

Practice Advisory Concerning the Superior Court of Justice's Binding Judicial Dispute Resolution (JDR) Pilot Project

Effective May 14, 2021 (most recently amended **May 2023**)

This pilot has been developed to provide a streamlined alternative to reach a final resolution for some family law cases. The pilot is currently operating in the Superior Court of Justice in all of the Central East region, all of the Northwest and Northeast regions, Kitchener, Ottawa, Cornwall and L'Original.

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1. What is Binding Judicial Dispute Resolution?

Binding JDR is a party-initiated, consensual, and flexible process that allows parties to obtain final orders in family cases without the need for a trial. The parties ask the same judge to try to assist them to settle their issues on consent and to make final orders about unresolved issues at the same hearing.

Prior to the Binding JDR hearing proceeding, the parties must consent to the process in writing and obtain approval of the Court.

A Binding JDR hearing includes *both* the settlement and the adjudication parts of the process. The judge conducting the Binding JDR hearing will explore with the parties (and their lawyers, if any) possibilities for resolving the issues on consent. Each party is expected to explain their proposal to resolve the disputed issues as well as the key facts that support their position. As in any court proceeding, the judge conducting the Binding JDR hearing has an oversight role and must approve any terms of settlement.

For any issues that cannot be resolved on consent, the judge will hear submissions from the parties about the orders that they are seeking. The judge may ask the parties questions and request additional information, if necessary, to reach an informed and fair decision.

At the conclusion of the Binding JDR hearing, the judge will provide a final order on the issues, including those that have been resolved on consent.

2. Cases That are Not Suitable for Binding JDR

Binding JDR is not available for cases brought under the *Child Youth and Family Services Act* (child protection cases), or for cases involving international child abduction.

Any other family law case can potentially be resolved by Binding JDR, however, subject to the discretion of the judge, the process is not generally suitable for the following cases:

- a. cases where financial disclosure has not been exchanged prior to the hearing;
- b. cases that require witnesses other than the parties;

- c. cases where there are significant credibility issues that require cross-examination by the other party(ies);
- d. cases that involve one or more vulnerable parties.

3. How to Request and Schedule a Binding JDR hearing

A request to participate in a Binding JDR may be made at any stage of the court process, either at a court appearance or by filing a 14B motion.

Each party who wishes to participate in Binding JDR must complete and submit the **Binding Judicial Dispute Resolution Request and Consent form** to confirm that they understand and wish to use this process to reach a final resolution of their case.

The judge approving the request will sign an endorsement setting out any procedural directions for the hearing.

Once the request has been approved, if a date has not already been assigned, one of the parties should contact the Trial Coordinator's Office to schedule their Binding JDR hearing.

4. Permission Required to Withdraw

A party may **not** withdraw their consent to participate in the Binding JDR hearing after filing their signed **Binding Judicial Dispute Resolution Request and Consent form**, if they do not have the agreement of all other parties or permission from the Court.

If a party fails to participate in the Binding JDR process after filing their signed **Binding Judicial Dispute Resolution Request and Consent form** and without permission to withdraw, the judge may make final orders based on the evidence filed or based only on the evidence of the other party(ies), along with an order with respect to costs.

5. The Judge Conducting the Binding JDR Hearing

Although the process is designed to be more flexible than a trial, the judge conducting a Binding JDR hearing has the same authority to make final orders about

any questions of law or fact relating to the admission of evidence or the determination of the issues.

The Binding JDR hearing may be heard by a judge who has not presided over any previous steps in the case or, if the parties do not object, by a judge who is already familiar with the case and may have conducted a settlement conference.

The process begins with a settlement discussion after which the judge will make a decision about any of any unresolved issues.

The parties participating in the process cannot object that the judge adjudicating their case is aware of settlement discussions and offers to settle or has provided an opinion on the issues in dispute.

If there is a reason why a particular judge should not conduct the Binding JDR hearing, the parties should advise the approving judge prior to the hearing being scheduled, by indicating the name of the judge on the Request and Consent form.

6. Evidence for a Binding JDR Hearing

There are certain documents that need to be filed by the parties in a Binding JDR hearing. The judge conducting the hearing needs to see the evidence that supports the parties' positions in the case and their proposals for resolution (see [section 9](#), Draft Orders and Offers to settle).

I. What to file for a Binding JDR hearing

Unless the judge approving or conducting the hearing orders otherwise:

- a) Each party must prepare an affidavit of no longer than 10 pages that sets out the key facts in support of the orders that they are seeking. The narrative part of the affidavit shall be double-spaced and using at least 12-point font.
- b) Parties may use the **Affidavit in Support of a Binding Judicial Dispute Resolution Hearing** or adapt the Form 14A Affidavit (General) to provide similar information.
- c) Any Reply affidavits must be no more longer 4 pages. The narrative part of the affidavit shall be double-spaced and using at least 12-point font.

- d) For cases involving support issues, the parties shall prepare a current Financial Statement (Form 13 or 13.1), including the income and financial information referred to in subsection 21 (1) of the child support guidelines, and for cases involving property issues they should prepare a current Net Family Property Statement (Form 13B) and Comparison of Net Family Property Statement (Form 13C).
- e) In their Request and Consent forms, parties should list the other types of documents they intend to rely on at the hearing, for example:
 - i. Reports prepared by independent professionals, such as valuation reports, the report of the Children's Lawyer or a CLRA Section 30 assessment.
 - ii. Statements of Arrears from the Family Responsibility Office, receipts for special expenses, etc.; and
 - iii. relevant court orders and endorsements.
- f) ***Caution** - if parties attempt to file too much evidence or highly contested evidence, there is a risk that the court will send the case back to the regular track for a trial of the issues. Make sure that you **only** submit evidence that is relevant and non-repetitive, and that will assist with either settlement or a streamlined judicial decision.

II. Timelines for Serving and Filing your Documents

Unless the judge approving or conducting the hearing order otherwise, Affidavits, current Financial Statements, Net Family Property Statements, Comparison of Net Family Property Statements, and Draft Orders must be served on the other party(ies) and filed with the court according to the following timelines:

- a) Applicant or moving party: not later than 20 days before the hearing.
- b) Respondent or responding party: not later than 10 days before the hearing.
- c) Reply Affidavits: not later than 5 days before the hearing.

III. Uploading to CaseLines

Unless the judge approving or conducting the hearing orders otherwise, all documents filed for your Binding JDR hearing must be uploaded to the appropriate bundle in CaseLines as soon as possible after receiving the invitation from the Court and not later than **five (5) days** in advance of the Binding JDR hearing.

Each document, including each attachment to your Affidavit or Financial Statement, should be uploaded separately within the bundle.

7. Confirming the Issues for the Binding JDR Hearing

Before the scheduled Binding JDR hearing date, parties must confirm whether any or all of the issues in dispute have been settled.

Not later than 2 p.m. three (3) days before the Binding JDR hearing date, parties must give the clerk the **confirmation of Binding JDR hearing** by,

- (i) sending it by email or submitting it through the Justice Services Online website; or
- (ii) delivering it to the court office.

The parties may not adjourn the date scheduled for a Binding JDR hearing – even on consent - without obtaining leave of the court.

8. At the Hearing

The Binding JDR hearing is designed to be flexible. The judge conducting the hearing may rely on any information that the judge considers credible and relevant, regardless of the formal rules of evidence or procedure.

The judge approving or conducting the hearing may adapt the procedure to meet the needs of the case, including:

- a) how much time to schedule for the hearing;
- b) what evidence to consider;
- c) how evidence is to be presented;
- d) whether to make any temporary orders;
- e) whether to suspend the Binding JDR hearing and return the case to the regular process under the Family Law Rules.

Before the proceeding begins, the parties will be asked to swear or affirm that statements they make during the hearing, including the settlement discussions, are true and can be relied upon by the judge when making a decision about contested issues.

No witnesses aside from the parties shall be called to give evidence at the hearing, unless directed by the Court.

The Judge may rely on reports prepared by independent professionals if they have been properly served on the other parties and filed with the Court. A report of the Children's Lawyer is always filed with the court and considered by the judge. The professional will not have to attend the hearing, unless required by the Court.

There is no formal right of cross examination at a Binding JDR hearing, but the parties may suggest questions for the judge to explore with the parties and any witnesses.

9. Draft Orders and Offers to Settle

The judge conducting the Binding JDR hearing will need to know what orders the parties are seeking. Along with their Affidavit, parties must provide the other side and the Court with a Draft Order (Form 25 or 25A) at the same time as they file their affidavits (see [Section 6.II](#)).

For help with wording, parties may refer to the sample order clauses available at <http://ontariocourtforms.on.ca/en/family-law-rules-forms/standard-clauses/>, the standard Minutes of Settlement in use in their court location or the sample clauses available at the [Simcoe County Law Association website](https://scla.ca/page-18188): <https://scla.ca/page-18188>

Draft Order must be provided in Word format so that, if necessary, the judge can amend the wording at the hearing.

Parties may be able to agree to some of the terms of the Order before the Binding JDR hearing starts. Along with the Draft Order, each party is strongly encouraged to serve the other side with any other proposal (offer to settle) they may have for settlement at least 7 days prior to the hearing.

A party who receives an offer to settle or Draft Order from the other side should respond as soon as possible to indicate what, if anything, is agreeable. If there is no agreement, they should provide their own suggested Draft Order and any other proposal for settlement that they may wish to make.

If parties do not serve a separate offer to settle, the Draft Order may be treated as an offer to settle under Rule 24 (12). The Court must consider offers to settle when deciding the issue of costs, if they are claimed by either side (see Family Law Rules, 18 and 24).

10. Decisions From a Binding JDR Hearing

Because this is intended to be a simpler and faster process, the judge will typically explain to the parties orally why a decision was reached and provide them with an endorsement containing the terms of the order. Extensive review of caselaw or detailed written reasons for the judge's decision should not be expected.

If appropriate, the Court may award costs in accordance with Rules 18 and 24. However, any argument and decision about costs must be completed during the allotted time for the hearing.

11. Legal Advice about the Process

Parties are *strongly* encouraged to obtain legal advice about the process before requesting to participate. The following services may assist parties to access legal advice or retain counsel.

- The [Family Law Information Centre](#) (FLIC) at your local courthouse;
- The Law Society of Ontario's [Lawyer Referral Service](#); (referrals and free 30-minute consultations);
- [Legal Aid Ontario](#): 1- 800-668-8258;
- [JusticeNet](#) (legal services at reduced fees for qualifying clients);
- [Ontario Family Law Limited Scope Services Project](#) (unbundled legal services).
- [Pro Bono Students Canada Family Justice Centre](#) (free unbundled legal services to self-represented litigants in Ontario by supervised law students).

The [Notice to the Profession](#) about this project in your region may include information about legal services in your area.