

Family

Binding judicial dispute resolution: A win for access to family justice | Avagene Skervin

By **Avagene Skervin**

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(January 10, 2023, 11:43 AM EST) -- As a member of the Kitchener, Ont., bar, I was pleased to learn about the implementation of binding judicial dispute resolution (JDR) as a pilot project in Kitchener (among other places) on Nov. 1, 2022.

And now we have the benefit of a reported decision from the first case in the Kitchener Unified Family Court.

In *M.D. v. C. S.* [2022] O.J. No. 5233 (*M.D. v. C.S.*), Justice Lene Madsen, herself a family mediator and arbitrator before her appointment to the bench, provides a road map that clearly explains the purpose and benefits of JDR.

JDR is voluntary for parties in court who wish to try to reach an agreement in their matter. It is accessible only where a judge agrees that the case is appropriate. Initially, the process is being offered for cases with only a few issues and that are not complex, where credibility is not a significant concern and disclosure is complete. Appropriate subjects include parenting disputes and select child support or property issues.

Justice Madsen describes the *M.D. v. C.S.* case as "perfect for this process."

The parties had a young child and had experienced high conflict since their separation over six years ago. After several conferences, the parents had not reached agreements on the "finer points" of a parenting plan, among other things. They were headed for a trial management conference followed by a five-day trial.

"Both parties and both lawyers saw that a trial would be expensive and only make things worse between these parents, and that there is little law to assist in distinguishing between the options the parents were considering," wrote Justice Madsen.

Justice Madsen describes the steps she took to patiently guide the parents to an agreement, including educating them about the relevant principles under Ontario's *Children's Law Reform Act* (CLRA). She allowed them longer than the anticipated two hours to reach their own settlement. She then made an order on the few remaining unresolved issues.

This dispute resolution process is indeed a great opportunity for parties to resolve issues without having to endure the emotional and financial costs of trial.

As Justice Madsen notes at paragraph 4 of her endorsement:

JDR is a court process that is intended to provide separated families with a faster, simpler, less acrimonious and more cost-effective way of resolving family law issues, as compared with a trial."

Although it is a court process, JDR appears to be a sufficiently close relative to the mediation/arbitration process. Both processes are voluntary, include negotiation and allow for parties to be heard. Both permit them to occupy an interest-based space rather than a positional space and

participate freely and fully. If no agreement is reached, then there is an adjudication or award component.

As Justice Madsen writes in her endorsement, in speaking about the JDR process:

“The process has been designed to be practical and efficient, and to help families craft their own resolutions if at all possible. It is more interactive and less adversarial than a trial. The intention is that the parties, counsel and the judge work together to craft a consent final Order, that day.”

Personally, I believe that binding JDR is a perfect marriage, and *for the skeptics*, a perfect melding, between a settlement conference and a focused hearing.

Binding JDR is an answer to the call for additional dispute resolution options, like mediation or mediation/arbitration, which allow parties to feel empowered in a process that they have chosen and in which their opinions, wishes and concerns are important considerations to the cast assembled to help them resolve their issues!

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