

Notice to the Family Law Bar and Family Litigants – Simcoe and Muskoka

A new pilot project is beginning in the Simcoe and Muskoka Superior Court of Justice, Family Court Branch beginning May 14, 2021. This pilot will allow parties in a family law case, on consent, to choose to participate in Binding Judicial Dispute Resolution (Binding JDR) to arrive at a final resolution of their case instead of following the regular process under the *Family Law Rules*.

What is Binding JDR?

Family law litigants follow a number of steps in the regular court process. If they are not able to resolve their issues after a case conference has been held, they attend a settlement conference under Rule 17(5) of the *Family Law Rules*. At a settlement conference, the parties (and their lawyers, if they are represented) meet with a judge to identify the issues that are in dispute, get input about possible resolutions and try to reach a settlement to end their court case. If the parties do not agree how their case should be resolved at the settlement conference, the parties must proceed to a further conference and ultimately a trial to obtain a final order.

A trial follows a formal procedure. A trial record and exhibit briefs are filed in advance. Each party is responsible for presenting their case and must call witnesses to establish the facts that support the orders that they are seeking. Witnesses testify under oath or affirmation and are then cross-examined by the other party. There are complicated rules of evidence that govern what evidence the judge can hear during a trial. After hearing from the witnesses and receiving statements from the parties, the judge makes a decision about any outstanding issues.

Binding JDR combines some elements of both a settlement conference and a trial. With Binding JDR, each party submits a sworn affidavit that contains the important facts in support of their case, as well as their proposals to resolve the issues. The hearing is more informal than a trial and the judge works with the parties to explore mutually acceptable options for resolution.

Unlike a trial, where each party is responsible for presenting their case, the judge in a Binding JDR hearing takes on a more proactive role. Both the parties and the judge can ask questions and give input about the issues being discussed but there is no formal right of cross-examination. Moreover, formal rules of evidence are somewhat relaxed.

Unlike a settlement conference, the parties in Binding JDR specifically agree that the judge should make a final decision at the end of the hearing about any issues that they have not been able to agree upon. As a result, a final, enforceable court order will be issued at or shortly after the hearing, incorporating both the terms that the parties have agreed to resolve and any issues that are decided by the judge. This eliminates the need for further steps in the case including a trial.

In requesting to resolve their case by way of Binding JDR, the parties specifically waive any potential rights to object to the decision under Rule 17(24), which prevents a settlement conference judge from making a decision about an issue that is not resolved at the conference.

What cases are appropriate for Binding JDR?

The court must approve the parties' request for a Binding JDR hearing. A judge will not order a Binding JDR hearing unless the parties appear to be appropriate candidates for the process. All financial disclosure and other relevant information must have been exchanged or the judge must reasonably expect it will be exchanged prior to the hearing date.

While all matters relating to parenting, support and division of property can potentially be resolved through Binding JDR, this process is best suited for less complex disputes that do not involve witnesses other than the parties. It is also more appropriate for cases where there are a limited number of issues or where the parties have substantially agreed on the facts and only require a decision regarding the application of the law to their circumstances.




Usually Binding JDR hearings will be scheduled for 2 to 3 hours. Cases that require more judicial time are not appropriate for this pilot project.

As the process is meant to provide an expedited decision for the parties, the judge is unlikely to provide lengthy reasons for their decision at a Binding JDR. Usually, the judge will orally explain their reasons for the orders that have been made and provide the parties with an endorsement setting out the terms of the final order.

Even with the court's approval of this request, the judge hearing the event retains the discretion to convert a Binding JDR hearing to the regular process under the Family Law Rules, where the judge feels it is necessary to ensure a fair process or reach a proper decision.

Steps to Obtain a date for a Binding JDR

If parties wish to complete their case by Binding JDR, they may obtain a date from the case conference judge or by 14B motion.

1. At a case conference, parties can discuss with the judge whether the case is appropriate for Binding JDR. If the judge agrees, the parties can complete and file the request and consent forms at the case conference and the Registrar will schedule a date for the Binding JDR hearing.
2. If the parties are not yet ready to commit to Binding JDR at the case conference but the judge has approved the case for Binding JDR, the judge's endorsement can authorize the parties to obtain a hearing date when they are ready. This will be done by filing the completed request and consent forms with the court filing office and then providing a copy of the judge's endorsement to the Trial Coordinator to schedule a date for the hearing.
3. If parties have not received approval from a judge at a case conference, one party may file a 14B consent motion requesting approval for a Binding JDR hearing. The 14B should include reasons why the parties wish to participate in Binding JDR and enough information to allow a judge to decide if the case is appropriate for Binding JDR. The last endorsement (usually a case conference or motion) and both parties' request and consent forms should also be attached. If approved, the parties should send the judge's endorsement from the 14B motion to the Trial Coordinator to obtain a date for the hearing.

What needs to be filed for a Binding JDR hearing?

Once a date has been obtained, the parties will need to serve and file the following documents for the hearing. The address for filing is set out below.

1. Affidavits – Each party must file an affidavit of no more than 10 pages that sets out the key facts in support of the order that they are seeking. The applicant or moving party's affidavit must be served and filed at least 20 days before the hearing. The responding affidavit must be served and filed at least 10 days before the hearing. Any necessary reply affidavit must be served and filed at least 5 days before the hearing.

Parties are strongly encouraged to use the **Affidavit in Support of a Binding Judicial Dispute Resolution hearing** which will be available on the family law section of the Simcoe County Law Association website shortly. Alternatively, they may use the **Form 14A Affidavit (General)**. If Form 14A is used, parties should

provide the information that is sought in the Affidavit in Support of a Binding Judicial Dispute Resolution hearing, as applicable in the circumstances.

Parties must swear or affirm that all statements in their affidavit, as well all statements that are made during the hearing, are true and can be relied upon by the judge in making a decision. If necessary, this affidavit can be sworn or affirmed at the hearing.

Parties may include attachments to their affidavits such as Children’s Lawyer Reports, financial statements, comparative net family property statements and support calculations that will not form part of the page limit for these documents. If the court is not likely to have access to the complete court file due to COVID-19 restrictions, copies of other court documents such as applications and answers; financial statements, 35.1 affidavits and prior court orders may be requested by the court. Additional supporting evidence that is needed for the fair adjudication of the case such as Income Tax Returns, pay stubs and valuations must be disclosed to the other party in advance and brought to the hearing but do not need to be filed with the court in advance.

2. Draft order – The parties must also file a draft order, in a format that can be edited by the presiding judge, containing all of their requested terms. This document can be used by the judge at the end of the hearing if the orders are granted. Standard clauses that may assist in the preparation of draft orders will be posted shortly on the family law section of the Simcoe County Law Association website at <https://www.scla.ca/> or on the Ontario Court Forms website.
3. Confirmation Forms are not required – As Binding JDR hearings are final hearings that replace the need for a trial, they do not need to be confirmed. The parties must be ready to proceed on their scheduled date. Adjournment requests will require an attendance and are only likely to be granted in exceptional circumstances. Parties should advise the Trial Coordinator immediately if the case settles before the hearing date.

Contact Information and addresses to file forms

Trial Coordinator: barrie.scj.tc@ontario.ca

Filing forms with the court: www.one-key.gov.on.ca

Help from Legal Aid Ontario: 1-800-668-8258 (provincially) or 1-888-616-0119 extension 18 (Simcoe and Muskoka).

Names of lawyers providing Unbundled Legal Services: barrieflic@gmail.com

Further information and sample forms: Simcoe County Law Association website: <https://scla.ca/>

Regional Senior Justice

Mark L.J. Edwards

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