

Alternative Dispute Resolution

Alternative Dispute Resolution (ADR) is a set of tools that helps people move away from the adversarial court system and use alternative methods to resolve disputes. ADR allows two groups with a dispute to develop a solution that works for everyone. This may occur just between the groups as negotiation, while other times the disputing groups bring in a facilitator to mediate discussions and help find a creative solution. If negotiation or mediation are not successful, the groups may even have an arbitrator (an expert in the law) help them come to a solution.

While these ADR methods are popular, concerns remain that these Western-centric tools can create challenges with cultural differences or exploitation when used in Indigenous contexts. For example, “mediation” practices might not consider the possibility of requesting the assistance of an Elder to resolve disputes. “Conciliation” is another ADR method, similar to mediation, and is a more inclusive term that respects the First Nation circle traditions. Conciliation puts more importance on the neutral party, such as an Elder, being the one to find a creative solution for both disputing parties.

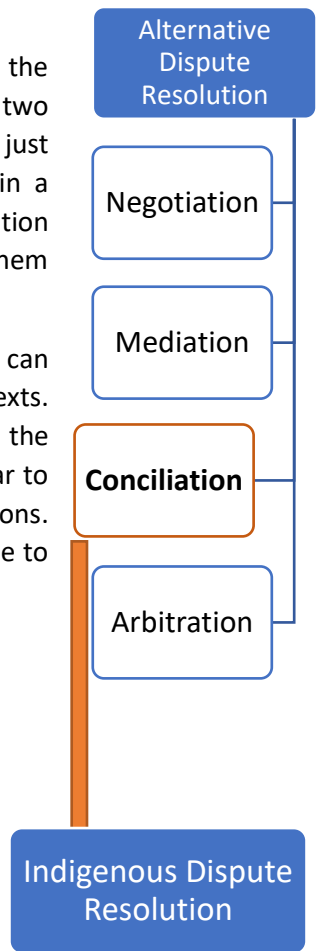
Indigenous Dispute Resolution

Indigenous Dispute Resolution (IDR) is a framework made up of Indigenous approaches to Alternative Dispute Resolution, utilizing traditional values and practices in order to resolve conflicts. Often, IDR is a form of restorative justice where an elder or someone respected in the community facilitates a circle to bring about a resolution and recognizes how Indigenous culture can play a powerful role in the solution of problems.

IDR differs between communities based on culture and traditions. IDR is unique as it prioritizes solutions consistent with the culture of the groups involved and makes the groups central to the decision making.

Facilitation style and purpose can differ between circles. Here is a non-exhaustive list of circles that may be used during conciliation:

- **Talking Circle:** a safe environment for sharing points of view with others.
- **Teaching Circle:** an educational circle that encourages dialogue, respect, and the co-creation of learning content and social discourse.
- **Sharing Circle:** opportunity to verbalize feelings and identify how we can support each other. A facilitator would gather and combine ideas to the end goal of keeping families or individuals safe, healthy, and happy.
- **Healing Circle:** opportunity to guide emotional release by encouraging participants to let go of their negative feelings. A facilitator would identify what experiences are triggering negative emotions and what experiences can lead to positive emotions.
- **Ceremonial Spirit Circle:** a circle to practice a symbolic ceremony and an opportunity to evoke energies to create change, to honor, and to acknowledge.



Indigenous Dispute Resolution and Workplace Harassment and Violence

As part of the introduction of Workplace Harassment and Violence Regulations by Bill C-65 into the Canada Labour Code, it is the responsibility of the employer to receive, investigate, and resolve complaints of violence or harassment in the workplace.

Employer Obligations
for Resolution

This requires the employer to make every reasonable effort for an early resolution to complaints of violence or harassment through negotiation or conciliation. Conciliation may include a variety of restorative justice or dispute resolution practices. Indigenous Dispute Resolution (IDR) can be used by providing safe and culturally relevant spaces and methods for negotiation and conciliation if both the principal party (the party who is the subject of the alleged violence or harassment) and the responding party (the party alleged to be violent or harassing) agree to work through IDR and approve of the facilitator.



1. Early
Resolution



2. Investigation

Employees are not required to meet with someone who has abused or caused harm to them. If negotiation or conciliation cannot resolve the occurrence, or the principal party insists, an investigation into the complaint will take place. Investigations result in recommendations for the employer to take actions for resolution.

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

Roles in the Indigenous Dispute Resolution Process

- **Chief and Council or Board of Directors** – provide the resources for the IDR conciliation process, respect the privacy and confidentiality of the situation and the wishes of the Principal Party.
- **Employer/Designated Recipient** – take quick action on occurrences, keep a list of potential IDR conciliators that meet the needs of employees, organization, and community.
- **Principal Party and Responding Party** – respect the privacy and confidentiality of the situation, determine whether or not to participate in negotiation or conciliation based on their experiences and needs, and to approve an IDR facilitator if they wish to pursue conciliation.
- **Colleagues/Coworkers** – respect the privacy and confidentiality of the situation, participate in IDR conciliation as invited.
- **Witnesses/Bystanders** – respect the privacy and confidentiality of the situation, participate in IDR conciliation as invited, respect the culture and traditions of the process.

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

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

