

**MINISTRY OF CHILDREN AND YOUTH SERVICES**  
**ALTERNATIVE DISPUTE RESOLUTION POLICY DIRECTIVE**

**Questions and Answers for Children's Aid Societies**

**When does the policy directive become effective?**

The policy directive takes effect on November 30, 2006.

**Is the policy directive retroactive?**

On November 30, 2006, children's aid societies will be required to consider, in all cases where a child is or may be in need of protection, whether a prescribed method of alternative dispute resolution (ADR) as described in this directive could assist in resolving any issue related to the child or a plan for the child's care.

Where a prescribed method of ADR commenced in a particular case before November 30, 2006 and it meets with the definition of a prescribed method of ADR in section 1 of the ADR regulation (496/06), it may proceed to completion even if it does not comply with the confidentiality provisions in the regulation or the requirements outlined in the policy directive.

Where a prescribed method of ADR commences on or after November 30, 2006, all of the elements of the regulation and policy directive apply.

**Is the policy directive available in French?**

Yes, the French language version is available from Regional Offices.

**How does ADR fit with Differential Response (DR)?**

The Child Welfare Transformation Agenda also includes a Differential Response (DR) Model of service delivery within children's aid societies which:

- is a method of service delivery that recognizes that one approach does not meet the needs of all children and families;
- provides a more case-sensitive and customized response;
- utilizes a strength based approach; and
- encourages a stronger collaboration between the child/family, extended family and community service providers.

The Differential Response model also requires children's aid societies to consider a continuum of family centred conferencing options to assist in case and permanency planning. The level of case complexity will determine what type of family centred conference will be most helpful. In high complexity cases where there is low agreement or where internal society resources have been exhausted,

societies are required to consider ADR as a more formal and impartial case and dispute resolution process.

### **How can the use of ADR be effective?**

ADR refers to ways to settle disputes or differences by minimizing or avoiding court involvement. There are several reasons why alternative ways of resolving differences can be effective:

- (i) **Flexibility:** When people work together with the help of an impartial facilitator, there is room to be creative and to reach a solution that meets the needs of all parties.
- (ii) **Control:** People working towards solutions outside of the court process generally have more control over both the process and the outcome.
- (iii) **Personal Satisfaction:** People are more likely to be satisfied with both the process and the outcome because they are more active in working towards resolving the dispute and in designing the solution.
- (iv) **Less Time/Lower Cost:** ADR processes are generally faster and less complex than proceeding through the court system and are more cost-efficient.
- (v) **Maintaining Relationships:** Child protection disputes often involve people who will need to continue to live and/or work together after the dispute is resolved. When people work collaboratively at resolving their disputes, improved relationships and fewer new disputes generally result.
- (vi) **Compliance:** People are more likely to comply with an arrangement that they helped design, rather than one that was imposed on them.

### **Is the use of ADR mandatory?**

It is mandatory for a children's aid society to **consider** whether a prescribed method of ADR could assist in resolving any issue related to the child or a plan for the child's care. However, the use of ADR is **voluntary**.

Prescribed methods of ADR must be undertaken with the consent of all participants and can be terminated at any time by any of the participants to it. If participants feel coerced into engaging in a prescribed method of ADR, the likelihood of reaching a viable settlement/plan and gaining compliance with its terms is lower.

**When a children’s aid society worker is considering the use of ADR, should the worker consult with their supervisor?**

Yes, a worker should consult with a supervisor when considering the use of ADR in a particular case and must document the outcome of that consultation in the appropriate file.

**Why are child protection mediation, family group conferencing, Aboriginal approaches, and other methods the prescribed methods that may be used under the *Child and Family Services Act*?**

Child protection mediation and family group conferencing are the most recognized forms of ADR being used in child welfare cases across the province and in various jurisdictions around the world. Evaluation of these methods has demonstrated positive results, including more timely resolution, higher settlement rates, higher satisfaction rates, more effective client engagement and lower costs.

Community-based traditional circle approaches are considered more culturally appropriate forms of ADR within Aboriginal communities. These approaches reduce risk for children by increasing the influence of extended family and community members, and have decreased the need for court involvement.

There are some children’s aid societies using or participating in less well known methods of ADR on a pilot basis, and achieving positive results for children. Where child protection mediation, family group conferencing, or Aboriginal approaches are not available or where another method of ADR is deemed more suitable, children’s aid societies may use another method of ADR. Other methods of ADR may be used only where they comply with the regulation and meet the criteria outlined in the directive.

The policy directive gives priority to well-established and evaluated methods, while still allowing for community and regional diversity and creativity with respect to the methods of ADR used in the child protection context. It allows for innovative forms of ADR to be used and evaluated through pilot projects, and provides for some flexibility as ADR in child protection matters continues to evolve.

## **What is the provincial roster?**

There are two rosters. The rosters provide provincial consistency and accessibility with respect to the use of trained and qualified child protection mediators and family group conferencing coordinators:

### **1. Child Protection Mediators**

The Ontario Association for Family Mediation (OAFM) has developed and is managing a roster of child protection mediators. When engaging in child protection mediation, children's aid societies are required to select a child protection mediator from this roster. Only child protection mediators who meet the criteria outlined in this directive are eligible to be on the roster.

To find child protection mediators in your community or for more detailed information on the roster please visit, [www.oafm-cpmed.ca](http://www.oafm-cpmed.ca), call 613-241-8711 or email at [gechlin@oafm-cpmed.ca](mailto:gechlin@oafm-cpmed.ca).

### **2. Family Group Conferencing Coordinators**

The George Hull Centre for Children and Families, as the lead agency for the Family Group Conferencing Project of Toronto has developed and is managing a roster of family group conferencing coordinators. When engaging in family group conferencing, children's aid societies are required to use a coordinator listed on the roster. Only family group conferencing coordinators who meet the criteria outlined in this directive are eligible to be on the roster.

To find family group conferencing coordinators in your community please visit, [www.georgehullcentre.on.ca](http://www.georgehullcentre.on.ca), or for more detailed information on family group conferencing training or consultation services for your agency, please contact Daniel Bogue at [reachus@georgehullcentre.on.ca](mailto:reachus@georgehullcentre.on.ca).

## **Can child protection mediation, family group conferencing or other methods be used with Aboriginal families?**

Yes, child protection mediation, family group conferencing, or other methods of ADR as set out in this directive may be used with Aboriginal families, providing that the process is consensual.

However, the *Child and Family Services Act*, as amended by Bill 210 makes it clear that where a children's aid society is considering a method of ADR to resolve a dispute respecting an aboriginal child, the society must consult with the child's band to determine if an ADR process established by that band or native community or another prescribed process could assist to resolve the case.

Further, a children's aid society must give notice where ADR is proposed for an Aboriginal child, to a member of the child's band or native community. A representative from the Band or native community may participate with the agreement of the other participants.

**Are Aboriginal approaches to ADR only for Aboriginal children and families?**

Aboriginal approaches to ADR are not exclusively for the use of native or Aboriginal children's aid societies. Aboriginal approaches utilize traditional methods of dispute resolution that have been established by First Nations communities or Aboriginal organizations. Aboriginal approaches have specific cultural relevance specific to Aboriginal peoples.

**Will additional funding be made available to children's aid societies to cover the costs associated with ADR?**

Specific ADR funding will go to Regional Offices which will make allocation decisions. The allocation to Regional Offices will be managed in two phases.

First, fiscal allocations will be made for 2006-2007 to support system capacity to respond to Bill 210, ADR regulations and policy. Some funds, in specific circumstances may go to children's aid societies. Children's aid societies also have legal services allocations in their budget which may be used to support alternatives to court. Second, annual allocations will be planned for in early 2007 having considered early implementation experience.

**The policy directive requires children's aid societies use a standardized form to notify the Office of the Children's Lawyer where ADR is proposed. Where can additional copies of the form be found?**

The form is available on the Government of Ontario Central Forms Site, on [www.gov.on.ca](http://www.gov.on.ca) in the "Resources" section, under "Forms". The form can be downloaded using MS Word Viewer or Adobe Acrobat Reader.