canada conference, Calgary, AB. Task Group Members are: Patricia Elliott, Program/Policy Analyst, British Columbia Ministry of Justice; Daryl Willetts, Leader of Dispute Resolution Development, Alberta Ministry of Justice and Solicitor General; Gina Alexander, Assistant Director, The Dispute Resolution Office, Government of Saskatchewan; and Michael William, Senior Support Determination Officer, Manitoba Child Support Recalculation Service

The western provinces have agreed to:

- Promote learning through increased and continuous communication between the western provinces with regard to implementation of new programs and changes to existing programs and services
- Build triage into existing and new processes that will promote the use of interventions appropriate for the specific conflict and that support a proportionate degree of intervention to the issues involved. Triage should be designed in a way that allows access to intervention processes, whether mandatory or voluntary, before citizens are required to engage the formal court system.
- Promote consensual dispute resolution (CRD) in general and mediation in particular as a viable option to resolve conflict and as an acceptable part of the justice system. This includes placing emphasis on increasing the legitimacy of CRD by ensuring services are delivered by professionals with an acceptable minimum standard of training and qualifications.

As explained at the October 2015 ADRIC conference in Calgary, the task group plans to look at the following emerging trends and policy issues:

- How can western provinces work collaboratively to advance ADR?
- How can we promote mediation as an acceptable and widely recognized part of the justice system as opposed to an alternative to more formal processes? (expected process rather than mandatory)
- How can we promote consistency among provincial programs? (fees, access, service provider qualification standards)
- How can we better assess and determine the appropriate program/response to disputes?
- How can we better evaluate the effectiveness of ADR programs?
- How can we develop a system/process to capitalize on our learning and successes across provincial programs?

First draft

The Task Group is seeking input and ideas regarding how the western provinces can work together.

Recommendations

The White Paper contains summary recommendations dealing with ways ADRIA can support and enhance work that has already begun in various GOA departments/ministries. Following are more detailed recommendations as to how some of the ADR programs can be supported and enhanced.

Through its collaborative governance initiative, inter-municipal dispute resolution roster, and dispute resolution workshops, the MDRS has succeeded in building conflict competent communities one municipality at a time. The Task Force

recommends the following ways in which ADRIA can support and enhance the work of MDRS.

- Showcase this unique program nationally and internationally, as a model for collaborative governance and dispute resolution at the municipal level;
- Acknowledge the exceptional work done by Municipal affairs to improve, document and validate the MDRS's record of performance and cost savings;
- Further acknowledge the importance placed by the MDRS on selecting highly qualified and credentialed mediators who are required to be members of a professional association, who are accountable to a robust public complaint policy, and who are compensated at competitive market rates through an innovative cost sharing formula;
- Enhance ADRIA's interactions with Municipal Affairs through continued engagement with the MDRS Advisory Group, and the various associations representing Alberta's municipalities, municipal districts, managers and municipal employees; and
- Advocate for expanded support to the municipalities though a provincially sanctioned, ideally publically funded, Community Mediation Program to address bylaw enforcement issues (and other disputes as noted below).

- Enhance Service Alberta`s registry and referral services for Alberta`s non-profit organizations and the general public;
  - Ensure updated website and referral resources serve to inform those facing conflict situations,especially in the non-profit sector, of how to access properly qualified and credentialed mediators, other ADR professionals, and community mediation resources; and
  - Support legislative improvements to Alberta`s Non-Profit law, such as recent recommendations put forward by the Alberta Law Reform Institute (ALRI).

- Recognize the success and important contributions made by the Alberta Energy Regulator`s ADR program in promoting ADR resolutions within Alberta`s energy sector;
  - acknowledge the importance placed by the AER on hiring highly qualified and credentialed staff and roster mediators who are encouraged and funded to pursue nationally recognized mediator designations, and who are compensated appropriately for their ADR skills and experience.

- Recognize and enhance Alberta Culture & Tourism`s progressive programs and services to assist community and non-profits organizations in Alberta;
  - Enhance the website, referral and training resources available through the Community and Board Development Programs for the preventions and resolution of conflicts. Enhanced support, public information, and assistance with the drafting of society bylaws that include robust and flexible conflict resolution options will serve to increase mediation opportunities and greatly improve the functioning of Alberta`s non-profit sector.

Final draft

APPENDIX D:
THE VALUE OF MEDIATION

Why is the "value'" of mediation important in examining mediation compensation and advocacy?

If the services provided by mediators are found to add value in some way to service recipients, both in quantifiable (cost /benefit) and non-quantifiable terms it follows that:

- The cost of mediation services can be better assessed and understood as compared to other alternative services (and therefore the viability of mediation as a livelihood)
- The need to increase knowledge and awareness of those who may benefit from mediation services (the public, businesses, communities, government, etc.) can be assessed.
- The systems in place to provide a supply of mediators with the appropriate skills can be considered

Challenges in looking at the value of mediation

The practice and use of mediation is multi-dimensional. Mediators practice in many different arenas in both private and public sectors and can use different dispute resolution processes such as evaluative, interest-based and transformative, for example. Mediators come from many different walks of life and many incorporate mediation into their work as Lawyers, Nurses, Social Workers, Engineers, Psychologists and Human Resources Professionals. When collecting information and considering questions about the value of mediation, one must be mindful of these differences and that the studies relating to mediation may not have direct application to all mediation forums.

Draft

How does one measure value?

The quantitative value of mediation could be assessed in dollars, in time and in opportunity costs such as the benefit to the court system when mediated resolutions allow judges to focus on other court processes. While many of the studies cited below do identify cost savings of mediation, the actual compensation rates of mediators in the research is not provided, nor is the cost of a mediator as compared to a judge, for example. Studies looking at the non-quantitative value of mediation have focused on client satisfaction, attorney satisfaction, and service provider satisfaction. However, what constitutes satisfaction? Is it looking at outcomes that sustain over time? Perception of fairness? Feeling heard? These are a few possible dimensions.

In exploring the value of mediation, the underlying assumption is that the use of mediation is first determined to be appropriate. Mediation is one option on the continuum of dispute resolution processes and is not always suitable. What

situations are appropriate for mediation is an entirely different subject and not the focus of this paper.

Findings From the Literature Reviewed

Mediate BC Study

The most recent and possibly most comprehensive research on the value of Mediation in Civil, Family and Workplace was [6]The Case for Mediation – The cost-Effectiveness of Civil, Family, And Workplace Mediation.

This study commissioned by Mediate BC looked at mediation in Civil Court, Family, and Workplace areas. This study is of significance to the work of the Task Force as its mediator survey showed that 50% of respondents work in civil court mediation, 45% work in Family and Divorce Mediation and 45% work in workplace mediation.

What did this study find? (Excerpts from the paper)

The vast bulk of available empirical evidence supports mediation as a cost-effective way of resolving legal disputes and workplace conflict.

Mediation saves court administration money by resolving many cases outside of, or early into, the litigation process. It saves families and businesses money that could otherwise be spent in the economy. It produces better psychosocial outcomes for families, and can save private companies and the public sector from significant monetary losses associated with workplace conflict.

TLI draft

The following five ways that mediation, either directly or indirectly, saves the government money were identified, and evidence for each was provided:

1. By resolving conflicts outside of, or earlier in, the court system, limited court resources can be re-allocated to other matters. This happens when:

- Mediation results in conflicts resolving before a court action is commenced; Mediation occurs relatively early in the litigation process, resulting in shorter time to resolution and, therefore, less use of court staff and judicial time;

- Mediated agreements are complied with more often than court-imposed terms, thereby reducing re-litigation; and

[6] Vander Veen, Sarah. The Case for Mediation – The cost-Effectiveness of Civil, Family, And Workplace Mediation. Mediate BC. January 2014. Retrieved from www.mediatebc.com

- Even when mediation does not result in an agreement, post-mediation court proceedings are shorter and therefore less expensive (e.g., because the mediation process gave the parties more information about the dispute, narrowed the issues for trial, allowed them to resolve some issues, made them less adversarial, etc.).

2. For both civil litigants and families, mediation saves money in legal and court fees that would otherwise be spent in the economy.

3. Family mediation produces better psychosocial outcomes than adversarial approaches, and this could result in reduced use of publicly-funded social assistance and other social services.

4. Mediation reduces conflict in the workplace, which saves businesses significant money. This boosts the economy through savings, investments, and hiring, and generates more tax income for government. Additionally, mediation reduces workplace conflict in the public sector – directly saving government money.

5. Mediation can reduce the cost of civil litigation in which government and/or crown corporations are involved.

FIFTH draft

In its most recent survey of mediators on its Civil and Family Rosters, to which 74 of its 313 mediators responded, Mediate BC asked about mediation resolution rates. The mediators reported a 77 per cent resolution rate for Civil Claims mediation, 76 per cent for Family mediations, and 72 per cent for workplace mediations.

Mediate BC Roster of Mediators Surveys (Flagged for Revision)

Mediate BC surveyed it's Civil and Family Rosters (including the Associate Rosters) in spring of 2015. This was the second annual survey.
The purpose was to learn more about the use of mediation in British Columbia. 74 of the 313 Roster Mediators responded. We have not referenced all results, which include average compensation rates, and average costs and duration of mediations. Looking at the question of "value" of mediation, the 2014 results provide more recent indications of the success of mediation when looking at resolution rates.

	Civil			Family			Workplace		
2014	Resolved all	Not all but progress	Resolved None	Resolved all	Not all but progress	Resolved None	Resolved all	Not all but progress	Resolved None
Resolution Rates %	68	25	7	76	17	2	77	20	3

Federal Department of Justice Study - Canada:
An earlier study that may be of interest was The Effectiveness of Using Mediation in Selected Civil Law Disputes: A Meta-Analysis.[7] The researchers conducted an extensive literature review, and contacted 85 individuals or organizations with expertise and experience evaluating mediation programs. The study was done because the Division was developing a pilot project called the Early Resolution Option (ERO), which was intended to reduce the time and costs associated with settling tort claims. It would make mediation mandatory for certain tort claims brought against the federal government.

Research was undertaken to support the development of the ERO pilot project, and assist with associated evaluation activities and business planning. Objectives included reducing the volume of litigation and develop appropriate dispute resolution instruments, policies and legislation, while also facilitating access to justice. The study evaluated mediation programs concerned with tort or contract cases (not criminal law, Aboriginal law or family law cases); using evaluative, transformative or facilitative processes.

FIFTH draft

The Conclusion: The results of this meta-analysis represents an accumulation of knowledge from more than 26 studies dealing directly with mediation programs. Although the sample was too small to differentiate between types of mediation programs, the overall summary of the reported findings of studies and evaluations of mediation programs demonstrates definite positive benefits in using mediation.

Overall, mediation processes are fairly effective in creating both time savings and costs savings. The meta-analysis showed that mediation results in improvements of at least 16 per cent or 17 per cent to perceptions of time and cost savings, which is supported by documented savings. Depending on the characteristics of the mediation program, these improvements could be at least 40 per cent, but are more likely in the range of around 30 per cent.

In addition, the meta-analysis showed that mediation results in improvements of at least between 3 and 6 per cent in perceptions of fairness and satisfaction. Thus, mediation processes clearly result in marginal, but definite, improvements in perceptions of fairness and satisfaction. Depending on the characteristics of the mediation program, these improvements could be in the 15 to 25 per cent range but are more likely to be in the 10 to 15 per cent range.

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[7] *Lawrence, Austin, with Nugent, Jennifer and Scorfone, Cora. The Effectiveness of Using Mediation in Selected Civil Law Disputes: A Meta-Analysis. Department of Justice Canada, July 2008*

A Few Studies from Other Countries

The European Union:

In 2008, the European Union adopted the 2008 Mediation Directive to address the availability of mediation services and improve awareness and use of mediation by ensuring a "balanced relationship between mediation and judicial proceedings". (Policy Department Citizens' Reights & Consitutiona Affairs, Directorate- General for Internal Policies: European Parliament, 2011)

Leading up to the Directive, ADR methods had been a topic of discourse in many nations for years, at least in the field of civil and commercial disputes. In the EU, the increasing focus on mediation was a consequence of years of mounting concern about court costs and congestion, and other obstacles to cross-border dispute resolution in the single market. ((Policy Department Citizens' Reights & Consitutiona Affairs, Directorate- General for Internal Policies: European Parliamen, 2014)

The Directive applies to **cross-border disputes in civil and commercial matters and** provides that Member States should authorize the courts to suggest mediation to the litigants, without, however, compelling them to use it. (Although Italy went beyond the *2008 Mediation Directive* and applied many of its principles to the domestic civil dispute arena and the paper reported that Netherlands may do the same in the future.)

FHFH draft

In 2011 the Policy Department: Citizen's Rights and Constitutional Affairs did a study to **Quantify the cost of not using mediation with the main goal to answer:** *"What is the cost of not using a [8]Two-step 'mediation then court' procedure in Europe?"*

Findings:

The success rate of mediation, the shorter the duration of the dispute resolution proceedings and the greater amount of time saved were reviewed:

- The time and costs correlating with a high mediation success rate (75% or 50%) are quite impressive (e.g. a 75% mediation success rate in Belgium can save approximately 330 days and 5.000 € per dispute; a 75% success rate in Italy can save 860 days and more than 7.000 € per dispute)
- The study used progressively lower mediation success rates in order to find the break-even point – the lowest possible threshold in which mediation can be successfully implemented. According to their calculations, the EU break-even

[8] A One-step approach is a system where the disputants have only one choice on how to resolve their dispute: to litigate in court. Two-step approach envisions mediation as an integral part of the dispute resolution solution because disputants need to go first to a mediator or a mediation-provider organization (step one), and then only if the mediation fails do the disputants and the dispute proceed onto court (step two). To evaluate the impact of mediation, the study used a One-step approach as the basis of comparison. The number of days saved using the Two-step approach is calculated as a weighted average of the estimated duration of the mediation process and the duration of the subsequent court case in disputes where mediation has failed.

point for time was estimated to be a 19% mediation success rate, and the break-even point for costs is 24%.

- Additionally the study found the average cost to litigate in the European Union is €10.449 while the average cost to mediate is €2.497. Therefore, when mediation is successful, European citizens can save more than €7500 per dispute.

If expressed as a percentage, mediation costs were about 24% of litigation costs.

With all the benefits to be gained from mediation the question remains: why is mediation not a more obvious choice for Member State governments?

A follow up study on the progress of the Mediation Directive was done titled <u>The 2014 Reboot Study.</u> A summary of its findings is below.

Five and a half years since its adoption, the Mediation Directive has not yet solved the 'EU Mediation Paradox'. Despite its proven and multiple benefits, mediation in civil and commercial matters is still used in less than 1% of the cases in the EU. This study, which solicited the views of up to 816 experts from all over Europe, clearly shows that this disappointing performance results from weak pro-mediation policies, whether legislative or promotional, in almost all of the 28 Member States. The experts strongly supported a number of proposed non-legislative measures that could promote mediation development. But more fundamentally, the majority view of these experts suggests that introducing a 'mitigated' form of mandatory mediation may be the only way to make mediation eventually happen in the EU. The study therefore proposes two ways to "reboot" the Mediation Directive: amend it, or, based on the current wording of its Article 1, request that each Member State commit to, and reach, a simple "balanced relationship target number" between civil litigation and mediation.

Draft

<u>Family Disputes in England</u>

The Legal Services commission administers legal aid in England and Wales. In 2007 the National Audit Office conducted a review of cases resolved through mediation and the courts, with the focus of improving value for money achieved through the legal aid budget. They found that:

- The average cost of legal aid in non-mediated cases was estimated at €1682 pounds versus €752 for mediated cases
- Mediated cases were quicker to resolve, taking on average 110 days compared with 435 days
- The Commission's current fee structure results in different amounts being paid for mediation – €611 to not for profit organizations compared to €463 paid to solicitors, which would likely weaken incentives solicitors have to promote mediation

A number of recommendations were made, including more actively promoting mediation and encouraging the use of mediation first where appropriate in contracts between solicitors and the Commission.

(Legal Services Commission - National Audit Office - Government of England, 2007)

Georgia USA

The Georgia Commission on Dispute Resolution provides the following information: The mission of the Georgia Commission on Dispute Resolution is to help the Georgia Supreme Court fulfill its Constitutional mandate to "provide for the speedy, efficient, and inexpensive resolution of disputes and prosecutions" in the judiciary. The Commission does this by managing a statewide system that offers true and effective alternatives to traditional litigation. Those alternatives – mediation, non-binding arbitration, and case evaluation – give Georgia litigants lower-cost choices for resolving their differences, and they help save scarce court resources for those cases that cannot be resolved without judge or jury.

The web site reports that since 1997, 178,000 cases have been resolved through the courts' alternative dispute resolution (ADR) system. The ADR system benefits:

- Taxpayers – by reducing the need to pay for more judges, staff and courtrooms as Georgia's population grows
- Litigants – by offering effective, empowering alternatives to litigation that save them time, money and energy
- Attorneys – by giving them more tools to satisfy their clients' needs and by reducing overcrowding in the courts
- Judges and Juries – by clearing dockets so they can concentrate their efforts on cases that require their services
- Courts – by helping the judiciary use its resources more efficiently

FIPPH draft

Australia's Civil Dispute Resolution Act[9]

Australia is interesting because about four years ago it adopted The *Civil Dispute Resolution Act 2011* which commenced on August 1, 2011. The Act encourages parties to take genuine steps to resolve a dispute before commencing certain legal proceedings in the Federal Court and Federal Circuit Court. Its objectives are to:

- ensure that, as far as possible, people take genuine steps to resolve disputes before certain civil proceedings are instituted
- promote a move away from an adversarial approach to litigation
- improve access to justice by encouraging early dispute resolution.

According to one author, the legislation was enacted because litigation costs had long been viewed as a barrier to accessing justice and despite case management techniques and court-referred ADR, the courts struggled to ensure costs were kept reasonable.

In a 2012 paper titled "The Objectives, Scope and Focus of Mediation Legislation in Australia" Justice P.A. Bergen noted that:

> "In addition to the recent State and Federal developments requiring litigants to attempt to resolve their disputes before instituting court proceedings,

[9] http://www.corrs.com.au/thinking/insights/early-dispute-resolution-efforts-compulsory-federal-courts/

legislation has for some time required parties to pursue mediation as a first option in certain contexts. These contexts share common characteristics. First, there is some policy imperative directing a preference for mediation and secondly, mediation has been shown to be an effective mechanism for resolving these particular disputes.

"... Finally, mediation is a cost-effective and efficient mechanism for resolving disputes. Mediation is pursued in large part because of its potential to significantly reduce the practical and financial burden of a dispute. This principle has an important corollary that mediation should not be recommended if it is likely to prolong proceedings and lead to increased client costs."

Justice Bergen discussed use of and benefits of mediation in the following contexts:

Family provision disputes: Since 2008, any applications for a family provision order (challenges to wills and applications by family members for greater provision out of the estates of deceased persons) are referred to mediation before the matter goes to trial. Mediation is highly effective in this context.

Figure A: Outcomes of Court-annexed mediation of Family Provision disputes during 2010 and 2011

	Settled	Not Settled	Still Negotiating	Total
2010	267 (57.7%)	65 (14.0%)	131 (28.3%)	463
2011	264 (56.2%)	95 (20.2%)	111 (23.6%)	470
Total	531 (56.9%)	160 (17.1%)	242 (25.9%)	933

Farm disputes: The legislative preference for mediation in this context is underpinned by a desire to temper the perceived structural imbalance between large lending institutions and small agri-business borrowers. Actions taken by financiers in relation to farm debts almost inevitably lead to severe consequences for farmers, including repossession of their property. In addition, drought and other seasonal factors may result in temporary default of a farm loan. For these reasons, there is a clear policy imperative to encourage and assist parties to reach a negotiated resolution through mediation.

Retail tenancy disputes: Disagreements between landlords and tenants can be effectively resolved by early mediation. Parties involved in retail tenancy disputes are unable to commence proceedings unless they have first attempted mediation, or the Court is otherwise satisfied mediation is unlikely to resolve the dispute. Litigation may produce an unsatisfactory outcome for both parties if they wish to maintain their commercial relationship. However the flexibility of mediation enables parties to arrive at a mutually beneficial outcome.

A recent inquiry issued December 3, 2014 by the Productivity Commission of the Government of Australia said the following about Australia's ADR system.

Alternative dispute resolution (ADR) encompasses a broad range of facilitatory, advisory and determinative processes whereby parties can resolve disputes with the assistance of an impartial practitioner. These techniques are increasingly being recognised as a way for people to resolve disputes without recourse to traditional trial processes. ADR offers a number of advantages, including cost and time savings and confidentiality of outcomes, provided both sides are willing to constructively engage in the process. In cases that already involve courts and tribunals, ADR can be used to narrow the issues in dispute and so minimise hearing times and avoid significant costs. . . . While ADR has proved effective in some circumstances, the Commission recognises that it is not an appropriate mechanism for resolving all disputes. Its use must be accompanied by safeguards that allow for litigation if settlement cannot be reached.

California USA

In 2007 a study[10] looked at five court-annexed civil mediation programs in California – three mandatory programs and two voluntary programs referred to as the Early Mediation Pilot Programs. These programs authorized early referrals to mediation. After running for 30 months the study looked at five elements: trial rate; time to disposition; litigant satisfaction; litigant costs; and courts workload. The study reported success in all areas. Of particular note for this review:

- Pilot programs reduced the proportion of cases going to trial by 24-30 per cent which saved substantial court time (Estimated to be 521 – 670 trial days per year in San Diego/Los Angeles jurisdictions (or about $1.6 million - $2 million per year)
- Attorneys involved in cases that settled at mediation estimated savings ranging from 61-68 per cent in litigant costs and 57-62 percent in attorney hours

Alberta Specific Studies and Information:

Elsewhere in the appendices and White Paper the Task Force has provided an overview of where mediators work and where mediation is used in Alberta. The following provides some Alberta examples to look at similar "value" factors referenced in studies or articles noted above.

[11]The Civil Mediation Program in Court of Queen's Bench

WPPH draft

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[10] *Judicial Council of California, Administrative Office of the Courts; Fourth Edition, 2006; Administrative Office of the Courts ; Office of Communications San Francisco, California. Retrieved December 2015 from* ***http://www.courts.ca.gov/documents/profilejc.pdf***

[11] *This program is not currently operating in Alberta although the Provincial Small Claims mediation program is robust with 2337 cases mediated across the province last year.*

In Alberta, one of the first examinations of the value of mediation was through the pilot project Evaluation of the Civil Mediation Program Court of Queen's Bench of AB Final Report – PRA inv. May 31, 2007[12]. This study:

- Piloted interest based mediation in Edmonton and Lethbridge to eligible non-family cases filed in Court of Queen's Bench
- Conducted a review from January 2005 to about January 2007
- Was based on stakeholder interviews, survey of lawyers, analysis of mediation feedback forms plus other research including evaluation of civil mediation programs

Findings: The results were positive. About 75% of cases settled and more than 90% of litigants and lawyers were satisfied with the process and believed mediation saved litigant time and money. There was also the perception the program complimented rather than duplicated existing services.

Challenge: Building demand for court-annexed mediation. Voluntary mediation was low due to a number of factors including the lack of knowledge and understanding of the program among lawyers and litigants, and the screening process at that time.
A few key recommendations were to continue education and outreach to legal community and increase public awareness through a marketing program. However, the program is not currently operational.

FIFTH draft

The Provincial Civil Claims Mediation Program

The civil claims mediation program operates out of seven locations and serves 13 locations across the province. On August 1, 2014, as a result of the increase to the jurisdiction of Provincial Civil court, the value of small claims going to mediation increased to a maximum of $50,000 (from $25,000) and a counterclaim or third party maximum of $25,000. This has increased the number of claims in the program by about 10%.

In the 2014-15 fiscal year, a total of 2337 cases were mediated across the province with 56 per cent being fully resolved and with 85 per cent of parties expressing satisfaction with the process.

What did our Mediator survey respondents say about the value of the civil court mediation program?

- While many view the program as a great way for new mediators to gain experience and a way for them to work towards their professional designations, others felt the program devalued the mediation profession in the eyes of the public as people become accustomed to cheaper or free mediation services.

Comparison of Cost of Mediation versus a Judge's time in court

The annual Judges' salaries (non- Administrative) effective April 1, 2016 are listed below. These annual salaries have been converted to estimated hourly rates based on common annual work hours (accounting for minimum vacation/stat holidays not worked but paid). This is to enable a ballpark comparison between Alberta Justice contract mediation rates ($80 - $83/hour) and the cost of a judge's time in court. (No statistics were found on the average work hours of Judges). Both processes – mediation and litigation – are designed to resolve a dispute.

[13]*Judge Type*	**Effective Date**	**Annual Salary effective April 1, 2016** *(not including benefits such as health & welfare pension, professional allowance, paid vacation, etc.)*	***1951 hours per year 7.5 hour day***	***2008 hours per year 8 hour day***	***2133 hours per year***
Non-*Administrative Judge*	April 1 2015	$286 821	*147*	*143*	*134*
	April 1 2016	*$293,991*	*151*	*146*	*124*

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If the above comparison is deemed to be in the "ball park", looking at the April 1, 2015 estimated 8 hours per day rate of Judges compared to mediators, the staffing cost for one hour of dispute resolution time would be about $60.00 per hour (+42 per cent) less for a mediator than for a Judge without accounting for other employee benefits received by Judges (commonly estimated to add costs of between 25-35 per cent).

While this simple analysis does not account for factors such as average hours spent in similar court cases, or how many mediated cases went on to court (and if that had any impact on the time taken in the court) it provides some current Alberta context to the cost/benefit findings in the research reviewed.

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[13] Judges rates are found in the Alberta Regulation 176/98-Provincial Court Act Court of Queen's Bench Act – Provincial Court Judges and Masters in Chambers Compensation Regulation, and are as follows:

Full-Time Non Administrative Judges (administrative judge" means the Chief Judge, the Deputy Chief Judge or an assistant Chief Judge) : $286 821: effective April 1, 2015 and *$293,991 effective April 1, 2016*

- *Full Time Administrative Judges will receive the following additional compensation*
  - *Chief Judge, +1.1% = $297,722 April 1, 2016*
  - *Deputy Chief Judge, +1.075% = $2975,140, April 1, 2016*
  - *Assistant Chief Judge. +1.05% = $29707790, April 1, 2016*

Comments from respondents to the Task Force Mediation Services Survey
In response to the question: "What does your organization see to be the key value of mediation?" The following themes were identified.

- Cost and time effective for the system and saving court time
- Cost and time effective for the participants
- Self –determination. Opportunity for parties to resolve dispute themselves
- Avoiding conflict escalation (increased levels of enforcement)
- Maintaining and repairing relationships
- Good or acceptable outcomes
- High success rates
- Creating a peaceful community
- Increased efficiency of staff time
- Helping people develop better conflict resolution skills
- Bring closure
- Access to justice

APPENDIX E:

Mediator Compensation

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To understand the compensation of mediators both locally and abroad a number of data sources were reviewed and summarized. Compensation for mediators varies widely, and factors including market demand, government or regulatory mandated mediation, mediator experience, and individual background of individuals need to be considered. A summary of findings is presented in the table following:

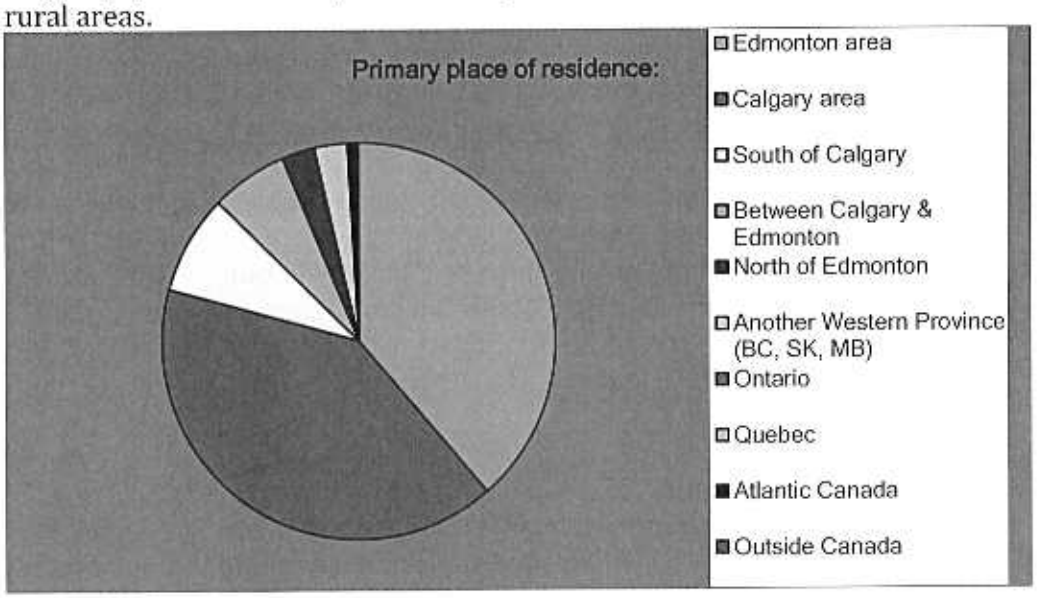
Compensation Ranges	Comments	Source
$0-$700+ per hour	Approximately 30 organizations completed the Mediation Services survey. Rates ranged from pro-bono to $700+ per hour	ADRIA Task Force, 2014, Mediation Services Survey
Average annual salary $0 - $150,000+	Survey of Alberta practitioners, with 111 respondents, reported earning between $0 to over $150,000 per annum.	ADRIA Task Force, 2014, Mediator Survey Alberta
£0 - £8,500+ per day (*conversion CND $0 - $12,769)	Average earnings for a one-day mediation reported for 2012, with the largest number (24%) reported earning from £1,251 - £2,000, (*converted to CND $1,879 - $4,080)	The Fifth Mediation Audit, 2012, Centre for Effective Dispute Resolution
Average annual salary US $61,280 (*conversion CND $81,815)	As of May 2012, U.S. Bureau of Labor Statistics for Arbitrators, Mediators and Conciliators estimated 6,520 jobs with median salary for full-time employment of US $61.280 (*conversion CND $81,815).	Rhudy, R., 2014, Engaging Conflict for Fun and Profit: Current and Emerging Career

Compensation Ranges	Comments	Source
		Trends in Conflict Resolution
$0-$10,000+ per day (*Conversion CND $13,351)	Winner Takes All Model, suggests 10% of mediators make 90% of revenues. Majority of the full-time mediators earn US $50,000 (*CND $66,765) or less, only a few hundred make US $200,000 (*CND $267,020) or more per year.	Velikonja, U., 2009, Making Peace and Making Money: Economic Analysis of the Market for Mediator in Private Practice
		*Conversion rates obtained September 25, 2015 at http://www.bankofcanada.ca/rates/exchange/daily-converter/ £1.35842, US$ 1.2595

The task force surveyed provincial ADR practitioners to obtain data including demographics (age, education, location), types of work involved in (ADR, mediation, teaching, coaching, mentorship, volunteer, other), hours worked (full time or part time), compensation levels, compensation sources, volume of mediations, areas of mediation, experience, etc.

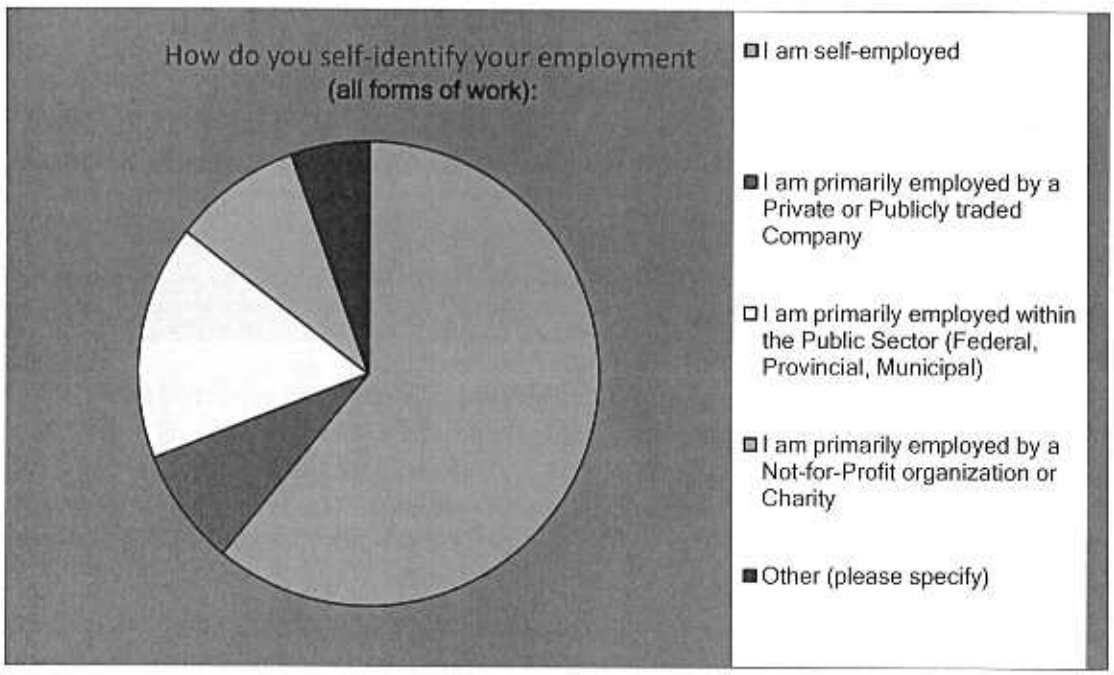
draft

111 individuals responded, and from the data we are able to determine some interesting information relative to demographics. Edmonton and Calgary have the largest populations of respondents 80 per cent, with smaller representations in rural areas.



32 per cent of respondents were male, and 68 per cent female, with the largest concentration of individuals found in the 50-59 age category (37 per cent), followed by 60-69 (28 per cent), and 40-49 at (20 per cent). Most respondents began their mediation practice in their 40s (42 per cent), with smaller representations in their 50s (26 per cent), and 30s (22 per cent). It is likely these are second or third careers, or possibly work complimentary to existing careers.

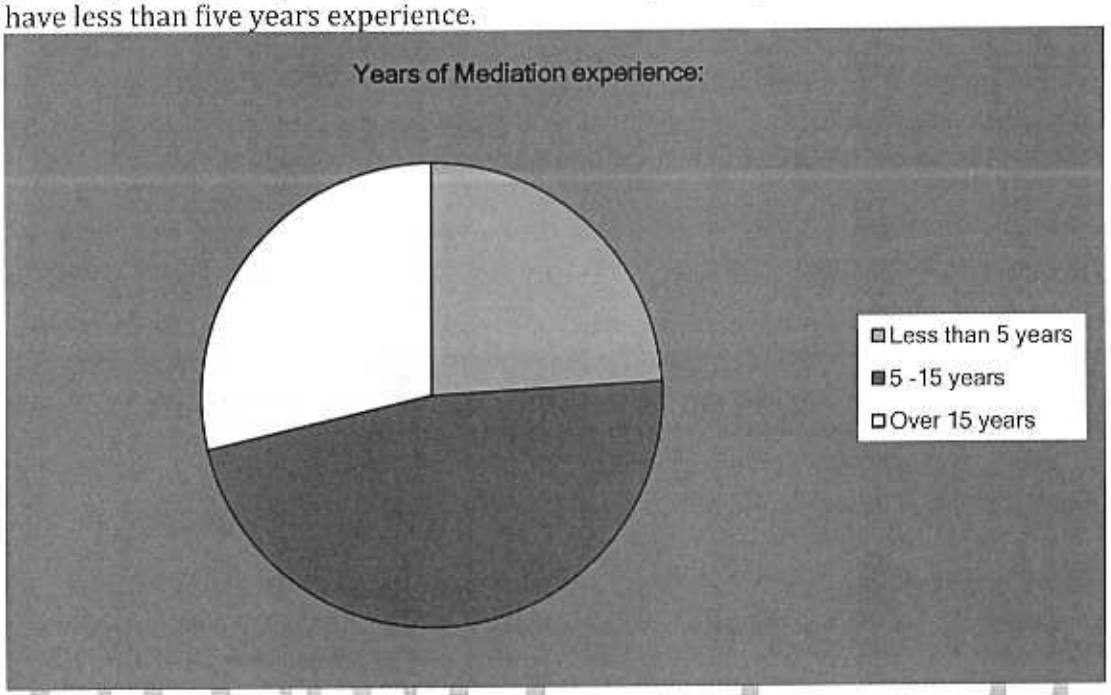
The majority of individuals reported that they were self-employed (62 per cent), with employment in the public sector (16 per cent) identified as the second source of employment.



Looking at levels of employment, 59 per cent indicate that they are working full time (in one or more positions/contracts), and 40 per cent work part time.
59 per cent of respondents reported that less than 15 hours on average per week involves ADR practice, and 69 per cent reported that less than 15 hours on average per week involves mediation practice. These percentages are similar for both full and part time individuals. This would suggest that less than half of total employment and therefore income derived is from either ADR or mediation practice.

58 per cent indicated their income is derived by providing ADR services and training other than strictly mediation and 67 per cent derive income from sources other than their ADR practice.

In terms of years of experience mediating, 47 per cent indicated they have five to 15 years experience, 29 per cent have more than 15 years experience and 24 per cent have less than five years experience.



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When considering all aspects of employment gross income was reported as following:

	All	Full Time Only
Under $50K	32%	11%
$50K - $100K	38%	44%
$100K - $150K	15%	21%
Over $150K	15%	24%

Statistics Canada reports Alberta median income per individual (latest available information 2012) at $39,190. Extrapolating increases based on historical data, we would find that 2014 Alberta median income would be approximately $41,010. Looking at the above information, we find that over 70 per cent of respondents exceed Alberta median income levels.

http://www5.statcan.gc.ca/cansim/a26?lang=eng&retrLang=eng&id=1110008&paSer=&pattern=&stByVal=1&p1=1&p2=-1&tabMode=dataTable&csid=

Of total income – income derived from ADR is as follows:

	All	Full Time Only
$0/Volunteer Only	13%	15%
Under $10K	32%	11%

$10K – $25K	18%	15%
$25K - $50K	14%	15%
$50K - $100K	14%	13%
$100K - $150K	3%	5%
Over $150K	7%	11%

Isolating gross income derived from mediation:

	All	Full Time Only
$0/Volunteer Only	9%	10%
Under $10K	46%	40%
$10K – $25K	18%	19%
$25K - $50K	10%	8%
$50K - $100K	10%	10%
$100K - $150K	6%	10%
Over $150K	2%	3%

Reviewing the hourly rates (paid) of mediation work reported:

	All	Full Time Only
Under $50	24%	21%
$50 - $149	17%	13%
$150 – $249	31%	27%
$250 - $349	8%	11%
$350 - $499	5%	8%
Over $500	8%	10%
Nil/Volunteer Only	8%	10%

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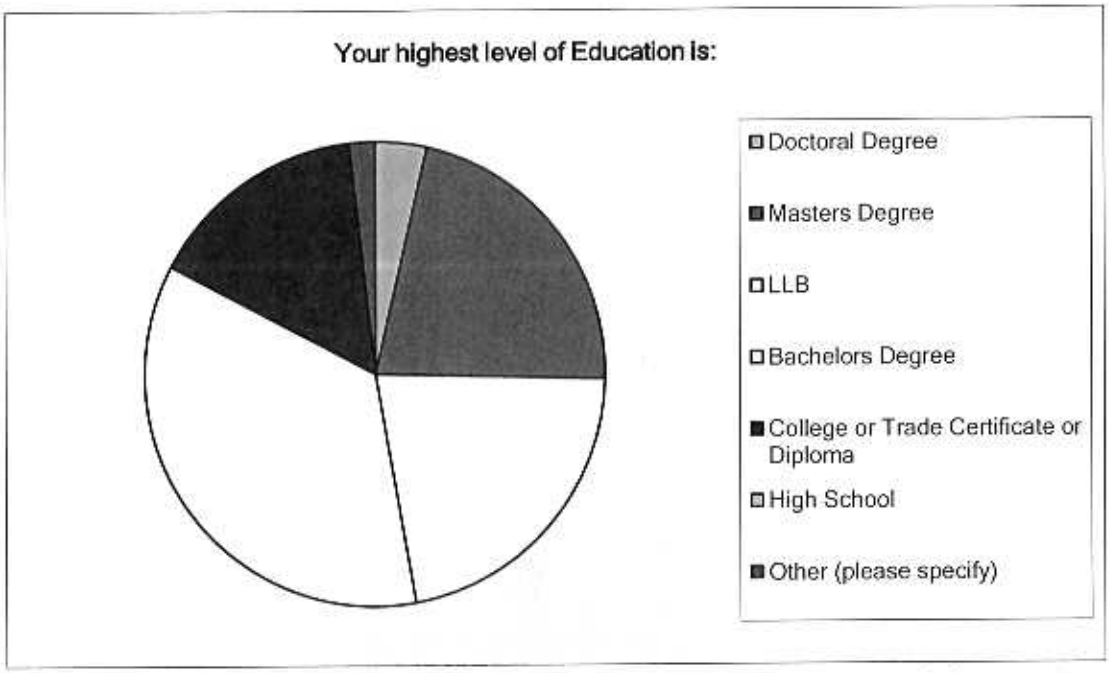
The greatest percentage of respondents indicate that their mediation practice is secondary to their other/primary professions (48 per cent), while (39 per cent) report as their primary (including retirement activity), and (13 per cent) report it as secondary to their other ADR practice (including arbitration, training, etc.). If the 24 lawyers who responded to the survey, 26 per cent made between $100,000 and $150,000 and 48 per cent made more than $150,000. Higher compensation is linked to those who provide ADR in support of their primary occupation, notably law. 50 per cent of hose making more than $50,000 annually are lawyers and 40 per cent hold a C.Med designation.

In the area of education, participants indicate that the greatest percentage have bachelors' degrees (35 per cent), followed by LLB and masters' degrees (22 per cent).



Practitioners come from any backgrounds, holding designations or qualifications in many areas including law (29 per cent), other (24 per cent) including communications, clergy, accounting, finance, etc., education (14 per cent), social work (17 per cent) and psychology (13 per cent).

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Many hold ADR/Mediation professional designations including Chartered Mediator (36 per cent), Alberta Family Mediation Society (22 per cent), Qualified Mediator (18 per cent), or have applied or have expectations to apply within the next year (15 per cent). Eight per cent hold the designation of Chartered Arbitrator or Qualified Arbitrator.

In terms of mediation training, most respondents obtained their training primarily from ADRIA (55 per cent), University of Alberta (14 per cent), Legal Education Society of Alberta (LESA) or law society (11 per cent), other (10 per cent) and Justice Institute of BC (six per cent).

Individuals professionally hold memberships primarily with ADRIA (75 per cent), ADRIC (45 per cent), AFMS (25 per cent), and others (12 per cent).

Conclusions What are the key themes that we see in compensation?
Individuals were asked if they felt that mediation alone can provide a viable income, and results indicate that only 25 per cent felt that was possible. A further 37 per cent felt one could make a living if mediation was combined with other ADR services and training and 13 per cent agreed if mediation was combined with another ADR profession. Conversely, 21 per cent felt mediation could only supplement or enhance other ADR and non-ADR services, qualifications or programs, and five per cent indicated mediation is only viable as a volunteer or secondary activity.

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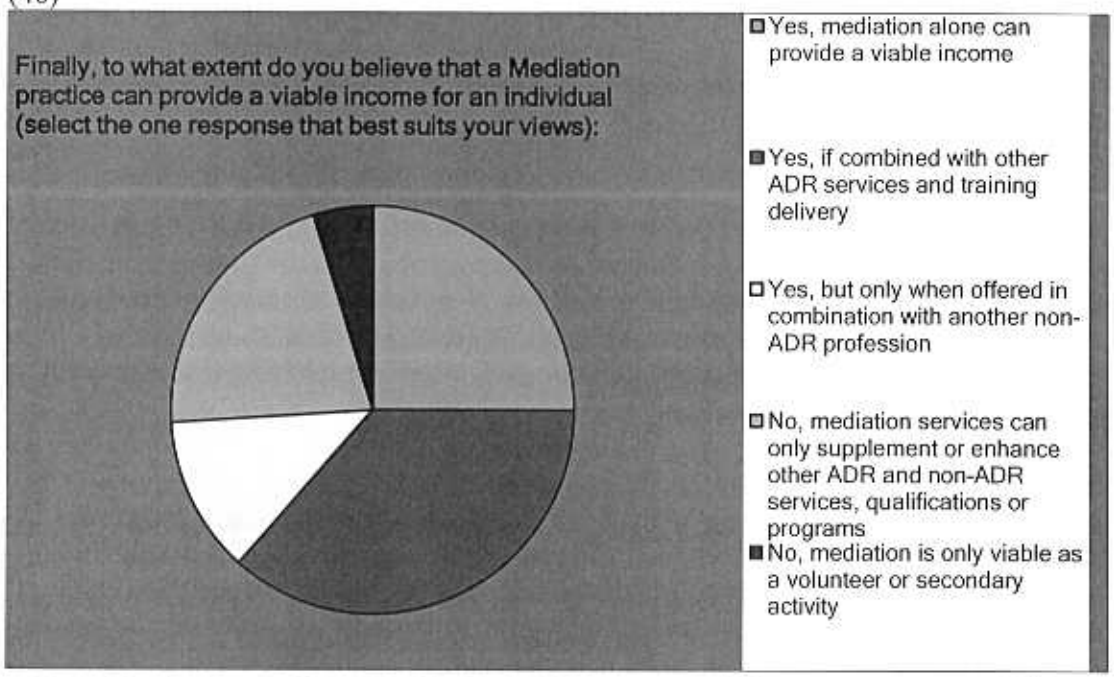

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APPENDIX F: Resolution Services Roster Mediator and Practitioner Information and Engagement Sessions, August 2014: Grande Prairie, Edmonton, Red Deer, Medicine Hat, Lethbridge, and Calgary

Those wishing to view this document can do so by requesting a copy of it from the ADRIA office at: paul@adralberta.com **FLAGGED FOR UPDATING**

APPENDIX G:
Summary of the types of Appropriate Dispute Resolution (ADR)

There are many ADR processes practiced by mediators and dispute resolution practitioners.

Negotiation

In negotiation, parties communicate directly with each other and make their own decisions. The outcome is likely a contract or an agreement that summarizes the parties' commitments pertaining to the issues. Negotiation can be positional and the results can result in a win-lose outcome. Negotiations can also be interest-based, during which skilled parties look for each other's underlying interests and work towards win-win resolution. [14]

Mediation

Interest-Based Mediation: In an interest-based mediation process, a selected, skilled, and impartial third party facilitates a discussion between disputants that allows them to make their own decisions and solutions in relation to issues and conflict. The mediator focuses on exploring the particular factors (concerns, hopes, expectations, priorities, beliefs, fears and values) that are important to and that motivate individuals in any given situation. The mediator will often use facilitation, collaboration and dialogue to guide parties through a structured process that can result in...

- A greater level of understanding through safe and structured dialogue,
- A bridge to mutual understanding, and
- A mutually satisfactory resolution. [15]

Transformative Mediation: According to Transformative Mediation theory, when we are in conflict our behavior is often what disturbs us most, even more than the actual unresolved issue we are in conflict about.[16] Crisis results in two main states for those in conflict – weakness and self-absorption. A transformative mediator, then, will orient his or her in-session work to listening for and supporting opportunities for the participants to recover their senses of both autonomy and relatedness. The mediator will avoid making any suggestions or decisions either about process or content. "Rather than directing the parties through the process, transformative mediators invite parties to shape process as well as content." [17] And "rather than focusing on issues to be resolved, transformative mediators highlight opportunities for empowerment and recognition."[18] It is the job of the transformative mediator to "help the parties make positive interactional shifts

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[14] ADR 110 – Student Manual. Alberta Arbitration & Mediation Society Updated: January 2010, p. 22.
[15] Ibid.
[16] Bush, Robert A. Baruch (2001), "Handling Workplace Conflict: Why Transformative Mediation?" Hofstra Labor & Employment Law Journal, Vol. 18, No. 2, p. 369
[17] Folger, Joseph P. and Robert A. Baruch Bush (eds.) (2001). Designing Mediation, p. 12.
[18] Ibid.

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(empowerment and recognition shift) by supporting the exercise of their capacities for strength and responsiveness through their deliberation, decision-making, communication, perspective-taking, and other party activities."[19] The transformative set of ideas rejects the notion of mediator neutrality, asserting that "there is no objective position from which to participate in discourse."[20] The most important activity a transformative mediator can perform is to "stay out of the parties' way". This means that asking probing question, reframing and active listening skills have little currency in this approach.

Narrative Mediation: Narrative Mediation grows out the Narrative Therapy approach to psychotherapeutic intervention. Fundamental architects of this approach are Gerald Monk, John Winslade and David Epston whose starting place is sociology, in particular the philosophy of Post-Modernism, which takes the view that we live our lives according to the stories we tell and embrace. These stories are personal, cultural, and political and are often (if not usually) held unconsciously. These stories occasionally collide with the stories of others, and conflict emerges from this collision. The mediator's job is to "work with the participants to explore the narratives behind their conflict story, and then to identify and develop alternative, preferred stories."[21]

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Evaluative Mediation: A third type of mediation involves an evaluative process. Individuals may seek out this approach to assist them if they desire an independent opinion, but are reluctant to proceed with a more formal and often costly and binding arbitration or litigation. Unlike an arbitrator's Award, the mediator's recommendations are non-binding and presented simply as an evaluation by an informed third-party. Nevertheless, these recommendations are often taken seriously and form the basis for a settlement. [22]

Judicial Dispute Resolution: Judicial Dispute Resolution (JDR) is a confidential pre-trial settlement conference led by a Judge (in Provincial Court matters) or Justice (in Court of Queen's Bench matters). The objective of a JDR is to resolve the dispute so a trial will be either unnecessary, or at most limited to those issues on which the parties do not agree. The parties meet with a Judge or Justice to confidentially discuss the background of the case and what the parties feel is important in the case. The participants will then discuss possible solutions. If no agreement is reached, the Judge or Justice may give a non-binding opinion of what decision they would make if this case and these facts were presented at trial. The Judge's or Justice's non-binding opinion may help the parties and their lawyers

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[19] Bush, Robert A. Baruch and Sally Ganong Pope (2002). "Changing the Quality of Conflict Interaction: The Principles and Practice of Transformative Mediation", Pepperdine Dispute Resolution Law Journal, Vol. 3 ,No. 1, pages 83-84.

[20] Folger, Joseph (2005). "Transformative Mediation: Current Thinking & Developments" – Presentation to the Victim Offender Mediation Association (VOMA) National Conference, Philadelphia PA, p. 1.

[21] Winslade, John, Gerald Monk, and Alison Cotter (1998). "A Narrative Approach to the Practice of Mediation", Negotiation Journal, Vol. 14, No. 1, p. 26.

[22] MED 330: Student Manual, Alberta Arbitration and Mediation Society: updated September 2010, p. 10.

reach a resolution without having to go to trial. A settlement is only reached if everyone agrees. Once a Judge or Justice hears a case through the JDR process, he or she cannot act as the Judge or Justice at trial."[23]

Consensus Building

Consensus building is a conflict-resolution process that is used primarily to settle difficult, multiparty disputes. Since the 1980s, consensus building has become widely used in the environmental and public policy arena, but it also can be a useful ADR process whenever there are multiple parties involved in a complex dispute or conflict. The process allows various stakeholders (parties with an interest in the problem or issue) to work together to develop a mutually acceptable and beneficial solution. Often as the group comes together, they actually design the process to be used, identify the parties needing to be present, share perspectives on interests, and brainstorm resolution. Consensus is reached when the parties are able to develop outcomes or solutions that they can all live with. [24]

Restorative Justice

Restorative Justice is a non-adversarial, community generated, sanctioning process that brings the justice of the accused back to the community level. Restorative Justice is victim centered and the focus is moved from punishment of an offender to repairing the harm done as much as possible. Restorative Justice includes the victim in order to make sure all affected parties have a voice and "a meaningful role in crafting the solution". [25]

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Arbitration:

"In the Arbitration Process, a jointly selected or a contract legislated third party, receives statements and arguments of both parties and acts as the decision maker, by writing up what is called an award. The Arbitrator's decision, which can be influenced by, but is not bound by precedent, is final and binding.
Arbitration functions within the framework of the law but outside the formal legal system. Each case is decided according to the merits of the individual case.
While the history of arbitration is grounded in the commercial context, over the past ten years Canada has seen arbitration used more widely in a variety of disputes including family issues, wrongful dismissals, shareholder agreements, buy-sell agreements, construction projects, commercial leases, and many other types of issues. Arbitration is also used in disputes arising from international trade.
Arbitration is governed by the Uniform Alberta Arbitration Act and the award becomes a public record of the legal system. "[26]

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[23] Inventory of Government-Based Family Justice Services: Judicial Dispute Resolution (Alberta), http://www.justice.gc.ca/eng/fl-df/fjs-sjf/view-affic.asp?uid=88 , retrieved October 26, 2015.
[24] ADR 110 – Student Manual. Alberta Arbitration & Mediation Society Updated: January 2010, p. 22.
[25] Ibid., p. 23.
[26] Ibid., p. 24.

Litigation:
This is the traditional and formal legal process of resolving disputes. Typically, communication between the parties is done through their lawyers. The Judge has full authority and obligation to make a decision for the parties in conflict. The Judge's decision is final and binding and is filed as a public record of the judicial system.

Mediation-Arbitration (Med-Arb):
A form of arbitration in which the arbitrators starts as a mediator but in the event of a failure of mediation, the arbitrator imposes a binding decision.[27]

APPENDIX H:
Professional Associations - Analysis of Survey Results

Purpose of this survey:

- To learn what other professional organizations are doing on behalf of their members in order to inform ADRIA in considering its future direction
- Focus on value being received for fees charged

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[28]Regulatory Status of the eight organizations responding:

- Regulation requiring mandatory licensing to practice **(Four)**
- Regulation where membership is voluntary but use of title is protected – (**One** - Under the Professional and Occupational Associations Registration Act of Alberta – Certification)
- Non-regulated (**Three**)

Two of the non-regulated associations are pursuing regulation – Massage Therapists and Human Resources Institute of Alberta (HRIA)

Limitations of results: Where information was not complete (for example the number of members, or verification of regulated status) the information was obtained from the organization's web site.

Organizations Representing Members in Regulated Professions

- Alberta Medical Association (AMA) - 10,000 members
- Alberta College and Association of Chiropractors - more than 1000 members

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[27] Duhaime's Law Dictionary. http://www.duhaime.org/LegalDictionary/M/MedArb.aspx

[28] *In Alberta there are two forms of professional regulatory regimes:* ***Certification*** *(typically referred to as 'Right-to-Title') only establishes protected title(s) and registration is voluntary. Under this regime, practitioners are not required to register but if they do, they are afforded use of protected titles and the public can distinguish between regulated and non-regulated practitioners via the protected title usage.* ***Licensing*** *(typically referred to as 'Right-to-Practice') also has protected title(s) provisions but professional regulation is via either an Exclusive Scope of Practice (ESofP) or via Mandatory Registration (MR) and Restricted Activities (RAs). Under ESofP, a practitioner who is practicing within the defined scope of practice must register and be accountable.*

- Alberta Teacher's Association (ATA) - more than 40,000 members
- Institute of Chartered Accountants of Alberta – (in the summer of 2015, this group merged with other accounting associations for form the new Certified Professional Accountants) more than 15,000 members
- Alberta Shorthand Reporters Association - about 350 members

Organizations Representing Members in Non-regulated Professions

- Massage Therapists Association – about 1200[29] members
- International Association of Facilitators - 205 members in Canada and more than 1,300 members World Wide
- Human Resources Institute of Alberta (HRIA) - about 6000 members

Survey Results

Do you influence compensation for your members?

Regulated Professions

- Two respondents negotiate agreements and rates on behalf of their members (For one a separate College regulates professional standards and ethics)
- One respondent indicated it is prevented from influencing compensation but publishes a fee guide (average rates of what members report they are charging)
- Two respondents indicated they do not influence compensation

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Non-regulated Professions

- Two indicated that they do not influence compensation of members
- One indicated it does not influence compensation of members, however conduct a salary survey bi-annually

Summary: Professional organizations surveyed reported various approaches to membership compensation ranging from not influencing at all, to surveying and sharing information about rates members charge, to negotiating rates on their members' behalf. Some professions have membership in two organizations - one providing professional certification and the other focusing on advocacy including influencing compensation and fees. Regulated organizations may be subject to legislation prohibiting them from influencing member compensation.

What does your organization consider to be pro bono work?

Six organizations responding provided the following examples as "pro-bono" work:

- Uninsured health services
- Services for non-profit organizations at no or low honorariums
- Work in the community (coaching youth, supporting clubs)

[29] *Source telephone contact with the Association December 15, 2015*

- Discounted rates for soldiers, veterans, seniors, children
- Sitting on boards or committees
- Donating time to Churches

Policies or Guidelines about Pro-Bono Work

- Five of eight organizations indicated pro-bono work is left up to their members discretion
- Three of eight had some policies or programs impacting Pro bono work of members including the following:
  - Where negotiating rates in agreements – ensuring such activities are voluntary
  - Providing recommended fees for uninsured services
  - Ensuring that members comply with ethical and/or regulatory requirements

What does the organization see as the role or value of pro-bono work?

Five organizations made the following comments:

- Unfunded services are still valuable to those served
- They recognize the potential for value added – enhancing the environment and the workplace
- When requested will assist members in finding volunteer opportunities (matching) as this serves the community and public
- Providing advice to government in area of expertise has value
- Those certifying or recertifying can include pro bono work to show and prove their application for core competencies

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Advocacy of the Profession

One organization reported it has restrictions to engage in advocacy initiatives by regulation and generally does not advocate for members except for influencing government policy relating to them.

Five organizations reported they engaged in some type of advocacy related activities:

- Promoting the "Brand" (not specific members)
- Maintaining media relations to represent the profession
- Supporting local advocacy corps that liaise with a range of government and related agencies
- Public relations efforts to impact terms of employment, public perceptions, protection against diminishing standards and supporting value of qualifications
- Media and public awareness campaigns promoting public health, access to services and quality of care
- Sponsorship of large business events in major cities

- Conduct periodic 'meet and greets' with MLA's
- Pursuing regulation of the profession
- Bi-annual conventions to help members learn about events that may affect them
- Maintaining a web site
- Advocating with Provincial and Federal Governments to use practitioners credentialed by the organization

Mentoring Programs

Four of eight organizations reported they were involved in some type of mentoring program for their members and one is developing a mentorship program. Examples include:

- Mentoring required as part of achieving professional designation. (Coaching to meet required competencies and advice on work that will provide required practical experience)
- Supporting internationally trained/educated professionals with integration to Canadian culture and ensuring they have skills and understanding to succeed
- A program to assist members with career progression/skills development
- Participants are matched with mentor who commits a minimum of 24 hours. Prior to being matched both the mentor and mentee must attend a workshop
- Supporting local mentoring programs with Employers of members
- Promoting informal mentoring with their membership ("year of the mentor")
- Maintaining contact with educational institutions running their educational programs

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Managing Standards and Ethical Issues

Members of all eight organizations are subject to a code of ethics/standards of practice. Seven had formal complaint processes and one (unregulated) is exploring that option.

One organization indicated that a different body was responsible for managing professional standards and complaints issues. Six others reported internal processes (investigation processes, panels or committees and appeal processes) were in place to manage ethical/standards breaches. Some of the organizations representing regulated professions reported that loss of membership may require providing recommendations to government to also remove certification.

Use of ADR/Mediation Services

The one non-regulated organization reported not using ADR processes. Three organizations representing regulated professionals reported the use of ADR in some way including:

- ADR option is included in regulated professional discipline processes (the regulation)
- Recommending ADR in disputes between members, such as dissolution of partnerships
- Resolution of contract/collective bargaining disputes (Mediation/Arbitration)

One organization representing regulated professionals reported being open to ADR, but that internal processes were working well.

Managing Disputes

The following represents the various responses received for how the organization deals with internal disputes.

- Recommend dispute be resolved between parties, failing that, person with authority makes decision
- An internal staff relations service under Human Resources handles dispute resolution within the organization
- Through a complaints process
- Internally, there are systems in place that allow for appeals with final decisions being made by the organization's Board of Directors
- Internal and external disputes are dealt with in a similar manner
- Disputes are handled by the organization's council
- They are addressed informally by board members – no formal mechanism
- Internal disputes are dealt with by the organization

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The following represents the various responses received for how the organization deals with external disputes or complaints from the public or clients.

- For fees, over which we have no authority in legislation, we provide free mediation or arbitration with consent of both parties.
- Through our complaints process (same as internal)
- Other routes, depending upon nature of dispute
    - Disputes under the Labour Act go to the Labour Relations Board
    - Disputes about health quality concerns go to government bodies
- No formal mechanism
- Handled by the Council

Conclusions

The following trends can be identified from the survey respondents:

- A key role of professional membership organizations is to provide standards of practice/ethical guidelines for its members and a complaints process regardless of whether the organization is regulated or not
- A key role is to set and maintain continuing education requirements for the profession
- Many organizations advocate for the profession, often including some promotional and public relations activities focused on the public

- The regulatory framework impacts the role of a membership organization to influencing professional compensation or fees. The role may range from acting as an agent negotiating fees to providing information on average rates charged by professionals

Two organizations are pursuing regulation by the Provincial/Federal governments.

APPENDIX J:
LIST OF ABBREVIATIONS RELEVANT TO WHITE PAPER

AAMS – Alberta Arbitration and Mediation Society

ACR – Association for Conflict Resolution

ADR – Appropriate (or Alternative) Dispute Resolution

ADRIA – ADR Institute of Alberta

ADRIC – ADR Institute of Canada

AER – Alberta Energy Regulator

AEB – Alberta Environmental Appeals Board

AFCC – Association of Family and Conciliation Courts

AFMS – Alberta Family Mediation Society

APPCMR– Alberta Provincial Police Complaints Mediation Roster

ARJA – Alberta Restorative Justice Association

CAB – Aga Khan Ismaili Conciliation and Arbitration Board for Canada

CCHRA – Canadian Council of Human Resources Association

CRT – Civil Resolution Tribunal

CFS – Community and Family Services

CMCS – Community Mediation Calgary Society

DRN – Dispute Resolution Network

ECM – Edmonton Community Mediation

FMC – Family Mediation Canada

FAO – Farmers' Advocate Office

FOAJ – Foundation of Administrative Justice

GOA – Government of Alberta

HRIA – Human Resources Institute of Alberta

HRPA – Human Resources Professional Association

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JADR - Judicially Assisted Dispute Resolution

LCB – Land Compensation Board

LESA – Legal Education Society of Alberta

MRJC – Mediation and Restorative Justice Centre

MDRS – Municipal Dispute Resolution Services

MGA – Municipal Government Act

NJI – National Judicial Institute

NCSA – Native Counseling Services of Alberta

PMAST – Peer Mediation and Skills Training

PSLRA – Public Service Labor Relations Act

QB – Court of Queen's Bench of Alberta

RFJS – Reforming Family Justice System

RAP – Restorative Action Program

SRB – Surface Rights Board

QB – Court of Queen's Bench

VOM – Victim Offender Mediation

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