

NOTICE TO THE FAMILY LAW BAR AND FAMILY LITIGANTS

A new pilot project is beginning in the Simcoe and Muskoka Superior Court of Justice, Family Court Branch beginning May 3, 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 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 (see below) 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 by May 3, 2021 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.

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/>

A handwritten signature in black ink, appearing to be 'J. Barrie', is written over a faint rectangular box.

April 16, 2021

**HOW TO REQUEST A BINDING JUDICIAL DISPUTE
RESOLUTION (BINDING JDR) HEARING**
(Request and Consent Form)

Court File Number:

RE: _____ v. _____
Applicant Respondent

REQUEST:

I, _____, the Applicant/Respondent (*indicate appropriate party*),

am requesting a Binding Judicial Dispute Resolution hearing

- or -

agree to a request for a Binding Judicial Dispute Resolution hearing

Part A: Resolved Issues

Check the issues that have already been resolved on a final basis (by court order, agreement or consent):

Parenting (including decision making, residential schedules or contact)

Child Support

Spousal Support

Division of Property

Other: _____

Part B: Outstanding Issues

Check the issues that must still be resolved and provide a brief description:

Parenting _____

Child Support _____

Spousal Support _____

Division of Property _____

Other _____

Part C: Undertakings

In order to request a Binding Judicial Dispute Resolution hearing you must agree to the following:

- I will serve on the other party and file with the court an affidavit of no more than 10 pages at least 20 days before the hearing (for the Applicant or moving party) and at least 10 days before the hearing (for the Respondent or responding party). Where needed to respond to new information raised by the Respondent or responding party, the Applicant or moving party can file a reply affidavit of no more than 4 pages at least 5 days before the hearing.
- I understand that if I have not already done so, I will be asked at the beginning of the hearing to confirm under oath or affirmation that everything that is included in my affidavit and said at the hearing is true, as it may be relied upon by the judge when they make a final decision. I understand that it is an offence to make a false statement under oath or affirmation.
- This process is not appropriate where the parties want the judge to review more than a few cases. If I intend to refer to any caselaw during the hearing, I will provide the decisions with my affidavit, hyperlinked to CanLII.
- In addition to my affidavit, I will provide the other party with a comprehensive proposal to resolve each outstanding issue, in the form of a draft order, in a format that can be edited by the judge. Parties are encouraged to use the appropriate sections from the standard Minutes of Settlement to assist with the preparation of this document, which will be available on the Simcoe County Law Association website (<https://scla.ca>). Parties should not include in their draft orders relief that

has not been sought in the pleadings. The parties' proposals will be considered by the judge during the hearing and treated as Offers to Settle if either party requests costs from the other side at the end of the hearing (see Rules 18 and 24).

- I will keep my financial information up to date by ensuring that my Financial Statement and Net Family Property Statements comply with subrules 13(12)(14) and (15) of the *Family Law Rules*. This means I must immediately correct any errors. Where there are financial issues to be dealt with at the Binding JDR, at least 30 days before the hearing, I will also either (i) update my Financial and Net Family Property Statements or (ii) confirm in writing that there are no changes to previously filed Financial and Net Family Property Statements.
- I will complete all of my disclosure prior to my hearing and bring all my supporting documents, including the information that has been used to prepare my financial statement, to court. I understand that the court or the other party may wish to examine these documents and it may be held against me in the court's decision if I do not have them available at the hearing.
- I will promptly advise the Court if a settlement has been reached about any or all of the issues prior to the hearing date by immediately filing a 17F confirmation and contacting the Trial Coordinator.

Part D: Consent

In order to have a Binding Judicial Dispute Resolution hearing you must also agree to the following:

- I have read the attached material and understand the Binding Judicial Dispute Resolution process.
- I understand that I am waiving my right to have my case decided on a final basis at a trial. Instead, I am requesting that the judge take a less formal approach to determining the outstanding issues. I understand that the judge will be directly involved in asking questions during the hearing to obtain the necessary information relating to the issues in dispute.
- I understand that at my hearing, the judge is not bound by traditional rules of evidence and may receive and use any credible information that either party has submitted to the court that is relevant to the issues that are in dispute.
- I agree to waive any rights that I would otherwise have to (i) ensure the strict application of the traditional rules of evidence, and (ii) follow the traditional rules of

evidence regarding the examination in chief or cross examination of the parties or any witnesses.

- I agree and request that the same judge will preside over the resolution phase of the Binding JDR hearing and, if required, make the final decision regarding any issues that remain in dispute. The judge will therefore be aware of any proposals that I have made during the process.
- I specifically waive the provisions of Rule 24(17) and any right to object to the hearing because the presiding judge has assisted the parties with settlement discussions prior to making a decision. I understand that I will not be permitted to withdraw my consent after the Binding JDR hearing begins.
- I understand that the presiding judge will have the same authority as a judge would have at trial to make final orders about any questions of law or fact relating to the admission of evidence or the determination of the issues.
- I understand that the court may rely on reports prepared by independent professionals, including the Office of the Children’s Lawyer, provided the report has been disclosed at least 30 days prior to the hearing. I also understand that the professional will not have to attend the hearing, unless required by the judge, and the judge will determine the appropriate weight to be given to any such reports.
- I understand that, if the children are represented by a lawyer, that lawyer may provide information to the court directly at the hearing, without the children being present. This may include information about the children’s statements regarding their views and preferences. The judge at the hearing will have discretion to decide what, if any, weight should be given to this information.

Part E: Legal Advice

NOTE: YOU ARE STRONGLY ADVISED TO GET LEGAL ADVICE PRIOR TO COMPLETING THIS FORM. *If you do not have your own lawyer, the Family Law Information Centre (FLIC) in Barrie (barrieflic@gmail.com) can provide you with a list of lawyers providing “Unbundled Legal Services” who you can consult at a reduced cost. Information about the process may be available by calling the numbers for Legal Aid below. If you qualify financially, you may be able to discuss your options with duty counsel at a case conference or with the Legal Aid Advice Lawyer available through the FLIC.*

Fill in the details of your legal advice and/or representation below:

I am currently represented by (Name of Lawyer) _____.

- The above-named lawyer will represent me at the hearing.
- I will be represented by (Name of Another Lawyer) _____ at the hearing.
- I will be representing myself at the hearing.

I am not currently represented by a lawyer.

- I have received advice in relation to this request and consent form from (Name of Lawyer) _____; or,
- While I have been advised to seek legal advice in relation to this request and consent, I have chosen not to do so.

AND

- I will be represented by (Name of Lawyer) _____ at the hearing; or,
- I will be representing myself at the hearing.

Signature: _____

Witness: _____

Dated at _____, this _____ day of _____, 2021

Name of Lawyer (if any): _____

Signature of Lawyer (if any): _____

Dated at _____, this _____ day of _____, 2021