Local Government Alternative Dispute Resolution: A British Columbian Case Study

by

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Bachelor of Arts, Carleton University, 2005
Associate in Arts, Cottey College, 2001

A Thesis Submitted in Partial Fulfillment
of the Requirements for the Degree of

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in the Faculty of Human and Social Development

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Supervisory Committee

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Abstract

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This research undertook a case study of the intergovernmental Alternative Dispute Resolution (ADR) process administered by the Ministry of Community Development (MCD) in the province of British Columbia (BC), Canada. This study used concurrent nested mixed research methods in order to discover how best to deliver, monitor, measure, and communicate MCD’s ADR process.

The dominant research approach used was qualitative and involved informal interviews and document analysis. The purpose of the interview portion of the research was to flesh out descriptors and perceptions of MCD’s ADR process with the objective of coming to a greater understanding of current and potential delivery, monitoring, measurement, and communication mechanisms most appropriate for the ADR process. The interviews undertaken in this research also provide the opportunity for MCD staff to deliver feedback on, and offer insights into, the research. The document analysis portion of the research involved a textual analysis of MCD’s electronic and print ADR process communications in order to build on the descriptors and perceptions identified in the interviews, providing for a more full understanding of the ADR process and the delivery, monitoring, measuring, and communication strategies best suited to it.

The nested quantitative portion of the research involved the use of secondary, anonymized data garnered from a survey prepared by MCD’s Director of Intergovernmental Relations which has been in distribution for a number of years. The survey used a Likert scale to measure process indicators. Data from this survey was analyzed to generate information about how participant respondents in the ADR process perceived certain attributes of the ADR services.

Potential implications of this research include: providing applied tools to monitor, measure, and communicate ADR processes, increasing accountability in government administered publicly funded programs, generating ideas around local government ADR
processes, improving dispute management in increasingly complex intergovernmental relational contexts, and addressing the literature gap on ADR processes and intergovernmental relations.

The general findings of this research included clarification of MCD’s ADR process mission, vision, and goals, its communication strategy, and the perspectives of facilitators on both successful and challenging aspects of process delivery. The research findings also identified gaps in process performance monitoring and measurement and discussed the implications of MCD’s ADR process survey data results.

This thesis concludes with recommendations to update process mission, vision, and goals. The thesis also suggests further ways to monitor and communicate MCD’s ADR process and provides templates for doing so. Finally, this thesis identifies opportunities to strengthen practices in process delivery.

In the final chapter, areas for future research are suggested including:

- ADR program evaluations generally,
- Province administered inter-local government ADR processes,
- Comparative work on inter-local government ADR in other national jurisdictions,
- Ways to incorporate diverse methods and cultural approaches to conflicts and disputes into inter-local government ADR processes,
- Studies into BC local government perspectives on MCD’s ADR process, and
- Ways in which BC First Nations governments could be included in inter-local government ADR processes.
# Table of Contents

Supervisory Committee ........................................................................................................ ii
Abstract ................................................................................................................................. iii
Table of Contents ................................................................................................................... v
List of Figures ......................................................................................................................... vi
Acknowledgments ................................................................................................................... viii
Dedication ............................................................................................................................... ix

Chapter 1: Introduction ........................................................................................................... 1
  1.1 Research Purpose and Contribution to ADR Knowledge ........................................... 1
      1.1.1 Purpose ................................................................................................................. 2
      1.1.2 Contribution to ADR Knowledge ........................................................................... 4
  1.2 Research Boundaries ..................................................................................................... 5
      1.2.1 Research Discipline ............................................................................................ 5
      1.2.2 Knowledge Claims .............................................................................................. 7
      1.2.3 Situating the Researcher ...................................................................................... 8
  1.3 Summary ......................................................................................................................... 9

Chapter 2: Literature and Theoretical Issues Review ............................................................ 11
  2.1 Terms of the Review ...................................................................................................... 11
  2.2 Seminal Articles ............................................................................................................ 12
      2.2.1 Alternative Dispute Resolution ........................................................................... 12
      2.2.2 Public Administration .......................................................................................... 25
      2.2.3 Intergovernmental Relations ............................................................................... 27
      2.2.4 Performance Measurement and Evaluation ....................................................... 33
      2.2.5 Summary .............................................................................................................. 42

Chapter 3: Research Background ........................................................................................ 44
  3.1.1 Canadian Federalism and Local Government ....................................................... 44
  3.1.2 Local Government in Canada ................................................................................ 48
  3.1.3 Local Government in British Columbia ................................................................. 53
  3.1.4 BC Local Government ADR Processes ................................................................. 57
  3.2.1 ADR Across Canadian Jurisdictions ...................................................................... 64

Chapter 4: Methodology and Methods .................................................................................. 71
  4.1 Procedures ..................................................................................................................... 71
      4.1.1 Research Questions ............................................................................................. 71
      4.1.2 Research Framework .......................................................................................... 71
  4.2 Methodology and Method ............................................................................................ 74
      4.2.1 Qualitative Methodology and Method ................................................................. 74
      4.2.2 Quantitative Methodology and Method .............................................................. 75
  4.3 Data Collection and Analysis ....................................................................................... 77
      4.3.1 Qualitative Data Collection and Analysis .......................................................... 77
      4.3.2 Quantitative Data Collection and Analysis ......................................................... 78
      4.3.3 Validation ............................................................................................................ 79

Chapter 5: Findings ................................................................................................................. 80
  5.1 Qualitative Findings ...................................................................................................... 80
      5.1.1 Describing the IRPD ADR Process .................................................................... 80
      5.1.2 Monitoring and Measuring the Process .............................................................. 85
List of Figures

Figure 1: Literature Map .................................................................................................................. 12
Figure 2: Conceptual Research Framework ..................................................................................... 72
Figure 3: Reasons for ADR Processes ............................................................................................. 110
Figure 4: Types of Facilitation and their Resolution ....................................................................... 110
Figure 5: ADR Process Survey Responses ....................................................................................... 111
Figure 6: IRPD ADR Program Logic Model ..................................................................................... 119
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I would like to acknowledge and honour the Coast Salish people, whose traditional territory I have lived and worked on these now four years. Though I came uninvited, I have received nothing but grace. Hay ch q’a’.
Dedication

Thank you to my mother Charlotte, my father Robert, my sister Charlotte, and my brother William, whose unswerving support bolstered me through the highs and lows of my scholastic journey. Thank you to Mark, my raison de faire, whose rock-solid foundation enabled me to stand no matter how hard the wind howled. Thank you to Lois Pegg, whose light and good will continually paved the road for me and all my fellows. Thank you to Herman Bakvis for taking a chance on a Dispute Resolution student and for the guidance provided. Thank you to Catherine Althaus for your enthusiasm and commitment at such a perilous point in time. Thank you to James Lawson, for your willingness to come on board as my External Reader. Thank you to Chris for making me laugh and letting me vent. Thank you to each friend and family member for your company on this long expedition. Finally, thank you to the research participants from the Ministry of Community Development, without whose generous giving of their time, support, and expertise, this body of research could not exist.
Chapter 1: Introduction

1.1 Research Purpose and Contribution to ADR Knowledge

The questions driving this research were guided by the British Columbia (BC) Ministry of Community Development’s (MCD) Intergovernmental Relations and Planning Department’s (IRPD) priorities to: (re)develop its Alternative Dispute Resolution (ADR) process description, including its objectives, mission, vision, and goals; and to generate tools to monitor, measure, and communicate the formal and informal ADR processes, including the expansion of IRPD’s ADR post-process survey and its website. The research question central to this study was:

What performance measurement tools are useful for IRPD’s ADR process?

The study and data-gathering processes were guided by the following four sub-questions:

1. What does ADR literature recommend incorporating into ADR processes?
2. What do comparable ADR processes incorporate into their ADR processes?
3. How can information about ADR processes best be monitored, measured, and communicated?
4. What perspectives can IRPD ADR process Dispute Resolution Officers, internal facilitators and resource persons offer to inform an understanding of the ADR process delivery?

Channels explored in an effort to answer these questions included:

- A comparison of BC’s intergovernmental ADR process to similar processes in other Canadian jurisdictions;
- A review of the delivery, monitoring, measurement, and communication mechanisms used for IRPD’s ADR process via both document analysis and interview;
- An exploration of MCD staff members’ perceptions of IRPD’s ADR process delivery via interview; and
- An analysis of IRPD ADR process participant feedback on IRPD ADR process indicators measured using a Likert attitudinal scale.
Participants in the interview component of this research were selected based on their involvement as process facilitators or resource persons in IRPD’s ADR process. The interviews focused on how these MCD staff members perceive IRPD’s ADR process in both its formal and informal capacities. The document analysis component of this research reviewed MCD website and printed texts of relevance to its ADR process internal and external communication strategy. The survey instrument employed in this research was developed by IRPD and is administered on an ongoing basis to IRPD ADR process participants once they have completed their resolution process. The data used from IRPD’s survey consist of responses to several statements measured on a Likert scale. Likert scales are often used in survey research and ask respondents to specify their level of agreement with a statement (i.e. strongly agree, agree, disagree, strongly disagree). All proposed research for this project was subject to an ethical review by the Human Research Ethics Board of the University of Victoria, and a discussion of the research’s ethical considerations is outlined in Appendix I Ethical Considerations.

1.1.1 Purpose

Outside of custom, diplomacy, the courts, insurgency, and war, there is little formal recourse for the reconciliation of intergovernmental disputes, be they at the international, national, or sub-national level. The province of BC, Canada, is one of the few jurisdictions where legislation is in place outlining measures for the formal addressing of disputes both between local governments (municipalities and regional districts) and between local governments and provincial ministries and agencies. The types of processes for dealing with disputes delineated in BC’s legislation can be categorized as ADR.

As so few similarly legislated jurisdictions exist, it follows that very little research has been done on legislated intergovernmental ADR processes. It also follows that research on the delivery, monitoring, measurement, and communication of these processes is minimal. This research aims to address this gap in knowledge as well as to provide academic feedback to MCD through the examination of BC’s intergovernmental ADR process.

Regions with responsibilities to multiple constituencies with diverse interests face complex service arrangement and provision dilemmas. For example, a long-standing
dispute between constituencies within a region of BC existed over a divergence of interests around the region’s water supply. After many years of failed discussions, one constituency involved initiated IRPD’s ADR process to look at the scope of the region’s general administration. Over the course of a year, elected officials from each involved constituency met several times to work together to successfully negotiate an agreement on regional general administration. This agreement significantly changed the allocation of regional administration costs so as to more fairly reflect each constituency’s usage of services, re-allocated the Regional District offices’ building operational costs based on an agreed-to formula, and provided for the relocation of some information housed in these offices into the offices of constituencies that wished to access it.

The participating constituencies’ ongoing working relationships as well as their erstwhile dispute over water distribution were impacted by their experience with the general administration ADR process. Whether the impacts of the ADR process on parties’ relationships and other disputes were negative or positive would depend on the management of the ADR process, the participants’ experience of the process, and the participants’ perceptions of the process outcomes.

Herein is the crux of why it is so important to quantify IRPD’s ADR process, to monitor and measure it, to communicate about it, and to constantly strive for increased functionality of the ADR process and learning around ADR, intergovernmental relations, public administration, and program measurement and evaluation.

The impact on those participating in the general administration ADR process of working together and coming to agreement with those they had historically been at odds has great potential for positive outcomes. But what if:

1. Parties were unclear on the ADR process or some parties had a better knowledge of the ADR system than others? Lack of or unequal access to process tools could lead to an unequal agreement.
2. One of the parties involved in the dispute refused to authentically engage in the ADR process? An agreement which did not reflect the recalcitrant party’s interests would suffer from lack of buy-in.
3. All parties bought-in and came to an agreement using the ADR process, but the agreement was unclear on how to enact the agreed-to conditions? A
dispute resolution lacking follow-through would be a waste of time and would lead to apathy and mistrust between parties.

4. A party bought-in to an agreement on the whole, but had misgivings about how certain aspects of the ADR process unfolded? If such a party had no outlet to air its grievances, the party’s willingness to participate in another ADR process would likely be reduced.

The reader is invited to actively reflect on the potential positive or negative outcomes of participation in an ADR process throughout the length of this thesis.

1.1.2 Contribution to ADR Knowledge

This research is important because it makes available practical ways for government to monitor, measure, and communicate its services. The research contributes to a feedback-rich environment for IRPD’s ADR process delivery. Making tools available and providing feedback facilitate improved accountability and representation of IRPD’s ADR services to stakeholders. Additionally, this research addresses the void of academic literature on the intersections of ADR, performance measurement and evaluation, public administration, and intergovernmental relations. The research helps capture current theory on smart ADR practices¹ so as to provide insight into the improvement of these practices. Finally, the knowledge generated from this research contributes to the bettering of relations between local and provincial governments.

The idea for this research was initiated by an internal report produced in 2007 by IRPD which made recommendations for improvement of its ADR process deliverables measurement, communication strategy, and promotion. Upon further discussion with IRPD’s Director of Intergovernmental Relations, several priority areas for IRPD’s ADR process were identified and further work towards improving process delivery, monitoring, measuring, and communication was proposed. Using this 2007 internal report as a preliminary document from which to shape the research undertaken in this thesis assured the practicability and value of the proposed thesis research.

In addition, an IRPD internal report from 2004 suggested that “…more specific studies on certain communities and experiences of other municipalities in similar

¹ The concept of smart practices is introduced by Bardach (n.d.) and is discussed further in section 2.2.1.
situations could help parties in dispute and [MCD] become better informed…” (Kaul 2004, 52). Some ideas captured in this 2004 internal report are expanded upon in the thesis research, serving again to link this new study with previously undertaken work.

1.2 Research Boundaries

1.2.1 Research Discipline

This research falls within the discipline of Alternative Dispute Resolution (ADR). Though the practice of ADR stretches back to pre-historic human relations across all cultures and continents, the study of ADR as it is taught today developed in the 20th Century with a strong presence in both Canada and the United States. Deutsch’s (1973) seminal discussion of alternatives to litigation in two-and multi-party conflicts gave rise to a body of literature primarily in the field of Law which explores different facets of ADR (Jackson 1997). Though theories, approaches and outcomes vary greatly, most in the field of ADR agree on these tenets: conflict is everywhere, it is not necessarily bad, and it is important to attend to it in some manner (Chicanot and Sloan 2003). This is as opposed to the many historical theories (discussed in section 2.2.1) and contemporary applications whereby conflict is construed as abnormal, bad, and best left unexamined.

Canadian ADR practices grew out of trepidation surrounding inconsistencies in sentencing, the alienation experienced by those involved in quarrels or crimes, and concerns around how labelling those involved in disputes contributed to their stigmatization (Picard 1998). In the United States, ADR blossomed in the 1960’s from a desire for greater judicial harmony, efficiency, and access to justice (Picard 1998). It is believed to have stemmed from church, social service, and citizen advisory groups, as well as in response to the congested, costly legal system perceived to serve only those with money and power (Picard 1998).

ADR processes in both Canada and the United States aim to emphasize the agreement of participants on outcomes, favour mediation over adjudication, acknowledge that parties can protect their interests and defend themselves “through a process conducted in ordinary language” “in a deprofessionalized setting,” and promote an environment free from institutionalized coercion (Picard 1998, 11). Picard (1998) and Folberg and Taylor (1984) are excellent resources for further insight into ADR history and development.
Particular terminology in the field of ADR tends to be used indiscriminately; the terms “dispute” and “conflict,” enjoy distinct meanings that are frequently blurred. Conflict is the “divergence of goals, objectives, standards, attitudes, or expectations between individuals or social units,” and can be either latent or manifest (Chicanot and Sloan 2003, 57-58). Disputes are “manifest conflict, in which the issues are typically identified, the parties known and the ‘particularity’ of the conflict is understood by those involved” (Chicanot and Sloan 2003, 57-58). So while a dispute is a conflict, a conflict is not always a dispute.

Debate over the proper naming of the ADR field entails, in addition to ADR, use of the terms dispute resolution, conflict management, conflict resolution, and conflict transformation. Some conflicts or disputes may be better termed as managed or transformed rather than resolved. However, the term “ADR” is used here due to its broad recognition.

The IRPD ADR process uses a type of ADR called Interest Based Negotiation (IBN), and this type of process is therefore the focus of this research. The pillars of IBN are: separate the people from the problem; focus on interests, not positions; invent options for mutual gain; and insist on using objective criteria (Fisher and Ury 1991). Other popular types of ADR include cross-cultural, transformative, and circle practices, as well as restorative justice. These specialties are not mutually exclusive and often intersect in more complex ADR situations.

Critics of ADR contend that ADR processes expand state control, re-legitimize the formal legal system, provide second class justice (Picard’s review finds a disproportionate number of people referred to ADR processes are poor, black, and female), create institutions of political control, and lead to legal rights violations, exploitation, coercion, and expansion of the state into private lives (Picard 1998). According to Sutherland (2005), ADR – and IBN in particular – can support imperialist attitudes and practises. Further, Sutherland (2005, 89) contends that IBN is steeped in “an individualistic worldview where the ultimate value in personal and social life is individual satisfaction” begot by the resolution of substantive issues through rationality, direct communication, and efficiency without thought to systems of domination, injustice, greed, or relationships. Sutherland (2005, 89-90) also claims that ADR draws
on the Newtonian belief that “the universe is made up of separate objects acting in isolation”; the social Darwinist belief that “human nature is inherently self-interested and concerned with its own preservation and in competition over scarce resources”; and the Cartesian belief in “separation of the mind from emotions”, which some theorists and practitioners find problematic.

Though it is not the purpose of this research to delve into these critiques at any length, the critiques should not be taken lightly and ADR practitioners, theorists, and enthusiasts would do well to keep them in mind at all times. There are, however, certain situations in which ADR and IBN processes are appropriate. BC local and provincial governments traditionally and historically draw largely on the cultural practices of Canadian white middle and upper class men, a culture whose attitudes and practices are still the norm in many work places, and a culture whose attitudes and practices mesh well in BC with the principles and procedures of IBN ADR. Therefore this researcher considers IRPD’s intergovernmental ADR-IBN focused framework as an appropriate situation in which to use IBN ADR.

This is not to say that other types of ADR would not be possible or should not be explored for use in the context of IRPD’s ADR process. On the contrary, by expanding the repertoire of dispute-addressing practices available to those involved with IRPD’s ADR process, the ADR process experience can only be enriched. Enrichment of IRPD’s ADR process by incorporating practices outside of IBN will likely become increasingly important as BC’s population continues to diversify and as First Nations governments are increasingly brought into the fold of Canadian provincial and local intergovernmental relations.

1.2.2 Knowledge Claims

A knowledge claim involves stating one’s assumptions about how and what will be learned through the course of a research project (Creswell 2003). This can be understood as the outlining of a philosophical assumption, epistemology, ontology, high level research methodology, or paradigm (Creswell 2003).

Pragmatism is “a philosophical underpinning for mixed methods studies” in which “researchers use all approaches to understand the problem” (Creswell 2003, 11):
[It] is not committed to any one system of philosophy and reality….inquirers draw liberally from both quantitative and qualitative assumptions when they engage their research. Individual researchers…are ‘free’ to choose the methods, techniques, and procedures of research that best meet their needs and purposes. Pragmatists do not see the world as an absolute unity….[and] look to many approaches to collecting and analyzing data rather than subscribing to only one way. Truth…is not based in a strict dualism between the mind and a reality completely independent of the mind. Thus, in mixed methods research, investigators use both quantitative and qualitative data because they work to provide the best understanding of a research problem….Pragmatists agree that research always occurs in social, historical, political, and other contexts (Creswell 2003, 12).

This research uses a pragmatist knowledge claim to employ a social constructivist perspective. The pragmatist approach was selected for its strong resonance with the researcher’s general experience. Social constructivists assume that knowledge is experiential, relational, produced through the interactions of people with their environments (including biases, privileges and power dynamics), and represents one truth among many possible renderings (Winslade and Monk 2000; Potts and Brown 2005). Social constructivists elucidate their senses of self, history, and relationships in order to reveal assumptions and thought patterns that may impact their research (Creswell 2003; Potts and Brown 2005).

By making known the researcher’s assumptions and thought patterns, the researcher hopes to highlight his or her potential partialities for the consumer of the research, in order that the consumer integrate these possibilities into his or her understanding of the research product. This is often referred to as “situating” or “positioning” oneself in relation to one’s research, and this researcher attempts to do so in the following section.

1.2.3 Situating the Researcher

I am roughly fourth generation Canadian, with cultural ties to England, Ireland, Scotland, and Wales. I grew up in a big city in Ontario, but throughout my childhood was treated to frequent visits to more rural locations to visit family and friends. At the age of eighteen I left home to attend college in a small town in Middle America. These
urban/rural Canadian/American insider/outsider contrasting locales offered a wide spectrum of learning around the trials and triumphs of inter-group, cross-cultural, and identity-based communication, understanding, and conflict. This learning was supplemented by numerous excursions into national and international travel.

As an undergraduate taking a BA in Political Science in Canada’s capital city of Ottawa, I especially enjoyed studying Canadian politics. Through my undergraduate program I had the opportunity to work in the Canadian and British Houses of Parliament, providing me with first-hand experience of intergovernmental considerations. During the final year of my BA I studied in-depth the machinations of the Oka Crisis, a devastating Canadian dispute that took place in 1990 and involved Canadian First Nation, federal, provincial, and local governments, as well as extra-governmental factions.

As a graduate student in Dispute Resolution, I have intensified my understanding of conflict via study of ADR theory, participation in ADR skills training workshops, volunteering with ADR organizations, and undertaking work terms involving cross-sectoral consultations and various forms of intergovernmental dispute resolution, including ADR and formal legal processes.

Additionally, I value applied research and research that involves working with community groups or members. Universities are well positioned to collaborate with communities in order to produce meaningful research that contributes to community well-being. Working on this research with MCD ensured practicability of the research and enabled connection to the community in which I live.

I believe my past experiences and research interests provided me with a relevant background from which to explore various facets of IRPD’s ADR process. However, my immersion in Canadian intergovernmental and ADR culture influenced my perception of the information I received. I therefore relied on participant and peer feedback and indications from the literature to guide me in correcting any potential omissions or misunderstandings throughout the research process (see Appendix I Ethical Considerations for further discussion).

1.3 Summary

Chapter 1 discussed the purpose of this thesis research, its contribution to knowledge in the field of ADR, the discipline the research falls under, the knowledge
claims of the researcher, and situating the research within the research. The remaining thesis chapters take the reader through an exploration of literature and theoretical issues (Chapter 2), a further contextualization of the research background (Chapter 3), the research methodology and methods (Chapter 4), research findings (Chapter 5), and finally, research recommendations and conclusions (Chapter 6).
Chapter 2: Literature and Theoretical Issues Review

2.1 Terms of the Review

The purpose of this review is to create a picture of the work previously carried out on the subject of intergovernmental ADR processes and related studies. This review took several months to compile, and both scholastic and public libraries were combed for relevant works. It became evident quite early on that works related to this subject were scarce. Search terms included combinations of public administration, performance measurement and evaluation, intergovernmental relations, provincial-municipal relations, and conflict or dispute resolution, yet most joint searches of these terms produced few results, obliging the review to be quite broad. This contributed to the length of time needed to review thesis, dissertation, journal, newspaper, and book titles for relevance.

Literature on ADR and Interest Based Negotiation (IBN) was the main focus of this review; however, works from the fields of public administration, intergovernmental relations, and performance measurement and program evaluation were also considered. This review is organized thematically, and articles where subjects overlap are placed in the thematic section to which they most prominently relate.

The literature map diagrammed in Figure 1 captures the way these distinct areas of study can overlap to indicate new and more specific areas for future research. For example, where the fields of public administration and intergovernmental relations overlap an area for study is indicated; where these two circles overlap with the ADR circle, further area for study is suggested, and so on. The research undertaken in this thesis, while concentrating on ADR, attempts to get at the crux where these four spheres overlap.
2.2 Seminal Articles

2.2.1 Alternative Dispute Resolution

Classical philosophers like Plato and Aristotle considered conflict to be a threat to the state and recommended that it be contained as much as possible. In the 17th Century, Hobbes and Locke argued the necessity for a social contract to buffer the citizenry from conflict. Currently, many theorists believe that rather than being undesirable and harmful, conflict is vital to the healthy functioning of a society (Picard 1998).

Traditionally, modern ADR focused on interests, rights, or power (Ury, Brett, and Goldberg 1988). Power based ADR was considered most costly, followed by rights and then interest based ADR, which was thought to result in lower monetary and relational costs, higher satisfaction with outcomes, and less frequent dispute recurrence (Ury, Brett, and Goldberg 1988). More recently, some ADR practitioners and participants have introduced the concept of value-based negotiation, and others have called for more
holistic approaches which deconstruct systems that perpetuate power imbalances and encourage interdependence between humans and the environment (Sutherland 2005). Picard (1998) notes that disputes are:

- **Intrapersonal:** within a person and related to moral decisions, the use of resources, or personal goals;
- **Interpersonal:** between two or more people;
- **Intragroup:** between individuals or sub-groups; and
- **Intergroup:** between communities, organizations, cultures, or nations

Disputes can be fuelled by both cooperative and competitive interests (Picard 1998). Cooperative interests can lead to resource and benefit maximization (integrative bargaining) while competitive interests can lead to exclusive consideration of one’s own interests (distributive bargaining) (Picard 1998). Whether a dispute is constructive or destructive depends on “the relative strengths of the conflicting parties’ cooperative and competitive interests” (Picard 1998, 4). A collaborative approach engages the root cause of a dispute and leads to the learning of new skills (Karambayya and Brett 1989). This makes collaborative ADR very useful for contexts where disputes tend to recur between the same parties around the same issues (Karambayya and Brett 1989).

Disputes are also sometimes thought of as zero, positive, or negative sums. Zero-sum disputes are those where one party cannot gain its ends without depriving the other party of its ends (Spangler 2003). This usually occurs when negotiations are competitive and resources are inflexible (Spangler 2003). Positive-sum disputes are those where total party gains and losses are greater than zero; resources are flexible and negotiations are interest-based (Spangler 2003). Negative-sum disputes occur when resources are diminishing and total party gains and losses equal less than zero (Spangler 2003).

The ADR continuum encompasses processes that are informal, interest based, inexpensive (compared to the formal legal system), private, voluntary, and party controlled (Picard 1998; Sutherland 2005; Ury, Brett, and Goldberg 1988). At the same time, the ADR continuum also encompasses processes that are formal, legal norm based, expensive, public, involuntary, and not controlled by parties (Picard 1998; Sutherland 2005; Ury, Brett, and Goldberg 1988). ADR processes used to address disputes range from prevention, (re)conciliation, negotiation, mediation, arbitration, adjudication, and
force (Picard 1998; Sutherland 2005; Ury, Brett, and Goldberg 1988). Theoretical approaches to dispute resolution include conflict transformation, resolution, management, and suppression (Picard 1998; Sutherland 2005; Ury, Brett, and Goldberg 1988).

Understanding the substance of disputes involves discovering who the disputants are, important players associated with the dispute, the type and frequency of disputes, organizational, relational, or contextual impacts on the amount and content of disputes, and dispute causes (Ury, Brett, and Goldberg 1988).

**ADR Smart Practices**

Many ADR theorists and practitioners suggested ADR methods they considered successful, or what can be termed as “best practices”. The term “best practices” is problematic, as taking the time to prove something is “best” is rarely done, and suggesting something is “best” across all inconstants is foolhardy (Bardach n.d.). Bardach (n.d.) suggests, instead, to consider practices used successfully in other contexts as “smart practices.” Bardock (n.d., 1) defines a smart practice as “An ‘interesting idea’ embedded in some practice” which “the researcher must analyze, characterize in words, and appraise as to its applicability to the local situation.” This literature review reflects here on “smart practices” recommended by ADR theorists and practitioners. The identified smart practices are then considered in later chapters of this thesis in terms of their applicability to IRPD’s ADR process. For further information on best versus smart practices, Bardach (n.d.) provides a succinct and helpful discussion.

Smart ADR practices come under four categories: process, skills, attitudes, and context. Chicanot and Sloan describe process, skills, and attitude as “a fascinating interplay” of “what makes a dispute resolution event tick” (Chicanot and Sloan 2003, 1). According to Chicanot and Sloan (2003, 1) process is “how we carry out what we do,” skills are “an intentional exploration of what we do,” and attitude is “the foundation that knits it all together”. Chicanot and Sloan do not name context as a major component to ADR events; however, their definition of “attitude,” which is “that bundle of values, theories, philosophies, beliefs and principles that motivates us,” can easily be interpreted to collapse together the categories of attitude and context, seen as distinct here (Chicanot and Sloan 2003, 1).
a) Process

Chicanot and Sloan understand *process* as “a procedural skeleton on which to build the [ADR] activity” (Chicanot and Sloan 2003, 1). ADR literature recommends incorporating a variety of process steps, with different authors favouring different wording, or emphasis. The following list is a compilation of process steps recommended by Jackson (1997), Picard (1998), Folberg and Taylor (1984), Fisher and Ury (1991), Sutherland (2005), Ury, Brett, and Goldberg (1988), Carnevale (2003), Kaner, Lind, Toldi, Fist, and Berger. (1996), Poitras and Renaud (1997), Ryan (1998), and Schwarz (2002):

- Planning and logistics;
- Identifying, consulting with, and organizing the parties;
- Introducing the parties to the process and its alternatives;
- Laying out ground rules;
- Setting an agenda;
- Identifying issues and points of contention and escalation;
- Exploring interests;
- Sharing information;
- Generating and assessing options;
- Reaching agreement;
- Clarifying, writing, having a lawyer review, and signing the agreement; and
- Agreement implementation, monitoring, reviewing, feedback, and revision

An ADR process should enable participants to address what happened to cause the dispute and why; the impact of the dispute; and the mechanism needed to repair and prevent further problems (Pranis 2005). When possible, Kaner, Lind, Toldi, Fist, and Berger (1996), suggest that facilitators incorporate the following process tools in order to cultivate these activities:

- Presentations and reports;
- Idea-listing;
- Working in small groups;
- Individual writing;
- Structured “go-arounds”;
• Computer assisted meetings;
• Experiential learning;
• Multi-tasking; and
• Debriefing a structured activity

In order to keep participant distress at a minimum, the arrangement of process choices should move from lowest to highest personal, interpersonal, and financial cost in procedural order (Ury, Brett, and Goldberg 1988). All procedures should include ways to move back from high-cost to more low-cost process options should participants so desire (Ury, Brett, and Goldberg 1988). Ury, Brett, and Goldberg (1988) provide an example of such an arrangement as follows:

• Prevention procedures such as notification, information, consultation, quick verbal handling of disputes, and post dispute analysis and feedback;
• Interest-based procedures with multiple points of entry, such as negotiation and peer or expert mediation, and mediation-arbitration; and
• Rights and power procedures such as advisory arbitration, conventional arbitration, expedited arbitration, final offer arbitration, mini-trial, and summary jury trial

ADR processes are not automatically neutral and value-free (Pranis 2005), and for this reason ADR process “ground rules” were noted in many texts as integral to ADR process function. Schwarz (2002) suggests ground rules for assisting process momentum such as:

• Testing assumptions;
• Sharing information;
• Using examples;
• Defining important vocabulary;
• Explaining reasoning and intent;
• Focusing on interests;
• Using advocacy and inquiry;
• Jointly designing the process
• Laying out ways to test disagreements;
• Discussing the “undiscussable”; and
• Using a decision-making rule that encourages participant commitment

ADR process decision-making is aided by: clearly characterized objectives based on stakeholders’ concerns, creating a set of appealing alternatives and employing good technical information about these alternatives, identifying the tradeoffs the alternatives entail, and summarizing the areas of and reasons for agreement and disagreement (Gregory, McDaniels, and Fields 2001).

In order to prevent further fracturing and disputes between parties, the agreement document stage of an ADR process should ensure the final document clearly states participant intentions, decisions, and future actions in a concise, comprehensive, and easily accessed language and format (Folberg and Taylor 1984). The agreement should be understood as a working document which will undergo legal review or amendment to reflect changing realities, and should be provided to each participant for review prior to a next meeting at which time any unresolved underlying conflicts can be addressed (Folberg and Taylor 1984). Facilitator initiated follow-up at specified intervals can ensure agreement implementation is going as planned (Folberg and Taylor 1984). Follow-up may include: phone calls, letters, or personal contacts by the mediator (Folberg and Taylor 1984). A participant comprised monitoring committee is another way to supervise agreement implementation and to discourage future dispute development (Poitras and Renaud 1997).

There is disagreement in the literature as to whether internal or external ADR processes are more ideal. The term “internal” or “in-house” ADR process is used here to indicate an ADR process for disputes that an organization (ministry, company, etc.) is involved in that is managed on an ongoing basis by those working within the organization. Some literature indicates that having an in-house ADR process empowers participants to have control over the handling of their own disputes and enables them to uncover mutual interests to create a resolution unique to the problem and organization (Ryan 1998). Some authors believe in-house facilitators will have insight into the group context and culture, the process will be less costly, and he or she can be readily available in order to avoid dispute escalation (Ury, Brett, and Goldberg 1988; Schwarz 2002).
Schwarz (2002) and Roberts (1994) suggest that problems with in-house facilitators can arise, including when facilitators:

- Make inaccurate assumptions and inferences;
- Are too embedded in the culture;
- Have trouble establishing boundaries around when the facilitator is available to work on the process;
- Have trouble establishing boundaries around when the process is over;
- Are too high or too low a position in the work hierarchy to gain participant trust;
- Have an “insider image” or seen as too close to the problem, neutral or blind;
- Are perceived as having compromised independence; and
- Have job security endangered

An ADR process consists of five stages: preparation (“getting up to speed”), introduction (“creating tone and dealing with questions”), issues (“setting out the stories and deciding what to solve”), interests (“exploring what’s important and why”), and solutions (“helping the parties to find outcomes that achieve the identified interests”) (Chicanot and Sloan 2003, 30-38). Frequent process problems include group members selecting inappropriate process tools, focusing on different stages, follow stages out of order, using a stage incorrectly, or behaving ineffectively within a stage (Schwarz 2002).

b) Skills

The second category of smart ADR practices is that of skills: “any behaviour, activity, or tactic…used in the [ADR] process” (Chicanot and Sloan 2003, 2). Because navigating ADR processes can be challenging, it is important that participants are furnished with the skills to use the process via training and coaching (Ury, Brett, and Goldberg 1988). Skills training and coaching can ensure participants have a common vocabulary, instil common expectations around behaviour, and provide a safe venue for experimenting with new skills (Ury, Brett, and Goldberg 1988). According to Ury, Brett and Goldberg, training enables participants to: identify interests, create options, and

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2 An example of this might be the use of a “talking stick” to indicate whose turn it is to speak when participants are more familiar with and prefer the meeting conventions of Robert’s Rules of Order.
consider trade-offs prior to disputes. Afterwards they can debrief and get feedback on
their skills (Ury, Brett, and Goldberg 1988). Ury, Brett, and Goldberg (1988) also suggest
that process navigation is aided through:

- The demonstration of procedures;
- The use of leaders as examples;
- The use of peers as advocates;
- Goal setting;
- The provision of incentives; and
- The publication of early success.

Timing is an important ADR skill, as disputes tend to escalate the longer they are
left unattended. Smart ADR processes will have firm timelines and deadlines, with some
flexibility for investigation and resolution, depending on the character and intricacy of
the dispute (Ury, Brett, and Goldberg 1988; Ryan 1998). Throughout an ADR process,
time should be allowed not only to address the dispute, but also to build group and
individual capacity to address the dispute (Schwarz 2002). Unforeseen circumstances can
put intense pressure on ADR process participants and their staff, and this likelihood
should be factored into process scheduling and the expectations placed on participants
(Roberts 1994).

The following list is a compilation of ADR facilitator skills recommended in
Poitras and Renaud (1997), (Carnevale 2003), and Pranis (2005):

- Helping to frame
  negotiations;
- Fostering constructive
dialogue;
- Helping parties find a
  solution;
- Helping create a safe,
  respectful, open, fair, and
  inclusive space and process;
- Encouraging participation
  and understanding;
- Cultivating shared
  responsibility;
- Understanding contextual
dynamics;
- Trust and rapport-building;
- Interests and needs
  assessment;
Undertaking option inventories; Dealing with anger; Empowering participants; Refocusing, paraphrasing, and reframing input; Reality-testing; Information-sharing; Deadlock, pattern, and stereotype breaking; Using humour; Goal-setting; Identifying agenda items and ordering; Strategic and temporary planning; Rewarding and affirming; Building momentum; Caucusing; Balancing power; Conflict identifying and analysis; Agreement writing; Credibility building; Developing ground rules; Grief counselling; Skilled listening and articulation; Patience; Inclusive; Non-judgmental; Flexibility; Imagination; Self-awareness; Sensitivity; Resourcefulness; Reliability; Respectability; and Humility

Though this list seems rather exhaustive, many of the skills overlap with one another and, depending on the situation, may even conflict at times. The skill list is not meant to illustrate an array of artillery that facilitators must master before engaging in ADR, but rather a repertoire from which facilitators may draw from and improve upon throughout their years of practice. Many of these skills are held in common with those that are useful in other “helping professions”.

Expanding on the concept of the highly valued skill of communication, the following list is a compilation of recommended communication techniques from Carnevale (2003) and Kaner, Lind, Toldi, Fist, and Berger (1996):
• Diverse communication styles;
• Paraphrasing;
• Drawing people out;
• Mirroring;
• Gathering ideas;
• Stacking and tracking ideas;

Skillful communication is a type of cooperation or collaboration which draws on Buber’s (1958) recognition and confirmation of the worth of the “Thou”/intrinsic value of a person, independent of one’s own attachments to or designs for them.

c) Attitude

The third category of smart ADR characteristics, attitude, consists of “values, theories, philosophies, beliefs, and principles that motivate” (Chicanot and Sloan 2003, 1). An ADR process can be well thought out and skills engaged, but people’s attitudes can:

…[lead them to] fall into a trap where their beliefs are the truth, the truth is obvious, their viewpoints are based on real data, and the data is selected and relevant data. A seamless circuit is created that is self-reinforcing and feels right even when it reflects only a partial and often distorted view of existence (Senge et al 1994, 242-246 cited in Carnevale 2003, 40).

People do not like being wrong and the fear of loss of face can prevent them from acknowledging they are wrong even when they come to know it on some level: “Shame and blame is such an unhappy part of our work culture that persons learn to cover mistakes and resist looking wrong” (Carnevale 2003, 42). To protect themselves from “hostile information,” people can unconsciously repress, deny, project, rationalize, and idealize (Carnevale 2003, 44). This can be compounded by “sin-bagging”; where people use prior unresolved conflicts or perceived mistreatment and injustice to validate their current experience of frustration and powerlessness (Carnevale 2003, 100).

ADR processes are greatly aided by participant attitudes of authenticity, which engender a process where the groups’ collective wisdom can be used to solve problems
all involved both give and receive wisdom, creating insight into the problem and possibilities for solutions (Jackson 1997; Pranis 2005). Authenticity might be embodied in commitment and good will signified by congruence of language and actions, genuine apologies, a focus on social change, action on research and information, inclusion, and suitable processes (Sutherland 2005, 72-73).

Attitudes of trust are also important throughout an ADR process (Ryan 1998; Carnevale 1995). Trust is the “faith or confidence in the intentions and actions of a group to be ethical, fair, and non-threatening concerning the rights and interests of others in social exchange relationships” (Ryan 1998, 17). Trust results from spending time with people and from a perceived sharing of interests, which creates interdependence and care between participants, from explaining the process, consulting with parties, fairness, and active listening (Ury, Brett, and Goldberg 1988; Poitras and Renaud 1997; Pruitt and Rubin 1986; Pruitt and Syna 198980). Trust can lead to empathy (demonstrations of concern), perspective taking, and sensitivity to the needs and experiences of others (Poitras and Renaud 1997; Zubek et al. 1992). Carnevale (2003) advises that attitudes espousing ethical behaviour include:

- Avoiding petty disputes;
- Keeping promises;
- Working with people with different ideas and values;
- Being civil;
- Refusing to engage in character assassination;
- Communicating openly about positions and preferences;
- Being willing to accommodate, compromise, and collaborate;
- Keeping conflict functional;
- Allowing people to save face;
- Telling the truth; and
- Not promoting “zero-sum legitimacy”

When attitudes shift, openings for reconciliation – “the parallel process of personal and political transformation from systems of domination to relationships of mutuality” – can occur (Sutherland 2005, 150). This opening is facilitated by participants
examining the path of their relationship versus the path of their conflict (Doe cited in Sutherland 2005, 86). Reconciliation involves “‘righting’ a relationship along the dimensions of self, others, nature, and spirituality” (Sutherland 2005, 149). Sometimes it is the process of taking the time to go through the ADR process and become exposed to new information and actions that enables people’s attitudes to shift (Carnevale 2003, 46). When people go through an ADR process they “get the time they need to gain insight that something is wrong and they can do a lot about it. Opening people to change is pure artistry” (Carnevale 2003, 46).

Emotions are construed in this research as falling under the theme of attitudes, although it may be more accurate to say that emotions are the outcomes of the catalytic interactions of people’s attitudes. Understanding the physiological events that bring about emotions can help better shape responses to them, as people can identify their physiological experiences and corresponding strategies for best coping with them. When experiencing emotions, the amygdala and the neocortex send messages to the brain (Schwarz 2002). The neocortex prompts people to think about how they feel, while the amygdala decides whether the situation is threatening (Schwarz 2002). If the amygdala senses a threatening situation, it reacts angrily or defensively, even when a person is not actually in danger (Schwarz 2002).

People’s attitudes about their own and other’s emotions impact ADR processes, yet the recommended role for emotions to play in ADR processes is highly debated and is at least partially attributable to the Western cultural practice of not disclosing emotions in work or public life. Some practitioners recommend providing room for emotional expression and even claim that expressing emotions can be crucial to resolution (Picard 1998; Schwarz 2002), while others recommend “managing” the “emotional climate” through “diagnosis” and “intervention” in order to “regain effectiveness” (Ury, Brett, and Goldberg 1988, 6). Those that recommend the latter approach prescribe slowing down, using compassion, experiencing and naming emotions, identifying their source, and emphasizing the use of skills to “manage” emotions (Schwarz 2002).

When a process comes to the decision-making stage, attitudes remain critical: it is important to preserve people’s honour as it represents a huge part of their accepting or rejecting an agreement; people like to be perceived as being leaders, pragmatic, and fair
(Poitras and Renaud 1997). How an agreement is implemented is also affected by attitudes. Acceptance of an agreement within a community can range from a belief in and ownership of the decision and a will to do whatever is necessary to implement it effectively (internal commitment), support for the decision and a will to work within one’s role to implement it (enrolment), acceptance of but not a belief in the decision with a will to do what is formally required within one’s role to implement it (compliance), opposition to the decision without following through on the formal requirements within one’s role to implement it (non-compliance), and actively undermining the agreement (resistance) (Schwarz 2002).

d) Context

The fourth and final category of smart ADR practices is minding a dispute context, and this speaks to a dispute’s historical, sociological, cultural, economic, and physical contexts, which impact the nature of a dispute, the resources required for its resolution, and the resolution itself (Picard 1998; Ury, Brett, and Goldberg 1988; Wallace 1988).

The social context includes expectations, relationships, personalities, the number of participants, and openness to interveners or observers (Picard 1998). It includes community morals, knowledge, skills, concerns, values, and commitments, which arise from, enable, and foster communities (Wallace 1988). People from the community can support ADR processes by providing for needs, teaching skills, building bridges, mediating conflicting interests, arbitrating disputed rights, equalizing power, healing injured relationships, witnessing, refereeing limitation, and peacekeeping and protection (Ury 1999).

Physical context (the environment where the ADR process takes place) includes location, communication options, time limits, seating, spaces, and ability to see visuals (Picard 1998; Schwarz 2002). These can symbolize equality, connection, and inclusion and promote focus, accountability, and participation (Pranis 2005).

Culture always impacts how dispute resolution processes unfold. Culture can be conceived as “…the fundamental worldview, the structural dimensions, and the more visible aspects such as customs, language, food, habitation, and technology” (Sutherland 2005, 15-16). Culture can refer to race, ethnicity, gender, age, socioeconomic status,
sexual orientation, educational levels and physical ability (Picard 1998). Understanding culture-specific systems of meaning contextualizes disputes, identifies those involved, helps direct the process for entering into the dispute, and helps understand how to resolve it (Picard 1998). Culture “shape[s] the ways in which conflict is viewed, discussed and resolved” presenting “a ‘lens’ through which conflicts are perceived and interventions or reactions are developed” (Picard 1998, 14).

The history, variety, and recommended approaches to process, skill, attitude, and context of ADR, discussed in this section provide a context within which to base how these practices intersect with the disciplines of Public Administration, Intergovernmental Relations, and Performance Measurement and Program Evaluation, which are the topics of the subsequent sections of this chapter.

2.2.2 Public Administration

ADR is especially relevant to public administration because public institutions “are nested in a vortex of competing stakeholder demands and charged with trying to carry out legislative mandates that are often unclear”; disputes over public policy issues can be long lived and heated (Carnevale 2003, 112). Though there are great gains to be reaped from the combination of the fields of public administration and ADR in teaching and research, this systematic combination is infrequent in the literature (Lan 1997).

The proclivity for complex relations and disputes in the public sphere is compounded by “unique obstacles” (Golembiewski 1985). Golembiewski (1985) contemplates these in the context of American public sector disputes as being:

- Legal restrictions;
- Lack of economic incentive and market indicators;
- Multiple access points;
- Quasi-governmental action;
- Public scrutiny and suspicion;
- Volatile political/administrative interfaces;
- Jurisdictional boundaries;
- Diverse interests, values, and incentives;
- Procedural regularity and rigidity;
- Short time frames;
- Weak chains of command;
- Lack of professionalism; and
- Complexity of objectives

Though the above list of “unique obstacles” does not exactly describe obstacles encountered in Canadian federal and provincial contexts, however the list’s applicability to the Canadian local government context is more arguable. Even so, generally applying some obstacles listed above to the Canadian context — such as lack of professionalism, for example — could only be argued with great difficulty, and this argument is not attempted or endorsed in this thesis.

Escalation of these disputes tend to be caused by inflammatory public statements, personality conflicts, disagreement over scientific data, unhealthy psychological relationships, differing values, and poor dissemination of information (Poitras and Renaud 1997).

Poitras and Renaud (1997) explain that public disputes can occur within a political context and be divided into three segments of interests:

- **Economic**, including investments, job creation, and financial profitability;
- **Social**, including standard of living, satisfying needs, justice and social equality; and
- **Environmental**, including environmental protection, rehabilitation of contaminated sites, and enhancement of natural sites.

Social costs and benefits to these disputes include economic losses, social stress, destroyed partnerships, social impasse, integrative solutions, reconciliation of interests, cooperation, and social evolution (Poitras and Renaud 1997).

Collaborative approaches to public disputes minimize costs and maximize social benefits via direct communication, problem-solving, consensual decision-making, and win-win outcomes (Poitras and Renaud 1997, 18-19). Likewise, adversarial approaches unintentionally maximize the social costs of confrontation via indirect communication, argumentation, independent decision-making, and win-lose outcomes (Poitras and Renaud 1997, 19). Of course these strategies will have different effects depending on dispute contexts.
Ideally, public ADR processes should: prevent conflict from escalating, reconcile interests, seek a mutual-gain solution, coordinate participant effort, and integrate transparency (Poitras and Renaud 1997, 25, 109, 20). Incorporating these approaches requires a willingness to resolve disputes, to explore areas of disagreement, to seek a win-win outcome, and the authority to make decisions (Poitras and Renaud 1997, 35). The willingness discussed in the preceding sentence will not likely exist at the beginning of an ADR process, but must be put into place over time (Poitras and Renaud 1997, 37). Consensus building, rather than majority rule, should be encouraged, and such consensus building can be increased by the selection of a trained ADR professional by all involved stakeholders (Susskind 2005, 146).

2.2.3 Intergovernmental Relations

Intergovernmental relations refers to actions and interactions within a federal system between the different levels or units of government, including national-state, inter-state, national-local, state-local, national-state-local, and inter-local (Watts 1999; Wright 1974; Anderson 1960). Though it is technically accurate to use the term intergovernmental relations to describe provincial-municipal and inter-municipal relations, and though the literature remains applicable to this research, in practice intergovernmental relations (IGR) tends to be used in Canadian discussions to indicate relationships of the Canadian federal, provincial, and First Nations governments both amongst themselves and internationally, to the exclusion of local government.

Federal political systems have inherent tensions, but in order to work effectively, the various levels of government must strive to manage conflict arising from inter-jurisdictional issues: “citizens will normally expect the two orders of government to set aside their differences and deal with the issues on which citizens’ well-being and the integrity of the political community as a whole depend” (Bakvis and Skogstad 2008, 5-6). This relational navigation requires extensive consultation, including exchanging information and views prior to independent action; cooperation; coordination; and the cultivation of policies and objectives accepted and implementable by all (Watts 1999; Bakvis and Skogstad 2008). Intergovernmental relations are impacted by changing political agendas and policy environments, and involve addressing mutual problems and balancing autonomy with interdependence (Bakvis and Skogstad 2008). No matter how
integrated or un-integrated the various levels of government are, “at a minimum they need to communicate with one another in order to make adjustments in their respective roles” (Bakvis and Skogstad 2008, 5).

Inter-jurisdictional activities cloud jurisdictional accountability so that “multiple accountabilities co-exist” (Simeon and Nugent 2008, 101). At the same time, each government’s accountability to its legislature is paramount (Simeon and Nugent 2008). In a parliamentary system governments are responsible to their legislatures for laws, regulations, and raising and spending money. In a federal system, however, each government is meant to be autonomous within its own jurisdiction; these two systems, combined as they are in Canada, conflict “when there are significant transfers [of money] among governments” (Simeon and Nugent 2008, 102).

Canadian intergovernmental relations are “complex, elaborate, and persuasive”; however they are also inadequately institutionalized; unmentioned in the Constitution, they “are awkwardly ‘added-on’ to our parliamentary system, rather than integrated with it (Simeon and Nugent 2008, 97; Papillon and Simeon 2004, 113). This contributes to several problems with intergovernmental relations in Canada: the overall dynamic is competitive and adversarial; policy is overshadowed by the importance of “turf protection, the claiming of personal credit, and avoidance of blame” and “money trumps policy” (Simeon and Nugent 2008, 99). All this serves to contribute “to a decline in trust in intergovernmental actors” (Simeon and Nugent 2008, 99).

Ostrom (1986) and Scharpf (1989) argue that intergovernmental relations should be governed by rules that order relationships among governments. The following list compiles relationship rules suggested by Ostrom (1986) and Scharpf (1989):

- Boundary rules (who can participate);
- Scope rules (what matters they can take action on);
- Position rules (what positions participants hold);
- Authority and procedural rules (what actions position holders can take);
- Information rules (information actors may or must reveal);
- Aggregation rules (the way collective decisions are made);
- Payoff rules (how costs and benefits will be distributed as a result of the decision); and
• Decision rules (how preferences become binding decisions).

In spite of the central role that intergovernmental relations play in federations, there are seldom formal conditions set out for governing the details of these relations. Of major concern is the lack of decision-making rules which can lead to a “joint-decision trap”: “a de facto requirement of unanimous decisions” which can result in “sub-optimal policy outcomes” (Scharpf 1988, 239). Canadian intergovernmental relations are governed by “Few if any principles or rules”, a condition enabling the unilateral cancelling or altering of intergovernmental agreements and causing “little permanency, predictability, or consistency” (Simeon and Nugent 2008, 100). The lack of rules results in silence on several major areas of Canada’s constitution (Bakvis 1981; Trochim).

Rules governing intergovernmental decisions can be hierarchical/unilateral, majoritarian, or unanimous (Scharpf 1989; Scharpf 1988). Without decision-making rules, a central government’s decisions may result in exclusion, bilateralism, multilateralism, and opting out (Painter 1991). Alternatively, a central government may come to rely on the unanimous agreement of constituent governments which might result in relations that are inefficient, inflexible, unnecessary, undemocratic, and potentially less accountable to constituencies (Scharpf 1988). Scharpf (1988, 158) contends that:

In single-shot negotiations among independent parties, non-agreement leaves everybody free to pursue their alternative options individually. Under such conditions, Unanimity is indeed likely to maximize individual liberty and to increase allocative efficiency. In ongoing decision systems, by contrast, from which exit is impossible or very expensive, non-agreement is more likely to imply the continuation of earlier policy choices.

This situation can cause problem-solving capacity to decline (Scharpf 1988). Though Scharpf supports his contention with examples from the former West Germany, Painter believes that the “pathologies” resulting in the joint-decision-trap are unlikely to materialize in Canada in the same way, as unlike Germany, Canadian “governments are not rigidly locked together in constitutionalized systems of collaboration” (Painter 1991, 284). In addition, Canada’s Supreme Court has ruled that federal decisions need not be unanimously supported by the provinces, rather, substantial consent is required (Painter 1991).
Ways to remedy the joint-decision trap include direct elections and active interest groups at all levels, matching financing of joint programs at multiple levels, and regular interaction free of artificial deadlines and political theatre between governments (Scharpf 1988; Painter 1991).

When there are regular joint decision-making procedures agreed to by those involved, these “familiar” and “clear” rules will help participants simplify their strategies, reduce conflict, re-evaluate their goals, and develop shared values (Simeon 1972). Participants can create awareness around their needs and aspirations as well as cultivate “respect for each other’s positions and strengthen norms of reciprocity and compensation” (Simeon 1972, 310).

Decision-making rules are impacted by the decision-making style of intergovernmental actors, such as confrontation, bargaining, and problem solving (Scharpf 1988). A confrontational decision-making style involves a focus on dominant party or coalition interests, with the use of power and coercion as sanctions (Scharpf 1988, 259). A bargaining decision-making style involves focusing on individual party self-interests and incentives (Scharpf 1988, 259). A problem-solving decision-making style involves an appeal to common values, and as a last resort ostracism and exclusion are “the ultimate collective sanction” (Scharpf 1988, 259).

Scharpf argues that “It is a specific combination of a decision style with a decision rule that will determine the characteristic capacity of the decision system to reach effective agreement on collective policy choices” (Scharpf 1988, 259). Where decision-making rules do not exist, the problem-solving style which promotes common interests, values, or norms and facilitates voluntary agreement is most effective (Scharpf 1988). The problem-solving style is difficult to create and easily eroded by ideological conflict, mutual distrust, or disagreement over the fairness of distribution rules (Scharpf 1988).

Intergovernmental relations styles and formal rules are additionally influenced by the human relationships between the individuals involved and these humans’ informal, unfixed, recurrent, and routine knowledge, actions, and interactions (Watts 1999; Wright 1974; Anderson 1960). Communication increases the effectiveness of intergovernmental relations and prevents disputes via information sharing around policies and attitudes.
which prevents misunderstandings and increases the likelihood that governments will consider others’ viewpoints during the formulation of policy (Simeon 1972).

The Canadian system of governance is difficult to navigate and is rife with intrinsic conflict and tension. Criticisms exist that “governments often seem far more concerned with their own status needs and goals than with concrete programmes and policies; much of the debate is far removed from public scrutiny” (Simeon 1972, 312-313). Canadian intergovernmental conflict is often connected to different social and value systems, the perceived “proper roles” of governments, their institutionalized status and prestige, political leaders’ ideologies, and the continuation of disagreements from one issue into others (Simeon 1972). Canadian intergovernmental conflict is impacted by the contextual factors of both local circumstances and personalities (Simeon and Nugent 2008). The influences and impacts described in the preceding two sentences combine to complicate the willingness of governments to co-construct policy and, in contrast to the U.S., Canada’s fewer, more centralized governmental units contribute to a simpler and more visible pattern of conflict (Simeon 1972).

Intergovernmental conflict can occur when the interests of political communities are at odds due to one segment of a population being perceived as favoured over another (Watts 1999; Bakvis 1981). This perception is prone to the imbalances produced by diverse regional geographic and socio-demographic attributes such as urbanization, age, infrastructure, economics, and so on (Watts 1999; Bakvis 1981). Four additional factors that contribute to intergovernmental stress include: sharp internal social divisions, certain types of institutional or structural arrangements (such as inter versus intra-state federalism), the strategies adopted to combat disintegration, and political processes with polarized internal divisions (Watts 1999).

When intergovernmental actors have recourse to dispute resolution mechanisms, it simplifies coordination and creates incentive to collaborate on urgent issues (Simeon 1972). If intergovernmental relationships routinely emphasize cooperation and reciprocity, participants will more easily come to agreement, support one another on issues, and see the other’s views as legitimate and entitled to promotion, even if they disagree with them (Simeon 1972).
In extreme cases of intergovernmental conflict, federations can succumb to disintegration. Strategies for combating disintegration include strengthening the power of the federal government or devolving power to constituent governments (Watts 1999). Alternatively, combining both so that federal loyalty is strengthened and major concerns of regional groups are addressed can be an ideal solution (Watts 1999).

It is unusual for federal constitutions to recognize a right to or process for secession as this could weaken the system by introducing a “weapon of political coercion” for constituent governments, create a lack of confidence in the system’s future, impair the development of state cohesion and economics, and undermine constituent governments due to the reciprocal right of the federation to unilaterally expel them (Watts 1999, 107-108). History has shown that even where federal disintegration has occurred peacefully, the economic costs, diplomatic and defensive ineffectiveness, and bitterness between parties have been great (Watts 1999).

Canadian law does, however, recognize a right to secession after the Supreme Court of Canada issued an opinion in August 1998 stating that although Quebec does not have the right to a unilateral secession, Canada has the obligation to negotiate such a secession with Quebec if a clear majority of Quebec’s population voted to separate (Solicitor for the Attorney General of Canada 1998). This Supreme Court decision gave rise to the federal Clarity Act which elucidates the particulars of such a referendum question, the validity of the majority, and the circumstances that such a negotiation would entail: “an amendment to the Constitution of Canada would be required for any province to secede from Canada, which in turn would require negotiations involving at least the governments of all of the provinces and the Government of Canada” (Supreme Court 2000). A negotiation would also specifically require a decision surrounding “the division of assets and liabilities, any changes to the borders of the province, the rights, interests and territorial claims of the Aboriginal peoples of Canada, and the protection of minority rights” (Supreme Court 2000).

As mentioned at the beginning of this section, the literature on Canadian Intergovernmental Relations focuses on national, provincial, and in a minority of instances, First Nations relations. Discussing it here serves the dual purpose of offering a contextual backdrop to local government intergovernmental relations, but also of using
the theory generated on the relations of these jurisdictions as theory on local government relations writ large. Many of the patterns, structures, foibles, challenges, and strategies for success are applicable and adaptable to local governments.

2.2.4 Performance Measurement and Evaluation

Performance measurement and evaluation help organizations provide program accountability (McDavid and Hawthorne 2006). Organizational endeavours to improve accountability have resulted in program evaluation and performance measurement being “increasingly seen as ways of contributing information that informs performance management decisions” (McDavid and Hawthorne 2006, 5). Performance measurement and evaluation are of especial importance to ADR programs as these programs are constantly required to prove their effectiveness compared to more traditional, formal forms of dispute resolution such as the court system.

Performance measurement and program evaluation are seen by some as complimentary, yet some in the field of program evaluation view performance measurement as “just an aspect of organizational management” (McDavid and Hawthorne 2006, 4). Performance measurement can provide information in a timely manner for use in improving program efficiency, effectiveness, and accountability whereas program evaluation is seen as needing more resources and longer timelines to analyse and explain the results (McDavid Unpublished 2008). Yet, when program evaluation is omitted, “the ability to explain patterns in the outputs and outcomes associated with policies and programs” is “lost” (McDavid Unpublished 2008, 1).

Public program accountability occurs externally to the source of responsibility and to those being served, laterally to colleagues and organization authority, and internally to ethical standards of society (Penney 2002). Accountability unfolds in three stages: information (reporting and investigating), discussion (justification and critical debate), and rectification (imposition of remedies and sanctions) (Mulgan 2003). Herein lies the importance in distinguishing between calling someone to account and holding someone to account.

Calling someone to account is the exercising of “a right to call…to account” (Mulgan 2003, 10). Holding someone to account is the “effective rectification” of a situation once someone is called to account: “Where institutions or officials are found to
have been at fault, there must be some means of imposing remedies, by penalizing the
offenders and compensating the victims….Accountability thus involves an element of
retributive justice in making the guilty pay for their wrongdoing” (Mulgan 2003, 9).

Accountability procedures should include a performance assessment against
program goals as well as provide an account which demonstrates answerability to a
superior authority (Penney 2002). Instruments of accountability include business and
strategic plans, annual reports, access to information, and quality performance reports for
provision of information processes, program evaluation, guideline development, report
cards, performance indicators, and quality assessment and improvement for managerial
function processes (Penney 2002).

a) Performance Measurement

Performance measurement is “the process of designing and implementing
quantitative and qualitative measures of program results, including outputs and
outcomes” (McDavid and Hawthorne 2006, 445). Performance measurements can help
make better decisions, budget allocations, changes in program priorities, changes in focus
of programs, improve service quality, reduce operations costs, increase managerial
accountability, improve employee motivation, focus organizational goals, enable more
objective employee performance evaluations, improve relations between administrators
and elected officials, and improve community relations (Poster and Streib 1999).

Developing a measurement strategy includes creating categories of measures such
as input, output, and outcome and specific measures within each category such as data
definitions, collection, storage, access, and reporting formats (Kravchuk and Schack
1996). It requires specifying the technological environment, involving key users in the
design and development phase, considering users throughout the process and ensuring
they can understand the information, periodically reviewing and revising the
measurement system; taking account of complexities; and avoiding excessive aggregation
of information (Kravchuk and Schack 1996). It is “an exercise in storytelling…. [which]
allows you to tell a convincing story, backed by credible evidence, about the value added
by your program to some particular segment of…society” (Schacter 2002, 1).

The foundation of the program performance story “is a detailed understanding of
the program” (Schacter 2002, 1). This foundation involves illuminating first the program
objectives, second creating a logic model linking program inputs, activities, and outputs to program objectives, and third using the logic model to develop performance indicators (Schacter 2002).

There is no one way to undertake the formulation and periodic revision of a clear, coherent mission, strategy, and objectives, rather, “It is your own capacity to develop a clear, analytical understanding of the program whose performance you want to measure” (Schacter 2002, 1). For a detailed discussion of formulating these program components, the work of Schacter (2002) provides some seminal guidance.

A logic model is a mechanism through which program goals and processes can be understood; it “provides a basis for developing a set of performance indicators” (Schacter 2002, 2). Outputs exist along a continuum with government controllability at one end and intrinsic value at the other; “Outputs have high controllability and, typically, low intrinsic value. Outcomes, on the other hand, have high value and, typically, low controllability.” (Irwin 1996, 19). Governments must also collect information on output-outcome links (Irwin 1996).

Indicators included in a logic model should be those representing the most important facets of the program; not all facets need to be included (Schacter 2002). When deciding whether or not to include an indicator, one should ask: “do we really need…this indicator; can we handle the administrative burden that the indicator creates; is the right kind of data readily available to service this indicator; is the proposed indicator linked to some strategically important element of our program?” (Schacter 2002, 28). Program managers should show they are monitoring and integrating data into the program whether or not they are accountable for data outcomes (Schacter 2002).

In order to develop program indicators, “you need to have a clear picture of: what your program aims to achieve…; and the steps by which you are assuming that your program will achieve its ultimate objectives” (Schacter 2002, 2). Appropriate indicators are ones “over which the program has some reasonable level of control; which have a logical link to the desired ultimate outcomes; which show meaningful changes on an annual basis; and which provide credible evidence that you are contributing to ultimate outcomes” (Schacter 2002, 26).
ADR process indicators should strive to represent fairness, efficiency, wisdom, and stability (Susskind 2005). ADR process fairness (procedural justice) and outcome fairness (distributive justice) are linked, and participants’ perceptions of procedural fairness affect the acceptance of an unfavourable outcome and the perception of the facilitator’s role (Karambayya and Brett 1989). A process and its outcome are deemed fair when they are so considered by all stakeholders and participants (Susskind 2005). ADR processes are efficient “when they produce results that meet most of the important interests of all relevant parties while minimizing the investment of time and money required” (Susskind 2005, 145). This efficiency weds “limiting waste, with making maximum use of available resources” (Sancton 1994, 16). ADR processes are wise when they have and take seriously the best scientific (Susskind 2005) or other relevant advice available at the time, such as cultural, geo-political, or historical advice. Finally, ADR processes are stable when they “remain in place even as political leadership fluctuates because they constitute meaningful long-term commitments by all key constituencies” (Susskind 2005, 145).

A fair agreement gives rise to participant satisfaction. This can be measured by using a Likert scale and asking participants whether the facilitator was reasonably informed and prepared; if meetings started on time; whether there was sufficient time booked for the meeting; and whether they would use the process again or recommend it (Gomes 2003). Challenges in meeting these participant satisfaction criteria include turnover of ADR process participants, underutilization of ADR process options, dependency on a key person, and cultural insensitivity (Brown n.d.).

In order to measure fairness, efficiency, wisdom, and stability in ADR processes and outcomes, a number of performance indicators can be used and interpreted. Indicators can include participant willingness to: resolve the dispute, explore areas of disagreement, seek mutually satisfactory outcomes, and share decision-making authority (Poitras and Renaud 1997). According to Jackson (1997), Ryan (1998) and Schwartz (2002) indicators can also include:

- Process flexibility;
- Process dynamism;
- Participant and administrator feedback;
Indicators can measure clarification of interests, explicitness of objectives, appropriateness of meeting facilities, whether participant pre-screening or training took place, whether procedural alternatives were understood, whether stakeholders were identified early on, and extent of ministry support (Jackson 1997; Ryan 1998; Schwarz 2002).

It is important to accept that no performance indicator or framework can be “perfect,” and that “only when you are clear in your own mind about the tradeoffs you have made, and why you have made them, can you explain to others how the pieces of your performance framework fit together, and why the whole thing makes sense” (Schacter 2002, 22). Some indicators are “a fair reflection of program performance” (inputs, activities, outputs, and immediate and intermediate outcomes) and should be used as indicators (Schacter 2002, 25).

Program intermediate and long-term outcomes are not appropriate indicators, but should be included in the program performance story (Schacter 2002). Common short and long term outcomes for ADR processes include: increased joint problem-solving, participant control, overall agreement or agreement on important issues, participant satisfaction, meeting or surpassing of participant and administrator standards, enhancement of personal well-being and growth, cost efficiency compared to litigation, procedure length, and long-term outcomes such as agreement compliance, improved relationship, and resolution longevity (Jackson 1997; Ury, Brett, and Goldberg 1988; Karambayya and Brett 1989; Ryan 1998; Schwarz 2002; Zubek et al. 1992; Susskind 2005).
While the success of private company programs can be measured by financial profit, government programs “are driven by the objective of improving people’s lives in ways that often can’t easily be measured in dollars and cents” (Schacter 2002). Schacter (2002, 8) writes:

For public servants and the public programs they manage, there is often a lot of ambiguity over what the “bottom line” is. Ambiguity about the bottom line creates a situation that one never sees in the private sector: room for disagreement over what constitutes “results” and “performance”, and therefore, room for disagreement about appropriate performance measurement.

In the case of ADR programs, measurement is complicated by the subjectivity of participants’ short, medium, and long-term perceptions of the success of the process. The burden of tracing participants, knowing the right questions to ask, and interpreting the answers accurately is onerous. Many ADR process administrators rely on anecdotal evidence to support claims of process success, but as government funding for such programs is increasingly tied to strict definitions of accountability, this habit is becoming less and less acceptable.

Challenges encountered when creating a performance measurement system include: perverse incentives, tradeoffs between meaningful and controllable results (attribution), tradeoffs between meaningful results and meaningful results showing change over time, and tradeoffs between meaningful results and efficiently collectable data (Schacter 2002). Even if direct links between the program and its results or outcomes cannot be drawn, one must “make a convincing argument…that your program is likely to contribute to ultimate outcomes[…]…is being managed for results[…]…; [and] find a way to demonstrate that your program is achieving results at some meaningful level” (Schacter 2002, 25). Governments, in particular, encounter difficulties in measuring quality, keeping measurements up to date, ambiguous or confusing measurements, compiling and reporting in a timely manner, lack of staff analytical skills, and difficulty getting lower employees and managers to support the monitoring system (Poster and Streib 1999).

Performance measurement is particularly subject to the dangers of scarce resources; data needed to report on measures can either be omitted or measured
incorrectly (McDavid and Hawthorne 2006). Constrained resources such as time and money often demand that those involved in program measurements rely on their professional judgement and adapt the tools of measurement to each unique context (McDavid and Hawthorne 2006). When engaging in the creation of a performance measurement system, “we ultimately create a structure that combines what our tools can shape with what our own experience, beliefs, values, and expectations furnish and display” (McDavid and Hawthorne 2006, 8).

b) Program Evaluation

Program evaluation is “a systematic process for gathering and interpreting information intended to answer questions about a program” (McDavid and Hawthorne 2006, 447). Barzelay (1996) argues that evaluations can focus on:

- Unit of analysis such as policy, program, or major program element;
- Mode of review such as inspection;
- Scope of evaluation such as selected aspects of program design and operation;
- Certain efforts such as assessing the impact of public policies; or
- Evaluating program effectiveness.

A best practice review is an atypical type of evaluation where the unit of analysis is the whole sector, the process is generic, the mode of review is research, the scope of the evaluation includes aspects of organizational and program operation, and the focus of the effort is to formulate sector-specific standards of best practice and to reveal the relative performance of sector participants (Barzelay 1996).

In a rapidly fluctuating environment like politics, programs are vulnerable to instantaneous reviews, with results dramatically affecting how these programs are able to operate (Wildavsky 1979). Often evaluators do not have the resources, time, and data to produce the desired reviews, so in response to the need for immediate information, evaluators are likely to establish broad data determinants, which can lead to over-collection of potentially irrelevant data (Wildavsky 1979).

Program objectives are the foundations of program evaluations, as objective achievement serves to benchmark program success (Wildavsky 1979). Yet identifying objectives can be difficult, since evaluation looks at both what is intended and what is
actually happening, and compares this with program expectations (Jackson 1997). Program objectives and resources should be continually updated “to achieve the optimal response to social need,” resulting in both better programs and the modification of program objectives (Wildavsky 1979, 213). Clarifying objectives can lead to the discovery of outputs and outcomes, yet this can be a difficult process as objectives are not always obvious but are constructed and imposed on sometimes unwilling processes (Wildavsky 1979; Ball 1992). Additionally, some objectives may be elevated at the expense of others, objectives may be chosen because they are easy to measure -regardless of whether they relate to program purpose- or objectives may be desirable, but the method by which to achieve them unknown (Poster and Streib 1999; Kravchuk and Schack 1996; Wildavsky 1979):

For program managers and senior government administrators, being held accountable for outcomes over which their departments have only limited influence creates a dilemma. Do you report the outcomes knowing that, if questioned, it will be expected that someone will be accountable, even if the agency had limited or no control over the reported trends or levels? Or does the department instead pick indicators and results that are relatively safe? Or, do you measure and report outputs and postpone (perhaps indefinitely) the “search” for appropriate outcome measures? (McDavid Unpublished 2008, 3).

Obstacles to program evaluation can include legalities, bureaucracy, and cost (Wildavsky 1979). Due to the sensitive political nature of evaluation, perceived expense, or confusion or lack of confidence surrounding the methodology to be used for implementation, there is a danger that government program evaluations aimed at responding to citizen demand for accountability won’t actually be used to improve these programs (House 1978 cited in Jackson 1997; Poster and Streib 1999).

Evaluation reports can be overlooked or enacted in an ineffective top-down manner (Carnevale 2003). Evaluation participants are rarely given the opportunity to interpret or view the results or to contribute to planning; “They are drained of information for other people’s purposes” (Carnevale 2003, 54). Additionally, those vested with the responsibility of data collection may prove disinterested in an activity that contravenes their more pressing responsibilities (Wildavsky 1979). There is also impetus to relay only
positive data so the program and its leaders are viewed positively and the program is preserved in its current manifestation and criticism and endless changes are avoided (Wildavsky 1979; Kingdon 1995).

Ury, Brett, and Goldberg recommend that ADR evaluations look at whether the system is working, what its limitations are, and what the most important factors for success are (1988). Ury, Brett, and Goldberg (1988, 81) indicate that evaluation should take place as the program proceeds and with the active participation of the parties:

Without the parties’ active support, any changes are unlikely to take hold. The process…is as much a political task of garnering support and overcoming resistance as it is a technical task.

Ury Brett and Goldberg believe evaluation should determine whether the changes are working as intended, whether the costs are reduced, whether the benefits are being realized, whether there are unintended consequences, and why the changes work (1988). They argue that decision making around evaluations faces several challenges, such as the ability of the research design to rule out rival explanations for observed program results, the scale of the program not warranting extensive evaluation, and time constraints on client and facilitator schedules (Ury, Brett, and Goldberg 1988).

When carrying out an ADR evaluation, the system procedures, frequency, sequence, and timelines can be mapped out so as to facilitate an understanding of how the system as a whole works (Ury, Brett, and Goldberg 1988). If possible, learning whether there is a lack of procedures, motivation, skill, or resources (in the organization or the environment), the frequency with which people ignore problems, the focus of the process (interests, rights, values, or power), the frequency with which negotiations break down, what happens when they do, whether one party usually “wins,” the frequency of “power contests,” and their results, is helpful (Ury, Brett, and Goldberg 1988, 27-28). With this information, patterns can emerge that reveal system costs, against which any future system modifications can be measured (Ury, Brett, and Goldberg 1988).

When evaluating how local government agreements have been upheld, looking at conceptual, financial, and administration axis can be useful (Service Nova Scotia and Municipal Relations 2003). The conceptual axes looks at the process overall to review whether objectives were realistic, relevant, and satisfactorily met in the eyes of each
participant; whether there were aspects that did not meet each partner’s expectations; what could have been done differently to improve overall effectiveness; what could be done to improve efficiency and effectiveness; lessons learned; and the extent to which the partnership enhances the activities, programs, services or products of each partner (Service Nova Scotia and Municipal Relations 2003).

The financial axis reviews the cost, benefit and risk of a program in order to ascertain whether surprises could have been more effectively and efficiently dealt with; whether the program met financial expectations; whether the program provided the expected benefits within the budget; whether there were budget overruns, why these occurred, and how they could be avoided; whether each partner benefited from their resource investment as expected (Service Nova Scotia and Municipal Relations 2003).

The administrative axis reviews whether the process has been effectively managed, looking at whether the timetable, budget, implementation, and so on, of the work plan were accurate; whether each partner met their obligations; whether the control measures were appropriate and sufficient; whether the communication plan was effective; whether all participants were satisfied with the information provided; and whether steps were taken to communicate and convey the know-how and practices that proved successful (Service Nova Scotia and Municipal Relations 2003).

2.2.5 Summary

A strong grounding in what public administration, intergovernmental relations, and performance measurement and evaluation literature has to say about ADR and how these theories interact with ADR is the best platform from which to build an understanding of where IRPD’s ADR process comes from and how it fits into these related theoretical continuums.

Intergovernmental Relations literature, though largely directed at jurisdictions larger than the local government unit, can be most effectively applied to an understanding of local government ADR when used to establish a theoretical lens and sets of rules with
which to understand inter-local government and local-government-provincial interactions. Disputes, their resolution processes, and their outcomes, all arise from actions and interactions, and an understanding of these processes is incomplete without an understanding of the theory and rules within which they are embedded.

Likewise, in conceiving of the best way to measure and evaluate ADR processes, program measurement and evaluation literature can be most effectively applied through the use of a broad knowledge and careful weighing of the options available, their merits, and their drawbacks. Thus a thorough review of these options enriches the exploratory process of creating new and improving on old measurement and evaluation methods.

Remember now the general administration ADR process experienced by conflicted members of a BC region described in Chapter 1. How can all this theory inform an understanding of the best way to deliver, quantify, evaluate, and communicate publicly administered intergovernmental ADR services? By looking at ADR history and what the literature says about smart practices, a model of an ideally functioning ADR process can be generated. By informing this idea with theory about the structures within which publicly administered programs function, this idea evolves to become contained within certain boundaries. When intergovernmental relations theory is added into the mix, a picture of the people an ideally functioning ADR process seeks to serve and the environment in which it does so further evolves the understanding of the contextual requirements and limitations of this process. Finally, performance measurement and evaluation theory facilitates the discovery of where this ADR process should go in terms of how best to represent itself both internally and externally, and how to integrate ongoing improvements to the process.
Chapter 3: Research Background

3.1.1 Canadian Federalism and Local Government

Federal systems of governance are meant to strike a balance between unity and diversity (Bakvis and Skogstad 2008) and “accommodating, preserving, and promoting distinct identities within a larger political union” (Watts 1999, 6). This is in contrast to a subordination of a central government to constituent governments in a confederal system or a subordination of constituent governments to a central government in a unitary system (Bakvis and Skogstad 20085). A classical federal system has governments acting independent of one another within their jurisdictions, while unilateral federalism has one order of government asserting itself over the other, usually through conditions attached to financial transfers (Bakvis and Skogstad 2008).

Bakvis and Skogstad (2008, 4) indicate that Canadian federalism consists of 3 elements:

- The constitutional division of powers and provisions for judicial review;
- Intrastate federalism (“the representation of constituent units in the central government”, including addressing conflict between these orders of government); and
- Interstate federalism (“the pattern of intergovernmental relations” and arrangement of how the orders of government directly relate to each other)

This structure is influenced by Canadian social, economic, and political contextual aspects such as ethno-linguistic and territorial identities, values, and economics; provincial or national political leaders’ ideas and interests; and “extra-federal institutions” such as the Constitution and the parliamentary system (Bakvis and Skogstad 2008, 4). Federal governance “…is based on the presumed value and validity of combining unity and diversity”; it was adopted in Canada “to accommodate and reconcile territorial diversity within a fundamentally multilingual and multicultural society” (Watts 1999, 117).

The way in which a system embodies federalism can fall along a continuum, with “watertight” jurisdictions at one end and jurisdictional overlap and policy interdependence at the other (Bakvis and Skogstad 2008, 6-7). Canada originally aligned
at the watertight end of the continuum, but over the years has moved towards the overlapping and interdependent end (Bakvis and Skogstad 2008). In the Canadian system, governments are responsible “to each other for the shared management of the…system” (Simeon and Nugent 2008, 89). At the same time, Canada can be considered “one of the worlds most decentralized federations” (Bakvis and Skogstad 2008, 9).

Most federal systems allocate responsibility for international relations, defence, economic and monetary details, major taxing powers, and interregional transportation to the central government, while constituent governments are often allocated responsibility for social affairs such as education, health services, social welfare and labour services, as well as law and security, and local government (Watts 1999). Areas such as social services, agriculture, and natural resources frequently fall under shared jurisdiction (Watts 1999). Government financial resources are determined based on responsibility allocations and are then bolstered or held back as governments flex their constitutionally allotted powers (Watts 1999; Irwin 1996).

The allocation of responsibilities laid out in Canada’s Constitution Act, 1867 (formerly the British North America Act) is the crux of intergovernmental relations in Canada (Wright 1974). This document also furnishes the federal government with rarely ever used (and never used contemporarily), mechanisms to encroach into provincial jurisdiction, such as the power of reservation or disallowance when appointing provincial lieutenant-governors (who have the right to reverse provincial legislation), and the power to take over provincial endeavors if perceived in the national interest, and the power to disallow provincial legislation via a decision of the federal governor general in council (Bakvis and Skogstad 2008).

The powers of Canadian local governments are not granted by this document: rather, under section 92, sub-section 8 of the Constitution Act, local government falls under the jurisdiction of provincial governments. As such, the powers and responsibilities of local governments in Canada rely solely on what a given province decides to furnish them:

The provinces have the power to modify those responsibilities and powers and, indeed, to create, change and abolish municipalities at…will. The provinces have not
been reluctant to ‘reform’ local government by changing boundaries, responsibilities, powers and funding. [They] control their municipalities closely with a host of laws and regulations (McMillan 2004, 5).

The consequence of this is that municipalities “have no constitutional protection whatever against provincial laws that change their structures, functions, and financial resources without their consent” (Sancton 1994, 8). Additionally, the Constitution does not provide mechanisms for local accountability, self-sufficiency, or democratically elected officials (Lightbody 2006). Municipalities “are [frequently] subject to detailed administrative control from a wide range of provincial ministries, especially if conditional grants are involved” (Sancton 1994, 8). Municipalities’ only sources of revenue “are those which are specially allowed them by their provincial legislatures. In general terms, these revenues have come to include real property taxation, licensing fees, and transfer payments from provincial governmental to the municipal level” (Feldman and Graham 1979, 5). Transfer payments can “constitute up to 40 per cent of any local government’s revenues” (Lightbody 2006, 351). In addition to this, “Municipal councils are not, by law, permitted to run a deficit on current (or operating) expenditures” (Lightbody 2006, 351).

Part of the cause of the impermanency of local government status is attributable to the Westminster doctrine of parliamentary supremacy, which holds that current governments cannot enact legislation that binds (cannot be reversed by) future governments, and this includes the “guarantee in perpetuity [of] the future boundaries, or form, or functions of any local institution within the province” (Lightbody 2006, 369). Conventionally local governments are expected to act only in areas that the province explicitly lays out, otherwise “the municipality is open to court challenge for its proposed activity on the ground of *vires* (i.e. whether or not the action lies within its legislative competence)” (Lightbody 2006, 346). Due to “social and economic realities,” recent Supreme Court of Canada rulings have indicated that *vires* is beginning to yield to a doctrine of deference to municipalities in some instances (Lightbody 2006, 347).

Provincial-municipal relations involve the exercise of either control or guidance on the part of the province:
…the exercise of control normally comes through requiring the official approval of boards…or…quasi-autonomous agencies, on matters like annexations and municipal borrowing….On the other hand, provincial guidance comes through the paternal attentions of the Department of Municipal Affairs…[which] provides recourse on substantive questions of procedure for local municipal officials as a part of its normal workload (Lightbody 2006, 372).

Another conceptualization of this aspect of the provincial-municipal relationship is the concentration and deconcentration of power:

“Deconcentration is the movement of administrative and bureaucratic powers away from the centre, while decentralization is the movement of democratic and political authority towards the localities. Deconcentration is the delegation of power, while decentralization is the devolution of power” (Diamant and Pike 1994, 3).

This provincial-local relationship sharply contrasts with that of the state-local relationships in the U.S. where “there is much less state-government control over local government” (Sancton 1994, 9). The Canadian tradition of vires is replaced –at least in most of the western states– by that of “home rule,” which enables local governments “to do anything that [is] not explicitly prohibited by…legislation, instead of only what the legislature [has] specifically authorized” (Bish and Clemens 1999, 18).

It is possible to contrast the Canadian federal-provincial relationship to that of its provincial-municipal counterpart. Legally the former is based on constitutional law while the latter is based on statutory law. Hierarchically the former is equal to equal while the latter is superior to subordinate. Structurally the former is “simple” (a central government and ten constituent governments with wide-ranging territorial authority) while the latter “is…of vexing complexity” (Dupré 1968, 1). It is thus not surprising that “Municipalities have not often been thought of as being part of the Canadian federal system,” nor that they are “unlikely ever to become full partners in the Canadian federation” (Sancton 2008, 314).

The Canadian Constitution, then, provides the impetus for provincial concern with the beneficial functioning of local government relations. Together, Canada’s Constitution, government institutions, and intergovernmental history provide the context
for Canadian provincial-municipal interaction (Feldman and Graham 1979). It is against this backdrop of intermittent structure and improvisation that the Canadian local government system has had the fortitude to develop. Provincial-local government relationships vary from province to province, and this phenomenon is examined in detail in the following section.

3.1.2 Local Government in Canada

In Anglophone countries, local governments were modeled on both private corporations and government bodies (Sancton 2008). They were “essentially private” entities which “Parliament vested…with the authority to establish certain public institutions…, to pay for them through specified levies, and to make appropriate regulations to facilitate their operation. Whatever authority they possessed derived from Parliament, but they did not act in the name of the monarch” (Sancton 2008, 315).

Due to differing historical circumstances in each province (such as linguistic majority, rate of settlement, geography, etc.), Canadian local government institutions evolved in unique ways and times and were received by provincial constituents with varying degrees of warmth (Lightbody 2006; Feldman and Graham 1979; Tindal and Tindal 1979). Across the board, however, local government evolution was in answer to population growth and the resultant increase in service demands taking place especially in the last half of the 20th Century (Lightbody 2006; Feldman and Graham 1979; Tindal and Tindal 1979). The diversity of local government incarnation is testament to the continuing Canadian provincial search for the ideal manifestation of local government (Diamant and Pike 1994).

Provincial local government restructuring in the face of changing population and economies affected both rural and urban locales, with divergent outcomes (Lightbody 2006). While some urban municipalities faced forced amalgamations in the hopes of eliminating redundancies, some rural municipalities’ boundaries were extended so as to increase the tax base for support of better infrastructure, services, and staff (Lightbody 2006). This “forced change,” however, frequently involved the application of “traditional solutions to new problems,” with varying degrees of effectiveness (Feldman and Graham 1979, xvi). Contemporary municipal government is still often under the influence of traditions, precedents, practices, and laws dated to the 19th Century, and these archaic
decisions have tended to outlast any municipal review’s recommendations for change to municipal organization (Lightbody 2006; Diamant and Pike 1994).

Just as local government incarnated and evolved in diverse ways in each province, the relationship cultivated between provinces and their local governments is equally diverse. All provincial-local government relations grow out of constitutional arrangements; however, differences arise due to size and complexity of provincial government structure, variations in the degree of formality both within the provincial government structure and within its relationship to local governments, and a province’s reliance on Federal government support (Feldman and Graham 1979).

Broadly, in the Canadian context the boundaries of the term “local government” include both municipalities and special purpose bodies such as school boards (Sancton 1994, 7). Whereas municipalities are all-purpose entities that provide “a range of government functions, some of which seem relatively unrelated to one another….with varying measures of autonomy,” special-purpose bodies “are concerned only with one government function, or a set of closely related ones” (Sancton 1994, 7). Both municipalities and special-purpose bodies “are under the formal political control of locally elected representatives or of people appointed by such representatives” (Sancton 1994, 7).

More exclusively, the term “local government” refers to “any specified territory that is smaller than that of the province in which it is located”; however, generally these territories are quite small “often including only the built-up areas of small villages” (Sancton 2008, 315). More specifically still, a local government is “a government, other than the federal or provincial government, which: has jurisdiction over a defined territory; is governed by a body which is locally elected, either directly or indirectly; and has the power to impose property taxes either directly, indirectly, or conditionally” (Bish and Clemens 1999, 4). “Core characteristics” of local governments are:

- [t]hey are distinct legal entities rather than administrative subdivisions of some other entity; they are controlled by a governing body most of whose members are local citizens; they have some form of legally defined access to public funds or to publicly regulated fees; they have some degree of decision-making autonomy with respect to at least one aspect of public policy within their defined territory; apart
from the governing body itself, they have no other forms of membership; all eligible residents of the defined territory are automatically under their jurisdiction with respect to their defined responsibility (Sancton 2008, 315-316).

This sub-provincial unit of governance is most commonly divided into incorporated municipalities and unincorporated districts or regions and is alternatively referred to as a county, township, rural municipality, hamlet, village, town, or city (Diamant and Pike 1994). It is helpful to note that these names do not describe corresponding entities or duties from one province to the next, or, sometimes, even within one province (Diamant and Pike 1994).

Understanding what local governments do can be confusing, especially as they increasingly work in partnership with other local and other levels of government and the private sector (Sancton 2008). However, most provinces devolve responsibility to local governments for the following services: public education (elementary and secondary), protection (police, fire and emergency planning and services), animal control, roads (traffic control, parking, street-lighting), public transit, environment (water, sewerage and garbage collection and disposal), land-use planning and regulation, building regulation, economic development and promotion, public libraries, parks and recreation, public cultural facilities (museums, concert halls, art galleries), business licensing and regulation, and sometimes electricity, natural gas, telephone, local health and social services (Sancton 1994; McMillan 2004).

Local government services are decided upon by elected councillors; and to the degree of authority conferred to them by these councillors, board members, commissions, committees, and administrators (Bish and Clemens 1999). These people’s decisions are influenced by electors, auditors, municipal inspectors, Ombudspersons, Information and Privacy Commissioners, the courts, and local interest groups (Bish and Clemens 1999). Differing sizes, densities, population distribution, service levels, economic activity, and tax revenues are just a few of the issues that can lead to perceived or real inequalities between neighbouring municipalities –especially adjacent urban and rural ones (Diamant and Pike 1994). Provincial governments approach these problems differently (Diamant and Pike 1994).
Municipalities in Canada are found arranged in three kinds of formations: single-tier, upper-tier, and lower-tier (Sancton 1994). Upper and lower-tier are also together known as two or multi-tier systems (Sancton 1994; Diamant and Pike 1994). Single-tier municipalities have no other municipal government within their boundaries and are “responsible for all local-government functions within [their] territory that are not assigned to designated special-purpose bodies” (Sancton 1994, 14). Two or multi-tier systems contain two or more municipal government levels: lower-tier and upper-tier. According to Sancton, “In such systems, there is one municipal government – the upper tier- responsible for a range of municipal functions thought to require a larger territory than other municipal functions” while the other municipal governments in the system – the lower-tier- reside within the territory of the upper-tier government and “are usually concerned with the more local of municipal functions” (Sancton 1994, 14).

Provinces have chosen to institute single or multi-tier systems based on a number of factors; “A single-tier system works well when there is no undue pressure for the delivery of services that go beyond the financial capacity of the municipality,” which generally occurs in Canada’s less populated provinces (Diamant and Pike 1994, 31). Multi-tier systems work well in areas with large populations: such populations can support an additional level of government, and the resultant increase in bureaucracy; they can decrease the need for the consolidation of neighbouring municipalities due to financial trouble or under-population; they can increase the control and monitoring of jointly delivered services; and they can increase opportunities for municipal cooperation (Diamant and Pike 1994). On the down side, multi-tier systems can contribute to residents’ uncertainty about which level of government is responsible for what, and some believe them to add an additional unnecessary level of bureaucracy (Diamant and Pike 1994).

Multi-tier systems have generally been popular in Canada’s most populated provinces: Quebec, Ontario, and BC. In Ontario, “county” is the term generally given to the upper-tier government; however, its multi-tier system does not extend to larger city areas, where a single-tier system now exists (recall the Toronto and Ottawa area amalgamations) (Diamant and Pike 1994). Ontario’s system sees diverse arrangements of responsibilities between counties and municipalities as well as uneven representation.
on county councils (Diamant and Pike 1994). In Quebec, regional governments comprise the upper-tier portion of the system; however, there are 3 large city areas that—like Ontario’s configuration—have single-tier arrangements (Diamant and Pike 1994). Quebec’s regional governments were created to facilitate regional planning by providing an array of options for addressing local needs and by supporting, rather than forcing, cooperation (Diamant and Pike 1994). This arrangement has had the additional effect of allowing the province to allocate responsibilities down to the regional level and the regional levels to allocate responsibilities up to the provincial level (by mutual consent) (Diamant and Pike 1994).

BC’s upper-tier consists of Regional Districts (RDs), and its system is similar to that of Quebec in its flexibility and enablement of regional autonomy for joint service delivery (Diamant and Pike 1994). Additionally, BC has focused on facilitating relationships between municipalities and their neighbouring unincorporated areas by ensuring unincorporated areas have elected representatives participating in and being accountable for decisions in their respective RDs (Diamant and Pike 1994). Unlike Ontario’s system, all RD representatives are elected members of municipal councils; the number of votes representatives have varies depending on the size of the municipality they represent; member municipalities can choose whether or not to jointly deliver many of their services; and RDs are able to provide different services to different member municipalities (Sancton 1994).

One of the greatest weaknesses of multi-tier government is that “conflict [is] integral to the form” (Lightbody 2006, 462). When BC’s RD system was initially introduced, it led to disputes between municipal and rural areas within the same RD over land use plans where “one area could impose policies over another” (Diamant and Pike 1994, 14). After some experimentation with and adjustment to the system, BC created an ADR process to facilitate relations between the upper and lower tiers, as well as relations between neighbouring municipalities. BC is one of several provinces that have come up with systems to encourage municipal cooperation and joint agreements (Diamant and Pike 1994), and these are explored in later chapters of this thesis. Such systems have the advantage of letting municipalities retain their distinctive identities, while at the same
time coming together to deliver “services that are better or more efficiently done in concert” (Diamant and Pike 1994, 9).

The need for coordination across local governments is increased where decisions made in one local government in response to their constituents “yield undesirable consequences for adjacent municipalities or the region as a whole” (Lightbody 2006, 410). It is also increased where political boundaries subdivide closely knit regions; causing “its delivery of important functions...[and] policy development a process of cross-jurisdictional negotiation, barter, and diplomacy” (Lightbody 2006, 411). Barriers to this coordination include “conflicting development agendas, land use intentions, and budget priorities of different localities” (Lightbody 2006, 412). These types of scenarios could be greatly aided by ADR processes.

3.1.3 Local Government in British Columbia

The province of BC, located on Canada’s West Coast and bounded by Alaska, Yukon, and Northwest Territories to the north; Washington, Idaho and Montana to the south; Alberta to the east; and the Alaskan Panhandle and Pacific Ocean to the west, is geographically diverse with four distinct physical regions and five climatic zones (Ministry of Tourism, Culture and the Arts n.d.). Its main economic drivers include natural resources such as fish, minerals, hydroelectricity, and timber; as well as industries such as eco-tourism, agri-tourism, film, and high tech (Ministry of Tourism, Culture and the Arts n.d.). Its population is 3, 907, 738 –making it Canada’s third most populated province- with most of this population situated in Vancouver (2, 000, 000), and its capital city of Victoria (326, 000) (Ministry of Tourism, Culture and the Arts n.d.). The province is home to more than 40 First Nations cultural groups as well as significant Chinese, Punjabi, German, Italian, Japanese, and Russian communities, among others (Ministry of Tourism, Culture and the Arts n.d.).

When the California Gold Rush began, the area of mainland BC was declared a British Crown colony, in 1866 Vancouver Island and the Stikine District of the Northwest Territories were amalgamated with mainland BC, and in 1871 these amalgamated territories joined Canada as the province of BC (Tindal and Tindal 1979). The following year saw the BC legislature pass an act enabling the incorporation of municipalities in the province (Tindal and Tindal 1979). The physical geography of BC’s mountainous terrain
warranted colonies scattered and isolated, and considerably influenced the development
of its local governments and the centralized nature of its provincial government
(Lightbody 2006; Tindal and Tindal 1979). Even today only 1 percent of land within the
province is within organized municipal boundaries, within which over 80 percent of its
population lives (Bish and Clemens 1999).

Local governments in BC include municipalities, Regional Districts, and special-
purpose bodies such as school districts, regional hospital districts, regional library
districts, improvement districts, the Islands Trust, and several other bodies that assist in
local service delivery, making for a total of more than 700 contributing entities (Bish and
Clemens 1999). Terms designating BC municipalities include: cities, towns, villages, and
district municipalities (Bish and Clemens 1999). BC local governments are run by over
2,000 elected officials, many of whom are employed part-time and learned their work “on
the job” (Bish and Clemens 1999, 6).

Ministries that establish compulsory rules or mandates for BC local governments
include those responsible for municipal affairs, public school education, law
enforcement, environment, finance, health, labour, and transportation and highways (Bish
and Clemens 1999). In addition to these, many other provincial ministries and agencies
frequently interact with local governments while carrying out their mandates (Bish and
Clemens 1999).

Provincial legislation recognizes BC municipalities as “an order of government
within [provincial] jurisdiction” (Ministry of Community Services 2006a, 5). The
Province considers this as going “as far as the Canadian constitution will allow in
establishing the political legitimacy of local governments,” and considers itself “the most
empowering [province] for local governments in Canada,” (Ministry of Community
Services 2006a, 5).

In 1965, BC passed legislation creating the multi-tier RD system involving a
federation of municipalities and rural territory, “a unique feature to Canada’s local
government landscape” (Ministry of Community Services 2006a, 5). RDs were put in
place to provide regional governance, facilitate political and administrative frameworks
enabling members to jointly provide services, and as a mechanism for local government
in rural areas devoid of municipal government, enabling community planning, building inspection and other similar functions (Ministry of Community Services 2006a).

RDs are a “strange mixture of direct and two-tier representation” (Diamant and Pike 1994, 14) governed by boards “comprised of directors appointed by municipal councils and directors who are directly elected to represent rural, unincorporated territory” (Ministry of Community Services 2006a, 6). This “dual-stream system” engages the municipality as “the basic apparatus for local government” and the RD as the apparatus of “a federation of municipalities and rural areas” (Ministry of Community Services 2006a, 5). The layered, federated system eliminates the need for “the controversial municipal consolidation or amalgamation initiatives so prevalent [in other Canadian and international jurisdictions]” (Ministry of Community Services 2006a, 5).

The RD board voting system is comprised of weighted votes according to area and population; representatives must be from affected areas in order to vote on resolutions (Diamant and Pike 1994). Bish and Clemens explain the process:

The total number of board members and their voting weights are determined according to the voting unit population…calculated by dividing the voting unit into the population of the municipality or electoral area, with the result rounded to the next whole number….After the voting strength for each municipality and electoral area is calculated, the number of directors is determined by dividing the voting strength of the municipality or electoral area by five…with one director appointed or elected for each five votes or fraction thereof. Thus…each board member may possess between one and five votes…. Additionally a director may vote only on operational or administrative matters affecting activities financed by the director’s electors (Bish and Clemens 1999, 42-46).

RDs encompass all provincial areas (Bish and Clemens 1999), and their functions change from place to place (Diamant and Pike 1994). RDs “[provide] general municipal services to unincorporated areas…and to areas overlapping with other [RD] boundaries…. [and they can] make service decisions by by-law rather than provincial approval” (Diamant and Pike 1994, 14). Municipalities can choose to delegate some responsibilities up to RDs, however, since RDs cannot collect taxes municipalities must
come up with cost sharing and administration arrangements for the carrying out of these responsibilities (Diamant and Pike 1994).

Because rural, unincorporated areas have representation, RDs are “flexible and well suited to dealing with issues where large, relatively low density, rural areas surround urban centres….thus increasing accountability” (Diamant and Pike 1994, 14). The province’s “flexible, non-interventionist approach and the gradual expansion of activities in response to local decisions have resulted in a system that is accepted, practical, and functional” (Diamant and Pike 1994, 14). RDs carry out responsibilities “mandated by the provincial government” as well as those “decided upon by locally elected officials” (Bish and Clemens 1999, 43).

The province of BC spent the better part of the last decade restructuring its approach to local government, and this restructuring culminated in revisions to the Community Charter in 2004, “emphasiz[ing] the empowerment and fiscal independence, accountability, and collaboration of local governments” (Ministry of Community Services 2006a). These reforms were set to enable decision-making that involved the parties affected and that was carried out on a scale that fit respective issues (Ministry of Community Services 2006a). The BC local government reforms hope to enable adaptable local government structures that balance issues with various stakeholder concerns, and to enable incentives for local governments “to be independent where possible, but collaborative where necessary” (Ministry of Community Services 2006a, 5).

The Ministry of Community Services (2006a, 4) elucidates “key” provincial-local government relationship pillars delineated in BC’s provincial Community Charter including:

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3 The province has enabled Regional Districts to provide: official community, heritage, regional and social planning, general, electoral area, and local community commissions administration, land use and sign regulation, subdivision control, board of variance, airports and ports, cemetery operations, garbage collection, public transit, recycling, sewage collection, sports complexes, theatres, arenas, community parks, garbage disposal, museums, septic disposal, sewage treatment, television closed circuit, water supply, art galleries, fire protection, library participation, recreation, street lighting, sewage disposal, television rebroadcasting, animal control, economic development, fire alarm regulation, nuisance regulation, regional parks, weed control, building inspection, emergency programs, heritage conservation, pest control, security alarm regulation, sand, soil, gravel, and rock deposit and removal regulation, building numbering, emergency telephone, noise regulation, pollution control, unsightly premises regulation, ambulance service, business regulation, control of gatherings, curfew regulation, drainage, elderly citizen’s housing, electrification, fireworks regulation, flood control, health regulation, health centres, home nursing, marina operation, resident identification cards, tourism marketing, and victim assistance (Bish and Clemens 1999).
- Respect: the provincial government respects municipal authority and vice versa;

- No offloading: the provincial government must not add responsibilities to municipalities unless there is provision for the resources required to fulfill the responsibilities;

- Consultation: municipalities and the provincial government must consult on matters of mutual interest including provincial consultation on changes to legislation, local government transfers and provincial programs that will have a significant impact on matters within municipal authority;

- Diversity: respect for the varying needs and conditions of different communities;

- Balance: the authority of municipalities balanced by the need of the provincial government to consider the interests of the citizens of the province as a whole; and

- Dispute resolution: the provincial government and municipalities should attempt to resolve conflicts between them by consultation, negotiation, facilitation, mediation, and other forms of dispute resolution.

BC’s “dual-stream local government system” does have its downsides, including capacity issues stemming from the sheer complexity of the system with its demands for a high degree of interaction between the two streams (Ministry of Community Services 2006a, 19). This downside exacts the need for exceptional political and technical leadership and skill (Ministry of Community Services 2006a). Another downside is that “The system also incurs high bureaucratic costs because of the amount of communication required for collaborative decision-making to be effective” (Ministry of Community Services 2006a, 19).

3.1.4 BC Local Government ADR Processes

Administrating the diverse jurisdiction of BC across various levels of government is not without its challenges, and having recourse to an intergovernmental ADR process
is advantageous. MCD’s IRPD is responsible for facilitating the province’s intergovernmental ADR process.

This responsibility can be attributed to MCD’s mandate from the “Principles for Governmental Relations” set out in the BC Local Government Act (LGA) including: fostering cooperative relations between the province and local governments; providing adequate power to local governments to fulfill their responsibilities; balancing this provision with the need to act in the interests of BC citizens as a whole; providing notice and consulting with local governments when provincial actions impact local government interests; and recognizing that different local governments require different relational approaches (Anonymous 1996).

IRPD’s ADR processes include formal and informal facets at both the local government (municipal and regional district)\(^4\) and provincial (ministry and agency) government levels. They encompass ADR between local governments (inter-local governmental ADR) as well as between local governments and provincial ministries and agencies (local government-provincial ADR). Inter-local government and local government-provincial disputes can involve perceived or real issues (Ministry of Community Services n.d.). Common examples of issues that contribute to inter-local government and local government-provincial disputes are: unequal impacts, benefits, or costs; different expectations, assumptions, or forecasts; different definitions of the issues; different values; fragile relationships; different standards of behaviour; decisions/actions on unrelated issues; and lack of information and knowledge (Ministry of Community Services n.d.).

Most local-provincial government disputes occur during routine interactions between local government and provincial staff over areas of overlapping interest (Kaul 2004). Such interactions are complicated by the “dual role” of local governments as “mechanisms [for] local residents[’]…collective activities” and “administrative extensions of the provincial government” (Bish and Clemens 1999, 2). Provincial departments and agencies can approach these complications with an array of attitudes and

\(^4\) The BC Local Government Act defines local governments as: (a) the council of a municipality, and (b) the board of a regional district. Additionally, it states: ”‘Municipality’ means, in relation to a regional district, a municipality in the regional district; ‘regional district’ means, as applicable, (a) a regional district incorporated under this Act, or (b) the geographic area of a regional district corporation referred to in paragraph (a)” (Anonymous 1996, Section 1, point 5).
responses, which can be difficult for local governments to navigate (Bish and Clemens 1999, 2). Of course, “the provincial government can always resolve disputes by changing laws to put itself in a superior legal position,” however most provinces, including BC, have demonstrated a reluctance to do so and prefer instead “mutual accommodation [to] provincial fiat” (Bish and Clemens 1999, 2). Most inter-local government disputes occur due to boundary extensions, incorporation or dissolution of municipalities, and finance issues (Kaul 2004).

Inter-local government ADR is legislated through both the LGA and the BC Community Charter (CC), while local government-provincial ADR is legislated only through the CC. The LGA provides recourse for local government disputes specifically arising over Regional Service Reviews (RSRs) or Regional Growth Strategies (RGSs), while the CC provides recourse for non-specific disputes between a local government and other local governments, the provincial government, or a provincial government corporation (Anonymous 1996; Anonymous 2003).

In order to understand more thoroughly all of the province’s ADR measures as found in both pieces of legislation, the following several paragraphs discuss first the ADR provisions specified in the LGA, and then those specified in the Community Charter.

The LGA delineates five distinct types of processes that can be used in inter-local government RSR or RGS disputes. As identified by the Ministry of Community Services (2001) these processes are:

- Unassisted negotiations;
- Facilitated negotiations;
- Mediated negotiations;
- Peer panel; and
- Final proposal or full arbitration

Unassisted negotiation involves consensual bilateral or multilateral dispute resolution through discussion (Ministry of Community Services 2001). Facilitated negotiation involves a third party helping the disputants in any way (Ministry of Community Services 2001). Mediated negotiation occurs when disputants elect to meet with a third party who assists them to formulate their own resolution (Ministry of Community Services 2001).
A peer panel involves three locally elected current or former officials from local governments other than those involved in the dispute or individuals who in the opinion of the Minister have appropriate experience in relation to local government matters (Ministry of Community Services 2006b). This panel hears presentations from the local governments participating in the settlement proceedings and makes any decision it considers appropriate to settle the disputed issues (Ministry of Community Services 2006b).

Final proposal arbitration involves the disputing parties submitting written dispute resolution proposals to an arbitrator (Ministry of Community Services 2001). There are no oral hearings, testimony or other submissions allowed (Ministry of Community Services 2001). The arbitrator chooses which proposal will be put into effect for each issue in dispute, meaning that one party “wins” and the other “loses” (Ministry of Community Services 2001, 6).

Full arbitration involves a formal hearing in a court-like process with witnesses and evidence (Ministry of Community Services 2001). An arbitrator reviews the testimony and submissions and makes a final decision (Ministry of Community Services 2001). Disputants can initiate a review of a peer panel or final proposal or full arbitration decision by the Supreme Court of British Columbia within 60 days. However, this review does not consider the merits of the decision, but rather the manner in which the decision was made (Ministry of Community Services 2006b).

An RSR dispute occurs when one or more local governments disagree about some aspect of how services are operating in their region (Ministry of Community Services 2001). Prior to the legislation of the ADR mechanisms, “a dissatisfied [service] partner had little power to start a review process that would adapt services to met new conditions created by change” (Ministry of Community Services 2001, 2). An RSR “let[s] service delivery partners address their changing service needs, renegotiate the terms and conditions of a service arrangement, and resolve differences internally” (Ministry of Municipal Affairs). An RSR helps relieve tension when “partners…need a chance to explain and resolve their frustrations; partners need information about a service and its implications…[or when service] withdrawal is impossible,” but partners need to raise and resolve concerns (Ministry of Municipal Affairs). An RSR should be considered if: “the
partners’ shared vision changes; the service changes in scope and no longer fits the original vision; local conditions change; or scheduled by advance agreement in service establishment bylaws” (Ministry of Municipal Affairs).

There are three types of RSR process: informal, bylaw-based, and statutory (Ministry of Municipal Affairs n.d.). The informal review is independent of the LGAs provisions, proactive, and can be initiated by an RD at any time (Ministry of Community Services 2001). The bylaw-based review is a periodic review included as a term of a bylaw when local government partners establish their service agreements (Ministry of Community Services 2001). Statutory reviews are a default option that can be initiated by any service participant (Ministry of Municipal Affairs n.d.). Once initiated, the reviews include all service partners and the RD board (Ministry of Municipal Affairs n.d.). If requested, the statutory reviews may have a minister-appointed facilitator, and must meet within 120 days of the review initiation, must commence negotiations within 60 days of the initial meeting, and must abide by the cost-sharing arrangements that are defined in the LGA (Ministry of Municipal Affairs n.d.).

Both the informal and the bylaw-based process are initiated at the RD board level, with the board deciding the scope of the review (Ministry of Municipal Affairs n.d.). In each type of review, the process is jointly undertaken by representatives from the RD and each member municipality or electoral area 5 participating in the service under review (Ministry of Municipal Affairs n.d.). Each municipal council appoints a council member to represent its interests during the RSR process, or, if no appointment is made, this is undertaken by the mayor (Ministry of Municipal Affairs n.d.). Each electoral area involved in the RSR is represented by its director; and the RD representative is a member appointed by the board or the board chair (Ministry of Community Services 2001). These representatives are included at all stages and all discussions, and, during informal or bylaw-based reviews, they are charged with establishing a review body such as a steering committee (Ministry of Municipal Affairs n.d.).

If the RSR does not result in renewed service agreements, service partners can initiate a Regional Service Withdrawal (RSW). However, this is not an option for core

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5 An electoral area is an area in an RD specified as such by an RDs letters patent (they are usually unincorporated rural areas) (Anonymous 1996).
government functions, regulatory services, mandatory functions, or services exempted by Cabinet regulation (Ministry of Community Services 2001). If an RSW is initiated, “…service partners must try to agree on fair terms and withdrawal conditions through negotiation, facilitation or mediation” which can be aided by a minister-appointed facilitator (Ministry of Community Services 2001, 6). If RSW terms cannot be agreed upon by the service partners involved, the LGA instructs that the disputing members must undergo either full or final proposal arbitration (Ministry of Community Services 2001).

The second type of dispute dealt with by the LGA, Regional Growth Strategy (RGS) disputes, occurs when one or more local governments disagree about some aspect of the region’s Growth Strategy vision document (Ministry of Community Services 2006b). These vision documents are meant to “promote coordination among municipalities and [RDs] on issues that cross municipal boundaries, and clear, reliable links with the provincial ministries and agencies whose resources are needed to carry out projects and programs” (Ministry of Community Services 2006b, 1). The preparation of these documents is led by an RD, which consults with citizens and municipal governments falling within its jurisdiction, and adjacent RDs (Ministry of Community Services 2006b).

When the RGS is satisfactory to the RD, it undergoes a first and second reading at the board level and is then referred to the local governments in the areas covered by the strategy, as well as to adjoining RDs and the RGS process facilitator or MCD minister if no facilitator has been appointed (Ministry of Community Services 2006b). The parties then have 120 days to notify the RD whether they accept the RGS, and, if all accept it, then a third reading at the RD board level leads to the adoption of the RGS (Ministry of Community Services 2006b). During the 120 day period where adjacent and member local governments are considering the RGS, if a facilitator engaged in process assistance anticipates non-acceptance, he/she “may convene a meeting between the [RD] and the affected local governments” (Ministry of Community Services 2006b, 18). The purpose of the meeting is “to clarify issue(s) which non-acceptance may hinge upon and to encourage their resolution prior to formal communication with the [RD] board” (Ministry of Community Services 2006b, 18). Additionally, “If the facilitator anticipates that agreement is possible but more time is required, he or she may extend the 120-day
acceptance period,” or, parties can “agree to disagree” on minor outstanding issues to be resolved at a later date (Ministry of Community Services 2006b, 20).

At any point in the process, parties can elect to engage a facilitator. During the consultation phase of an RGS, the leading RD or an affected local government can request facilitator assistance, as can an electoral area director, if he/she is supported by at least two other RD directors (Ministry of Community Services 2006b). At this point, a facilitator’s suggestions are not binding or required (Ministry of Community Services 2006b). Parties can also choose to enter into a process of non-binding ADR, such as mediation or negotiation (Ministry of Community Services 2006b). The exact non-binding ADR process choice is decided together by the RD board and the local government or governments in disagreement with the RGS (Ministry of Community Services 2006b). If these parties cannot agree on an ADR process the minister chooses one for them (Ministry of Community Services 2006b). Throughout the ADR process selection, “The minister has no direct role in resolving the dispute, but rather acts as a ‘traffic cop’, directing parties to the most appropriate process for the issues and circumstances” (Ministry of Community Services 2006b, 21).

If non-binding ADR processes do not result in agreement between the parties, they enter into a final settlement process (a peer panel or final proposal or full arbitration), which is only used as a last resort (Ministry of Community Services 2006b). At this point, parties choose an arbitration process from the options of a peer panel, final proposal, or full arbitration (Ministry of Community Services 2006b). If they cannot choose a process “within a reasonable time period,” “the minister will choose the most appropriate settlement process based upon the issue(s) in dispute and specific circumstances” (Ministry of Community Services 2006b, 23). Should there be more than one local government disputing the RGS, all issues will all be dealt with in the same settlement proceedings, regardless of whether the issues are the same or different (Ministry of Community Services 2006b). All local governments party to the RGS—even those that have accepted it as it is—may participate in the settlement process, and member electoral area directors as well as the provincial government can also make

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Formal acceptance of an RGS is not required from electoral areas in order for the RGS to be adopted; this measure is meant to provide an opportunity to raise their concerns.
representations during the process, “subject to any conditions set by the panel or arbitrator” (Ministry of Community Services 2006b, 25).

Throughout the course of a settlement proceeding, parties can negotiate in attempts to come to “a mutually acceptable agreement” on the RGS, and, should this be achieved, arbitration proceedings are terminated (Ministry of Community Services 2006b, 26). The legislation permits a party-negotiated agreement to take precedence over an arbitrated decision for up to 60 days after the arbitration decision has been rendered, after which period the arbitrated decision becomes final and binding (Ministry of Community Services 2006b). These measures are meant to encourage party collaboration (Ministry of Community Services 2006b).

Once disputed issues have been agreed to by the parties or decided by an arbitration process, and once the RGS has been approved by the RD board at its third reading, a facilitator can assist parties in entering into Implementation Agreements with each other as well as the provincial government (Ministry of Community Services 2006b). After implementation, “the [RD] must establish a program to monitor its implementation” and publish a yearly “progress report’ to report on actions to date in relation to implementing the RGS (Ministry of Community Services 2006b, 29).

The ADR provisions specified in the CC call upon IRPD staff to mediate “any intergovernmental dispute initiated under the [CC]” (Kaul 2004, 24). It directs that the Minister or Minister’s delegate will consider the context of the dispute and direct the parties to a non-binding resolution process such as negotiation or mediation facilitated by trained IRPD staff or an appointed outside mediator (Ministry of Community Services 2006b). If the parties are unable to settle they will be instructed to partake in a binding resolution process such as a peer panel, or final proposal or full arbitration (Ministry of Community Services 2006b).

3.2.1 ADR Across Canadian Jurisdictions

This thesis scrutinizes the BC local government ADR process. However it is helpful to put this into context by taking stock of actions other Canadian provinces and territories take in this area and comparing them to BC’s actions. Comparing documents involves comparing social events that are not intrinsically comparable (Przeworski and Teune 1970; Mclellan 2005). Comparative policy theory is crafted from “partial
theories…historical and other context in order to provide complex explanations of real-world phenomena” (Scharpf 1989, 152). Although processes may be similar, process context prompts them to unfold differently (Watts 1999; Julnes, de Lancer and Holzer 2001) and policy choices are influenced by institutional, situational, preferential, and perceptual factors (Scharpf 1989). Despite these cautions, comparative analysis can yield rich and otherwise unattainable understandings of processes (Watts 1999). According to Julnes, de Lancer and Holzer (2001, 693-708):

[comparisons] help to identify options that may otherwise be overlooked….allow us to foresee more clearly the consequences of particular arrangements….draw attention to certain features…whose significance might otherwise be underestimated…. [and] suggest both positive and negative lessons.

Section 3.2.1 takes stock of the differing approaches to inter-local government and local-provincial government ADR taken by jurisdictions within Canada and serves to fill out the context surrounding BC’s action in this area. Taking stock also enhances opportunities for the cross-pollination of ideas from one jurisdiction to another.

Of Canada’s provinces and territories, BC, Alberta, Saskatchewan, and Nova Scotia involve themselves in inter-local government and local-provincial government ADR processes or legislation in manners which readily compare to BC. As discussed in section 3.1.2, provincial-local government relations evolved differently in each Canadian province and territory. This unique evolution is probably connected to the concentration on ADR measures in some jurisdictions while it is not emphasized in others. A decentralized quality to local government is likely partially responsible for the interest of BC, Alberta, Saskatchewan, and Nova Scotia in facilitating ADR related processes.

The following paragraphs discuss the provisions in these four provinces based on the information available on their websites takes place in the following paragraphs. Such a comparison improves the understanding of the larger Canadian context within which IRPD’s ADR process exists. The juxtaposition of these provinces’ ADR measures also provides an opportunity to encourage cross-provincial pollination around ADR process approaches. Improving information available on its website based on types of information found on comparable websites was a research outcome desired by MCD of this thesis.
From BC’s MCD main page, a link to “Local Government” and then to “Intergovernmental Relations and Planning” leads to a link to “Dispute Resolution Services” (Ministry of Community Services 2007). On this page one finds an introduction to the concept of dispute resolution, links to descriptions of the BC legislated process, types of facilitative assistance available to municipalities, handbooks on the provincial ADR processes, and contact information for further inquiries (Ministry of Community Services 2007). Further details of their website communication can be found in section 5.1.3.

Alberta’s Ministry of Municipal Affairs and Housing (MAH) local government intergovernmental ADR process is quite developed. MAH’s ADR program communication strategy, entitled “Let’s Resolve,” can be located by searching the website for “Let’s Resolve” or “Mediation” (Municipal Affairs and Housing 2005). Here the program’s mission, vision, values, motto, history, and contact information are found (Municipal Affairs and Housing 2005). The website describes types of inter-municipal disputes, services MAH provides to help resolve them, success stories, and other resources available (Municipal Affairs and Housing 2005). It relays the financial advantages to ADR, funding opportunities for Alberta local government ADR processes, and provides sample funding applications (Municipal Affairs and Housing 2005). It lists ADR training opportunities around the province, including course descriptions, instructor biographies, and fees, and links to other sites about municipal mediation, the provincial mediator roster, reports, publications and news stories related to mediation, and training videos (Municipal Affairs and Housing 2005).

Saskatchewan’s Ministry of Justice and the Attorney General hosts a Dispute Resolution Office that, though not specifically aimed at local governments, shares some content overlap in its focus on provincial government departments and agencies, crown corporations, school boards, and regional health authorities (Saskatchewan Justice and Attorney General 2007). The Office hosts training in mediation and collaborative problem solving, and website details include:

- Definition of mediation;
- Benefits of mediation;
- How mediation is used;
Various types of mediation;
Things to consider when selecting a mediator;
Finding a mediator;
Mediation fees; and
Financial assistance available

Saskatchewan has another initiative, “Clearing the Path,” led by the Saskatchewan Association of Rural Municipalities (SARM) and the Saskatchewan Urban Municipalities Association (SUMA). Though technically out of the purview of this research, it is mentioned here due to its support of the “Municipal Capacity Development Program,” which hosts a website on best practices in inter-municipal agreements including example MOUs for strategic cooperation and economic development, as well as example taxsharing agreements (Clearing the Path: Growing Saskatchewan Communities 2007a). Clearing the Path also has a forthcoming publication “A Guide to Increased Inter-Municipal Cooperation,” which no doubt will greatly contribute to this area of interest once released (Clearing the Path: Growing Saskatchewan Communities 2007b).

Though Service Nova Scotia and Municipal Relations does not have information on ADR on its website per se, they have produced 2 relevant manuals that can be located by following the link to “municipal” from its homepage, and clicking on “Manuals” under the section “General Information” (Service Nova Scotia and Municipal Relations). The Handbook on Inter-Municipal Partnerships and Co-operation for Municipal Government (HIMPCMG); and section 2.3 of its Local Government Resource Handbook (LGRH): “Inter-municipal Partnerships” are identical, save for an additional appendix in the HIMPCMG, which provides examples of inter-municipal agreements (Service Nova Scotia and Municipal Relations 2003; Service Nova Scotia and Municipal Relations).

These handbooks discuss the findings from a project undertaken by the Province to discover the experience of Nova Scotia local governments and what they term as international “best practices” around local government partnerships, and address the benefits of ongoing positive working relationships, procedures to follow in order to avoid relationship breakdown, and speak to ADR as a way to address relationship breakdown (Service Nova Scotia and Municipal Relations 2003; Service Nova Scotia and Municipal Relations)
Relations). Of particular interest is Appendix A of the documents, which is comprised of a “Sample Listing of Best Practices Websites and Related Information” on inter-local government partnerships (Service Nova Scotia and Municipal Relations). Unique among the other provinces discussed, Nova Scotia names First Nations as potential partners for inter-local governmental initiatives (Service Nova Scotia and Municipal Relations).

The LGRH contains a subsequent section, section 2.3.1, which contains the headings “Understanding municipal Organization Dynamic and Dispute Resolution,” “Formal Dispute Resolution Mechanisms,” “Reasons to Use Mediation” and “Accountability” (Service Nova Scotia and Municipal Relations 2003).

The Nova Scotia government’s research indicated that local governments would find a continuously updated description of examples of inter-local government co-operation within the province useful, in order to show benchmarks and best practices (Service Nova Scotia and Municipal Relations n.d., 9). Among the potentially useful items contained in the handbooks is a section on the benefits of inter-municipal co-operation (Service Nova Scotia and Municipal Relations n.d., 2). Guidelines for inter-municipal agreements and suggestions for evaluating the process are also discussed (Service Nova Scotia and Municipal Relations n.d., 2-7). This section also highlights the need for accountability to the agreement including each party defining its responsibilities and establishing annual objectives, as well as tracking achievements against objectives after year one, and party annual self-assessment of their relationship to the agreement (Service Nova Scotia and Municipal Relations n.d., 4-5, 7).

Local Governments themselves have also ventured into the ADR arena, with many Albertan centres crafting “Inter-municipal Development Plans” with ADR provisions included in them. The City and County of Red Deer are one such case where such provisions are incorporated (City of Red Deer 2008).

Presuming neighbouring constituencies are likely to disagree on one matter or another at some point, a possible inference from the absence of ADR measures in some Canadian provinces or territories is that those jurisdictions without ADR measures handle disputes via provincial direction as opposed to the more locally-directed approaches taken in BC, Alberta, Saskatchewan, and Nova Scotia.
The recent (within the last 10 years) proliferation of ADR measures within the provinces of BC, Alberta, Saskatchewan and Nova Scotia suggest inter-local and local-provincial ADR is an area that provincial governments find increasingly relevant and crucial to address in order to cultivate well-functioning local governments. The various overlaps and divergences of approaches taken in these jurisdictions are indicative of areas of common interest and areas for further initiative development, respectively.

BC, Alberta, Saskatchewan, and Nova Scotia all attempt to provide clear access to information on inter-local and local-provincial ADR services available within their jurisdictions as well as links to further resources such as process guides. Descriptions of ADR and its benefits are highlighted on each province’s website. Alberta, Saskatchewan and Nova Scotia each provide examples either of smart practices or success stories, a tool that MCD has indicated interest in developing on its website.

Alberta values relating the mission, vision, values, and so on, of its ADR process, something that other jurisdictions could emulate to improve communication around the ADR provisions they make available. Alberta also emphasizes local government training in ADR skills, access to which can greatly improve parties’ ability to work together and find creative solutions to mutual dilemmas.

Alberta and Saskatchewan clearly delineate funding scenarios and opportunities and provide direction on how to locate a mediator, something local governments are likely to find useful. Alberta, Saskatchewan, and Nova Scotia all provide templates for different aspects of their ADR measures, such as sample funding applications or sample agreements. This could greatly demystify the ADR process experience for those visiting their websites.

Nova Scotia emphasises dispute prevention, party accountability, and agreement evaluation. According to indications found in ADR literature, these are areas that other jurisdictions could benefit from including on their websites. Finally, Nova Scotia provides access to the findings of the research it undertook with its local governments when it was seeking to improve its ADR provisions. Other jurisdictions could improve the scope for local governments to voice their experiences with and recommendations for improving provincial ADR measures.
Most discussion in this thesis to this point has served to broadly situate MCD’s ADR processes in its historical, theoretical, and contemporary contexts. Firmly grasping context provides excellent grounding for exploration of this thesis’ main research question: what performance measurement and evaluation tools are useful for IRPD’s ADR processes? This thesis thus far has also begun addressing several research sub-questions including: what does ADR literature recommend incorporating into ADR processes; how can information about ADR processes best be monitored, measured, and communicated; and what do comparable ADR processes incorporate into their ADR processes? Fortified with theory and context, rumination on the vignette of the disputing BC regional constituencies described in Chapter 1 simultaneously increases in comprehension and complexity.

The next chapter delineates the methodology and methods used throughout the primary research portion of this study. Delineation of methodology and methods not only improves research transparency, but enables others to replicate or critique the researcher’s approach.
Chapter 4: Methodology and Methods

4.1 Procedures

4.1.1 Research Questions

As identified in Section 1.1, this research was guided by IRPD’s intention to (re)develop its ADR process description (objectives, mission, vision, and goals) and to generate tools to monitor, measure, and communicate the formal and informal aspects of its ADR process. The research question central to this study was:

What performance measurement and evaluation tools are useful for IRPD’s ADR processes?

Research sub-questions included:

1. What does ADR literature recommend incorporating into ADR processes?
2. What do comparable ADR processes incorporate into their ADR processes?
3. How can information about ADR processes best be monitored, measured, and communicated?
4. What perspectives can IRPD ADR process Dispute Resolution Officers, internal facilitators and resource persons offer to inform an understanding of IRPD’s ADR process delivery?

4.1.2 Research Framework

The following page depicts a figure conceptualizing the research framework (Figure 2). The research perspective and knowledge claims depicted in the diagram were discussed in detail in section 1.2.2. In this section, the framework is picked up at the level of the research approach, and continues on to discuss the levels of methodology, method, and design process. The “Result” level will be addressed in Chapter 5: Findings.
The pragmatist perspective allows for a mixed methods approach (both qualitative and quantitative research methodologies and methods). Mixed methods were first popularized in 1959 by Campbell and Fiske in a study of psychological traits (Creswell 2003). Mixing methods strengthens research and allows for diverse levels of analysis by neutralizing biases inherent in each method and by enabling triangulation and further development of, or insight into, one method from the other (Creswell 2003). Although the term “mixed methods” is the most common term applied to this type of research, it has also been referred to as multi-method, convergence, integrated, and combined research (Creswell 2003).

This research is descriptive in nature. Descriptive research “presents a complete description of a phenomenon within its context” (Yin 2003, 5). Descriptive research
collects and analyzes both numerical and textual information (Jackson 1997). The research undertaken here is applied research, involving the discovery of “…how to bring about specific changes,” instead of pure research, which involves “knowledge for its own sake” (Jackson 1997, 16-17).

Though the quantitative data collection process preceded the qualitative data collection process, analysis of quantitative and qualitative data occurred concurrently, involving the integration of quantitative and qualitative data during the interpretation of the overall results “in order to provide a comprehensive analysis of the research problem” (Creswell 2003). The quantitative research was nested within the qualitative research, resulting in an emphasis on the qualitative portion of the research.

The qualitative portion of this study involved a case study of IRPD’s ADR process via interviews with MCD’s ADR process Dispute Resolution Officers (DROs), internal facilitators, and resource persons (each role is described in section 5.1.1) as well as a document analysis of IRPD’s ADR process literature. This included a concerted focus on revising IRPD’s ADR formal and informal process objectives, mission, vision, and goals.

The quantitative portion of this study involved the analysis of data found in IRPD’s post-ADR process survey, which used a Likert scale (described in section 1.1.1) to measure variables indicative of whether or not IRPD’s ADR process was successful. The survey was developed by IRPD and is administered by IRPD to IRPD ADR process participants once they have completed their resolution process. Using data that is already available in combination with newly collected data specific to a new study is termed a “patched-up research design” (McDavid and Hawthorne 2006, 101).

The research approach included placing the researcher into the research context during data collection and writing (situating oneself), making interpretations of the data, and collaborating with participants. These approaches were selected due to their non-intrusive nature and compatibility with the subject matter. This research was subject to an ethical review by the Human Research Ethics Board of the University of Victoria, and a discussion of the research’s ethical considerations is outlined in Appendix I Ethical Considerations.
4.2 Methodology and Method

4.2.1 Qualitative Methodology and Method

This research purports to use case study methodology. Ragin (1987, 35) indicates the case study can be used “to understand or interpret specific cases because of their intrinsic value”. The meaning and usage of the term “case,” however, is problematic, as discussed at length by Ragin (1992). Ragin’s (1992) construal of a traditional understanding of a “case” is that of something bounded by place and time. Ragin (1992) posits that rather than understanding these boundaries at the beginning of a research project, the data collection, analysis, and write-up tend to reveal what something is a case of.

Yin (2003, 4) indicates case study is “the method of choice” for studying a phenomenon “not readily distinguishable from its context” such as a program in an evaluation study (analogous to the research undertaken here). Yin (2003) highlights that theory used in descriptive research involves indicating the scope and depth of the case being studied. This includes the start and end of the description as well as what is included or excluded (Yin 2003). Case study usually involves the selection of one case, a detailed and intensive study of a phenomenon in context, and the use of several data collection methods (Lewis and Ritchie 2003). The unit of analysis in this case study is the program, and this is due to participant feedback and time and budgetary constraints.

The methods selected to carry out this case study were iterative and included document analysis and interview. Document analysis facilitates procedural substantive understandings and works well when undertaking organizational research that relies heavily on written communications that are not otherwise capable of being researched via direct observation or questioning (Ritchie 2003). Interview methods permit personal perspectives and detailed examinations of processes, which in turn enable the exploration, clarification, and understanding of intricate systems (Ritchie 2003).

The document analysis portion of this research reviewed both electronic and paper materials produced by IRPD about its ADR process in order to inform the researcher’s understanding of the ADR process as well as to round out the perspectives on the ADR process provided in the interview portion of the research.
This research could have been informed by a number of perspectives, including local government, external MCD facilitators, or all MCD staff to name a few. On the advice of IRPD’s Intergovernmental Relations Director, several MCD Dispute Resolution Officers (DROs), internal facilitators, and a resource person (DRO, internal facilitator, and resource persons roles are described in section 5.1.1) were invited to participate in this research. Two from a total number of three DROs were interviewed, four from a total number of ten internal facilitators were interviewed, and one resource person from a total number of resource persons unknown to the research was interviewed (any MCD member with knowledge of a certain area could be called on to act as a resource person for an ADR process). A total of eight persons were invited to participate in the interview process, all eight accepted the invitation, however, one internal facilitator was unable to participate due to lack of time.

The mix of DROs, internal facilitators, and resource persons enabled a cross-section of diverse perspectives of the ADR process from within MCD itself. An internal perspective of the ADR process was desired due to the scope of the research as defined by the research questions. DROs, internal facilitators, and resource persons were in a position to render in-depth expert accounts of the internal workings of IRPD’s ADR process. Those interviewed have worked at MCD for between 1.5 and 20 years. The interview portion of the research focused on how these staff members described their experience with IRPD’s ADR process in both its formal and informal capacities.

4.2.2 Quantitative Methodology and Method

The quantitative portion of this research analyzed data found in IRPD’s ADR post-formal process survey. It attempted to discern whether IRPD ADR formal process participants perceived the ADR process as incorporating smart practices, indicated by the assessments of fairness, efficiency, stability, and wisdom. Data gauging program users’ experiences helped to address the central research question: what performance measurement and evaluation tools are useful for IRPD’s ADR process? The dependent variable used in the exploration of this portion of the research is the IRPD ADR formal program users’ experiences of the program, while the independent variable is the perceived presence of smart process practices.
The purpose of survey research is “to generalize from a sample to a population so that inferences can be made about some characteristic, attitude, or behaviour of this population” (Babbie cited in Creswell 2003, 154). In this thesis research, the sample population was the elected representatives that responded to IRPD’s ADR post-formal service survey, while the general population was the elected representatives involved as representatives with IRPD’s ADR formal services. The inferences made were about their attitudes towards the formal ADR services. Survey validity is generally confirmed by the meaningful and useful inferences derived from survey scores, and survey reliability by the consistency of the measurement. IRPD’s ADR post-formal process survey distribution and collection procedures pose problems for validity and reliability. These problems are discussed at length in section 5.2.

IRPD’s ADR post-formal process survey is distributed to all IRPD ADR formal program users, ensuring that “each individual in the population has an equal probability of being selected” (a random sample) (Creswell 2003, 156). The data is collected on an on-going basis however the survey itself is given to formal service users at only one point in time, at the completion of IRPD’s ADR formal process. The form of the survey is a self-administered questionnaire, and it is a single-stage sampling procedure. The survey is an intact instrument – an instrument created by someone else (Creswell 2003). Use of the survey for this research was granted by MCD.

The goals of this survey are to discover how participants in the IRPD ADR formal process experience this process, and to use this information to improve the process. A survey is the best way to acquire this information due to the minimal use of participants’ time and the comparability of answers. Those who participated did so voluntarily, though their selection was not haphazard. All members of this population were located or “covered” so they all had an equal chance to be sampled.

Question wording was matched to concepts measured and the population studied. Survey questions were arranged in a logical format and order, and definition of topics, concepts and content, wording, and survey length and format were considered. Question phrasing is unambiguous and unbiased. Respondent discomfort around sensitive matters was lessened by the anonymity of the surveys. Attention was paid to the quality with
which the survey was constructed, administered, and analyzed. Maximization of response rates was attempted.

IRPD’s post-formal process survey uses a Likert scale to measure variables that are indicative of evidence of a smart ADR process. Likert scales are bipolar scaling methods which measure either positive or negative responses to a statement by prompting survey respondents to choose a level of agreement to a statement (Trochim 2006). They are a type of psychometric response scale designed to measure knowledge, ability, attitudes, and personality traits (Trochim 2006). When using this type of measurement researchers must control for central tendency bias (using extreme response categories), acquiescence bias (providing respondents only with the option to agree to a statement), and social desirability bias (portraying the organization in a more favourable light) (Trochim 2006). IRPD’s post-process survey is designed to minimize all three of these biases.

4.3 Data Collection and Analysis

4.3.1 Qualitative Data Collection and Analysis

Interview and document analysis data were collected in an open-ended, emerging manner so as to enable the development of themes (Creswell 2003). This was done so as to develop theoretical guidelines based on patterns discerned throughout the case study process. This research was collaborative and change oriented with an effort to use participatory perspectives.

Qualitative data collection took place during November 2007 and July 2008. Interview data were collected throughout several individual interviews with the MCD participants during which IRPD’s program priority areas (see section 4.1.1) and participant experiences with the process were discussed. These meetings were in person, and a participant observation method was employed. Some internal documents were provided as supplements to the discussion. No audio or visual equipment were used to record the data, rather, to facilitate participant comfort and a natural flow of discussion, interview information was recorded by the taking of notes by the researcher during interviews.

The document analysis included analysis of textual information available on the MCD website as well as printed documents produced by MCD about its ADR process.
These texts were reviewed in order to glean clues about the structure and content of the process, as well as to ascertain key gaps or overlaps between textual representations of the process and those made by interview participants.

Data analysis and write-up took place from December, 2007 to July, 2008. Policy and evaluation analysis techniques were used, entailing a focus on finding answers about effectiveness, delivery and impact for social policy and program contexts (Ritchie and Spencer 1994). In order to respect the contexts in which these phenomena exist, data were viewed as “referring to and representing phenomena…which exist apart from the data” and apart from my account of this data (Spencer, Ritchie, and O’Connor 2003, 202).

The primary focus of the analysis was to locate and translate the data’s substantive and common sense implications (Spencer, Ritchie, and O’Connor 2003). Complex statements and ideas were reduced to their more core meanings while attempting to maintain data depth (Spencer, Ritchie, and O’Connor 2003). Data was organized in a non-cross sectional manner so that concepts could be applied to the data in a way that ensured information could be organized around themes whether or not the themes appeared in all data sections (Spencer, Ritchie, and O’Connor 2003). This also ensured the elucidation of overarching themes emerging from the data and the maintenance of context throughout the analysis process (Spencer, Ritchie, and O’Connor 2003). Abstract concepts and themes were garnered to attempt theory construction and categories created were utilized to group, display, and discuss data thematically in order to compare content and suggest further lines of inquiry (Spencer, Ritchie, and O’Connor 2003).

4.3.2 Quantitative Data Collection and Analysis

Quantitative data were collected on an ongoing basis by MCD staff from January 2000 to December 2006. Because the survey tool was previously designed and administered, the researcher’s collection procedures were minimal and involved making arrangements with IRPD to access survey data.

Quantitative analysis and write-up by the researcher took place throughout December 2007 to October 2008. Quantitative data were analyzed in two ways. First, they were numerically analyzed so the results of the data produced by the relevant statements in IRPD’s post-process survey Likert scale were interrogated to produce
relevant indicators. Tally sheets and master tables were used for this process (Jackson 1997). Once a master table is set up, data can be transferred to create individual tables, tables can be formatted, tests of significance and measures of association calculated, and results interpreted (Jackson 1997).

The second way in which the data was analyzed was via data transformation so that quantitative data was qualified to extrapolate and flesh out indicators of IRPD’s ADR process (Creswell 2003). In this way, practices identified quantitatively can be united with descriptors of such practices discovered in the qualitative portion of the research.

4.3.3 Validation

Findings were validated in several ways. In order to externally validate data, various methods and sources were used to confirm the integrity of the data as well as to enable the extension of data related assumptions (triangulation of sources) (Lewis and Ritchie 2003; Ritchie 2003). The constant comparative method was employed to test ideas found in one section of the data against those found in other parts of the data, as well as on relevant cases located in the literature (Lewis and Ritchie 2003). Respondent validation was employed by taking findings back to the interview participants to check whether the data interpretation resonated with them (member-checking) (Creswell 2003). Researcher bias was addressed through self-reflection or “situating the self” (see section 1.2.5) (Creswell 2003). Lastly, peer review/debriefing was undertaken (Creswell 2003), whereby feedback on thesis research was received from three colleagues in the MA Dispute Resolution program.
Chapter 5: Findings

This chapter relates the findings from the qualitative interviews and document analysis and the quantitative survey analysis. The findings chapter hones gathered data to respond to the research question: what performance measurement and evaluation tools are useful for IRPD’s ADR process? It also hones gathered data to respond to the research sub-questions: what perspectives can IRPD ADR process DRO, internal facilitator, and resource persons offer to inform an understanding of IRPD’s ADR process delivery; and how can information about ADR processes best be monitored, measured, and communicated?

Chapter 5 reviews IRPD’s ADR process objectives, mission, vision, and goals, and formal and informal aspects. The IRPD ADR process is discussed first as a whole, and then its formal and informal components are separated. Chapter 5 also looks at descriptors of the process unavailable in textual information about IRPD’s ADR process in order to identify and clarify areas for action. This chapter then goes on to consider monitoring, measurement, and communication procedures in place for formal and informal IRPD ADR process aspects. Section 5.1.4 relates the experiences of process Dispute Resolution Officer (DRO), internal facilitator, and resource people’s perceptions of process delivery, illuminating their wealth of experience on process issues, components, environmental influences, rural and urban identities, historical, political, and cultural contexts, tensions, process rules, timing, moments of shift, resolution, facilitation, training, background information, and general perceptions that comprise the ongoing experiences of those involved in the process.

Breaking from the examination of the qualitative findings, section 5.2 explores the quantitative data derived from IRPD’s post-process survey, which is administered to local government ADR process participants. Section 5.2 identifies gaps in data collection and analysis and poses potential inferences from available data.

5.1 Qualitative Findings

5.1.1 Describing the IRPD ADR Process

According to the literature on program measurement and evaluation, getting a clear understanding of what IRPD’s ADR process entailed including objectives, mission,
vision, and goals, was an integral starting point for contextualizing how the process worked, how those facilitating and resourcing the process fit into it, and the types of recommendations appropriate for process enhancements like performance measurement and evaluation. Sections 5.1.1-5.1.3 provide details of the process elucidated through the interviews which are not necessarily available in any documents describing the process. In this way, these sections greatly contribute to the information available to non-MCD staff regarding the ADR process.

Interviews helped clarify IRPD’s ADR process objectives, mission, vision and goals as they were discussed and revised. These revisions are the subject of the next several paragraphs.

Program objectives can be understood as the broadest statement of what a program would like to achieve in the future. IRPD’s ADR process objectives were described in interviews as follows:

To assist local governments in resolving inter-jurisdictional and intergovernmental disputes between both other local governments and the provincial government; to develop provincial government capacity in ministries and agencies to address issues of mutual interest to both local and provincial governments; to assist in the early resolution of intergovernmental issues to prevent issue entrenchment and escalation and to limit provincial involvement (Anonymous 2007b).

A program’s mission statement can be understood as a brief description of the program fundamental purpose including present capabilities, client focus, activities, and program makeup (Allison and Kaye 1997). According to Allison and Kaye (1997, 10-12):

A mission statement is like an introductory paragraph: it lets the reader know where the writer is going, and it also shows that the writer knows where he or she is going. Likewise, a mission statement must communicate the essence of an organization to the reader – and an organization’s ability to articulate this indicates its focus and purpose…[including] [w]hy the organization exists and what it seeks to accomplish…the main method or activity through which the organization works to fulfill this purpose…[and t]he principles or beliefs which guide an organization’s members as they pursue the organization’s purpose.
The pre-existing IRPD ADR mission was: to help resolve disputes between government jurisdictions while in an interview, IRPD’s ADR process mission was described as follows: “to develop local and provincial government capacity to manage conflict using interest based negotiation skills and processes” (Anonymous 2007b).

A vision statement describes what a program’s success would mean or look like. It outlines the problem that an organization exists to solve, who is affected by the problem, how they are affected, and how the world would be improved if the organization was successful (Allison and Kaye 1997). IRPD’s ADR process did not have a vision statement. In the interviews, the vision was described as follows:

The provision of outstanding advice, facilitation, or other assistance in matters of dispute resolution to both local and provincial governments. The widespread use of interest based negotiation skills at both the provincial and local government levels amongst both staff and elected officials in day to day interactions. The reduction in number of disputes occurring between local and provincial governments (Anonymous 2007b).

Goals can be thought of as the purpose of an endeavour. The IRPD ADR process goals previously in place continue to be relevant (Anonymous 2007b). According to Ministry of Community Services (2001) these goals are:

To resolve disputes collaboratively by helping parties to: identify their interests; explore options for resolution; develop and implement solutions acceptable to all; and obtain the services of a neutral mediator, if needed. To solve disputes as early as possible in order to help parties avoid stressful and costly arbitration or court action. To encourage open communication and help foster understanding between parties, building better long-term relationships, better decision making, better local government intergovernmental relations, less disputes requiring provincial involvement, and better local government understanding of legislated dispute resolution processes.

This completes the interview exploration of the IRPD ADR process as a whole. Next, the process was parted into its informal and formal aspects and the mission, vision, and goals of each aspect were queried. Though this overlapped the discussion of the ADR
process as a whole, the exploration of the details of each aspect assured that the researcher was as clear as possible on the various manifestation of IRPD’s ADR process. A clear understanding of IRPD’s ADR process contributes to the researcher’s ability to make appropriate recommendations for IRPD’s ADR process measurement and evaluation tools.

The informal and the formal ADR provisions undertaken by MCD are equally important, as the informal ADR provisions focus on dispute prevention or reduction, while the formal ADR provisions focus on the procedures by which local governments form agreements in order to resolve disputes. The informal and the formal ADR provisions can be conceived of as two equal halves of a whole.

**a) Informal**

The informal ADR provisions are integrated into MCD employees’ daily activities. While many research interviewees identified and celebrated the use of their ADR skills and activities in their every day work, it was unclear as to whether the interviewees conceived of these skills and activities as an extension of the formal ADR provisions delineated in legislation (Anonymous 2008a; Anonymous 2008b; Anonymous 2008f; Anonymous 2007a). Unclear, too was the extent to which local governments or other provincial ministries and agencies were aware that members of MCD’s staff were in possession of an ADR skill set, and to what extent local governments or other provincial ministries and agencies drew on this resource (a query which was outside of the scope of this research).

The informal ADR provisions carried out by MCD staff were not quantified or spelled out in any particular document. Rather, the informal ADR provisions were actions taken on an ad hoc basis that come from MCD staff awareness of and attunement to situations where ADR skills were helpful.

The objectives of the informal process include: to develop internal capacity for interest based negotiation in both local and provincial governments; to develop a culture of Interest Based Negotiation (IBN) that permeates relations between and amongst local and provincial governments and ministries; to be clear about the province’s interest in a non-positional way when facilitating discussions around common goals; to offer non-legislated services including providing advice to local governments and ministries to
address areas of concern; and to ensure IRPD staff have IBN skills in order to de-escalate conflict in their day to day duties including internal workplace conflict as well as work with citizens (Anonymous 2007b). These informal ADR process objectives are quite substantial, and these will form the backbone of any performance measurements designed to quantify the informal ADR process.

Activities undertaken to provide these informal services include: advice via phone, e-mail, and in-person; attendance of IRPD staff at meetings of disputing individual and joint parties to facilitate the process using IBN skills; coaching provincial ministries in understanding local government and using IBN skills in their interactions with local government; holding educational sessions and workshops for local government politicians, planners, and senior staff on IBN skills and processes at province-wide local government functions (this is on an ad-hoc basis, depending on whether the sessions fit with the function’s theme); making best practices available in print and on the website; and capacity-building (Anonymous 2007b).

Those responsible for these activities include every employee of MCD’s Local Government Division to varying degrees (Anonymous 2007b). An estimated 70 plus MCD staff have undergone training in IBN, an estimated 30 of whom use it on a daily basis for job-related tasks (Anonymous 2007b). This includes clerical and administration staff that deal with workplace conflict (Anonymous 2007b). There is a varying level of skill in the use of IBN by MCD staff; some use the skills more frequently and in a more refined way than others (Anonymous 2007b).

b) Formal

The formal aspect of IRPD’s ADR process revolves around inter-local government Growth Strategy disputes, Service Review disputes, and Community Charter disputes. The objectives of the formal process include: to assist local and provincial governments to resolve not yet deep-seated conflict and entrenched disputes; to ensure disputes are dealt with in a timely and efficient way by the ADR provisions laid out in legislation; and to assist local governments in resolving their disputes while maintaining good or improving working relations with one another (Anonymous 2007b).

The activities undertaken to provide these services include: the steps/actions required of a Dispute Resolution Officer by the Community Charter; provision of
direction and advice on process and facilitation or mediation; and engagement of external mediators or arbitrators as necessary (Anonymous 2007b).

Those responsible for carrying out these activities include: three Dispute Resolution Officers (DROs), whose powers are vested in the titles of Director of Intergovernmental Relations, Executive Director of Intergovernmental Relations and Planning Division, and Assistant Deputy Minister of Community Services (Anonymous 2007b). Additionally, there are ten IRPD staff members trained in mediation who can be called upon to actively facilitate a dispute (Anonymous 2007b). From this pool of thirteen people, co-facilitation or co-mediation teams consisting of two people are drawn (Anonymous 2007b). Resource people are also part of the equation and include an assortment of MCD staff with expertise on various subjects who are called upon to provide specific information and data clarification throughout the course of disputes (Anonymous 2007b). Though resource people do participate on co-facilitation or co-mediation teams, most frequently the team is comprised of one DRO and one facilitator. Less often co-facilitation or co-mediation teams are comprised of two facilitators advised by a DRO (Anonymous 2007b).

5.1.2 Monitoring and Measuring the Process

a) Informal

The informal ADR process is difficult to quantify as there are no mechanisms currently in use to monitor it. Putting such monitoring mechanisms in place might not only prove onerous for staff, but might also discourage the candour of potential process users wishing to make informal inquires (Anonymous 2007a). These cons should be weighed against the pros of any monitoring system engaged. Records of informal activities include letters received, notes taken during phone conversations, and filed e-mails (Anonymous 2007a). Going unrecorded are occasions where MCD staff are approached by local or provincial governments at unrelated conferences or meetings with inquiries into, or anecdotes relating to, the ADR process (Anonymous 2007a).

Some interview questions attempted to understand what and how features of this informal work would best be represented. Participants suggested that a useful monitoring tool for the informal process would: show how much work is being done; communicate to staff what is happening in various regions; be quickly accessed and updated; be simple;
easily retrieve important facts; show areas where disputes are occurring; be accessible to all staff; and be organized by Regional District (Anonymous 2007a). Such a tool would set the context to enrich the work MCD staff are doing as well as the decisions being made (Anonymous 2007a). It would also be a starting point prompting staff to initiate conversation with people when they hear about provincial-local issues “through the grape vine” (Anonymous 2007a). An example of such a tool is an electronic log documenting the date, the name of the contact, the issue, and contact questions, which staff could fill out right after a call (Anonymous 2007a).

b) Formal

As discussed in section 5.1.1, the relationship of IRPD’s informal ADR process to its formal ADR process is not overtly defined. Both, however, offer opportunities to engage with smart practices identified in the literature and comparative jurisdictional analysis, and both are considered by the researcher as critical components to a constructive approach to inter-local and local-provincial relations.

Tools used to monitor and measure IRPD’s ADR process should integrate MCD’s own definition of a successful ADR process, which is characterized as “based on fairness, the mutual satisfaction of participants and the effectives of the process” (Ministry of Community Services 2001, 17). Based on the Ministry of Community Service’s (2001) description of what success would look like for IRPD’s ADR process, the ADR process measurement tools should measure whether there was:

- A fair approach;
- Free and open communication;
- Equal opportunity for participation;
- Participant control over the process;
- Participant comprehension of other parties’ interests;
- Personal criticism;
- Addressing of all issues of concern;
- Identification and meeting of all joint objectives;
- Measurable and monitorable outcomes;
- Participant support for the agreement; and
Participant satisfaction with the process outcomes.

No measurement tool is in place to collect long-term data on how agreements hold up; anecdotal evidence is occasionally casually passed on to MCD staff, but there is no system in place for sharing these anecdotes (Anonymous 2007a). Agreement stability is a significant ADR process indicator as well as an indicator identified by MCD as an aspect of program success (participant satisfaction with the process outcomes) (Ministry of Community Services 2001). As such, its absence from measurement procedures is problematic, as is discussed further in section 6.1.3.

Keeping monitoring processes up to date enables all MCD divisions to have an awareness of problems in certain regions when they are doing work there (Anonymous 2007a). In addition, long term patterns could be indicative of systemic problems requiring a different solution (Anonymous 2007a). Formal process monitoring is possible through review of MCD budgets detailing travel expenses, days taken for meetings, and staff time (Anonymous 2007a). Formal disputes are also tracked via a table which lists dispute parties, key dates, processes engaged (i.e. advice, facilitation, etc.), whether there is external facilitation, key issues, if the dispute has been resolved and how, and dispute timelines (Anonymous 2007a). This tool has fallen into disuse and is not up to date (Anonymous 2007a). At one time reminders to staff to update and consult the table were sent out via e-mail, but this is no longer done (Anonymous 2007a). Disuse of the dispute tracking table is likely due to the reprioritizing of staff time such that other MCD mandates have taken precedent over actions around ADR perceived as less critical to operations. Likewise, the reminders to update the dispute tracking table likely stopped due to a perceived decrease in the priority of keeping the table up to date compared to other pressing matters in staff workload.

One problem with monitoring the formal process is that it is difficult to pin-point the end date of a dispute as there is no document signing at the end of the resolution process, but rather, an agreement to amend a by-law at a Regional Board at an unspecified later date (Anonymous 2007a). No formal signing takes place because each process is unique and signing may not be an appropriate conclusion (Anonymous 2007a). Monitoring is also difficult because there is no rhythm to how disputes arise and are dealt with; it is not part of staff day-to-day “consciousness” (Anonymous 2007a).
Respondents suggested solutions and ideal formal process monitoring tools. According to the interviews, an ideal formal processes monitoring tool would: indicate current disputes; be concise but comprehensive; be a simple Microsoft Word table (even thought these are not designed for statistic retrieval); be quickly accessed; swiftly retrieve statistics; show a budget to make a case for funding and show costs to non-action; capture the history of areas where there have been challenges to see if there are patterns in certain regions; have “readability” (i.e. ease of use when printed out) (Anonymous 2007a). Participants noted it would be hard to quantify the money saved because of the program, but instead local government and provincial satisfaction with IRPD assistance could be demonstrated (Anonymous 2007a).

The formal process is measured by a survey used for Service Review/Regional Growth Strategy/Community Charter process feedback (Anonymous 2007a). The survey is designed to measure the views of local government participants on their experience of IRPD’s ADR process. Gathering data via the survey is problematic as there is no formal time when this survey is distributed. There are three components to IRPD’s ADR formal process: the procedure (negotiation, mediation, or arbitration), the agreement/decision, and the implementation of the agreement/decision (i.e. passing of a by-law) (Anonymous 2007a). The formal ADR process is, however, only legislated up to the agreement/decision stage. This means that while IRPD sends surveys out to process participants at the completion of the legislated process, some participants refuse to fill them out, citing waiting on agreement implementation as the cause (Anonymous 2007a). Agreement implementation takes the form of local government parties passing bylaws, and because the ADR process provides no requirement for local governments to inform IRPD if and when agreement implementation occurs, the opportunity to receive process feedback via the survey can be lost (Anonymous 2007a).

As noted in the literature and theoretical issues review as well as in the Canadian jurisdictional comparison, building implementation guarantees such as monitoring and reporting mechanisms into dispute agreements is seen as a smart practice which can greatly increase agreement cohesion.

ADR process participant reluctance to fill out the survey is construed by IRPD as participants attempting to maintain leverage over the process, as once agreement
implementation occurs, legally the issue cannot be reopened for three years (Anonymous 2007a). If parties in an ADR process consistently wish to withhold feedback until agreement implementation occurs, and if desired performance measurements hinge on participant feedback, it seems practical to buttress agreement implementation by incorporating monitoring and reporting mechanisms into an ADR agreement. In addition to this, being sure to stay on top of who has or has not responded to the survey and routinely following up with these parties could greatly improve response rates.

5.1.3 Process Communication

The discussion of process communication was broken down into two facets: internal communication and external communication. External communication was further broken down into information available via the internet and information available via print sources.

a) Internal Communication

There are two audiences for internal communication, the MCD Minister and Executive, and internal MCD staff (Anonymous 2007c). The Minister and Executive should be provided with a year-end report detailing what has happened with the process in the previous year (Anonymous 2007c). According to an interviewee, ideally this report would: briefly and concisely detail information on both the formal and informal process; show progress in disputing regions and on certain issues; provide a sense of which local government councils are struggling with disputes; indicate staff and monetary resources (including external facilitator hiring and cost sharing); show advice given; and numbers of disputes in progress and resolved (Anonymous 2007c).

The format of such a report should resemble that of a briefing note and could include: subject; issue to be addressed (purpose of project, context); project description (goals, approach, Ministry staff role, partners, resources such as project costs and budget); deliverables; outcomes; justification (comparison of outcomes/deliverables and resources); fit with MCD and IRPD mandate; performance measures (definition of success, benchmarks, methods of measurement); project management (administrative parties, responsibilities of parties); communications (audience, messages, strategies), and staff contact (Anonymous 2007c).
The second internal communication audience – MCD staff – need access to the same type of information that the dispute monitoring table described above tracks, and this table itself could also be used for communicating the program to internal staff (Anonymous 2007c). MCD staff also need to have periodic process updates, which could take the form of a quarterly e-mail (Anonymous 2007c).

Communication about the program from meeting to meeting and process to process to those specifically involved as facilitators or resource persons is also important. For process facilitators, having an understanding of the “science and data” involved in the dispute was not identified as being as important as “just being there” (Anonymous 2008a). Having a process history available which details whether there have been past dispute resolution attempts, who instigated the process and why, related e-mails and decisions, meeting minutes, information on local government websites to recreate a picture of what happened; and being familiar with the personalities involved and how they were selected to participate could help better prepare MCD staff for an ADR process facilitation (Anonymous 2008e; Anonymous 2008d; Anonymous 2008b; Anonymous 2008f). Often facilitators do not have enough time to review this information (Anonymous 2008e; Anonymous 2008d; Anonymous 2008b; Anonymous 2008f).

When involvement in a process begins, MCD staff found it helpful to get in touch both with the local government involved and with other MCD staff who have worked with the local government to discuss roles, information, and to pre-interview local government representatives and staff participating in the process (Anonymous 2008e; Anonymous 2008d; Anonymous 2008b). These steps allow the capturing of the various parties’ perspectives in writing, but also help build trust (Anonymous 2008e; Anonymous 2008d; Anonymous 2008b); as one participant put it: “I found it really important to go and sit down with everyone who was going to be involved in the discussion” (Anonymous 2008b).

Participants thought it would be useful to have general ADR information available in an MCD located library, a binder, or on a website, while specific case information could be available on a shared computer drive that was easily accessed by everyone, but in a way that protects people’s privacy (Anonymous 2008e; Anonymous 2008b; Anonymous 2008f). Hard copies of information were considered useful for times
when something needed to be “mulled over” (Anonymous 2008d; Anonymous 2008c). Such a file would ensure that when staff retire or move on, the information on the process is not lost (Anonymous 2008e; Anonymous 2008b; Anonymous 2008f). Notes taken during process meetings identified as important to process facilitation could also be included (Anonymous 2008e). Guidelines or templates for recording these meetings were suggested as something that would be a helpful tool, in addition to a “final report” type document where facilitators could take the time to reflect on and evaluate the unfolding of process and lessons learned (Anonymous 2008e).

b) External Communication

As previously mentioned, IRPD ADR process external communication uses two mediums: print material, and the internet (Anonymous 2007c). MCD is moving away from print materials due to their environmental and economic costs, as well as the time taken to mail them out, and problems with having them printed (Anonymous 2007c). Printed resources are currently intended for local government staff and elected officials and all include the direction of users to the internet (Anonymous 2007c). The phasing out of print materials is not expected to pose a problem to local government access to information, as almost all are directly connected to the internet and those that aren’t have access through public libraries (Anonymous 2007c). Some publications will continue to be available in print (Anonymous 2007c).

Occasionally MCD will contribute articles with testimonial quotes in province-wide local government organization (Union of British Columbia Municipalities and Planning Institute of British Columbia) newsletters (Anonymous 2007c). These articles incorporate quotes garnered from individual personal phone calls to local governments likely agreeable to sharing their stories (Anonymous 2007c).

Unlike the print materials, the internet plays to two audiences: local governments, and the “general public” such as researchers, students, and others interested in ADR processes (Anonymous 2007c). The perceived information needs of these audiences overlap, with the information targeted solely to local government staff and elected officials being the PDF guides described above (Anonymous 2007c). The role of the website for local governments is that of a first point of contact for staff to go to on behalf of a council when there are frustrations with other jurisdictions (Anonymous 2007c). It
provides information on MCD’s role, such as what is in the *Local Government Act*, what processes are available, what purposes they serve, what the requirements are, what kinds of assistance are available, how the processes are used, and ADR best practices (Anonymous 2007c). If local government staff is already familiar with the ADR process, they tend to contact the Director of Intergovernmental Relations directly via phone or e-mail (Anonymous 2007c). The role the website is designed to play for the general public is that of a broad discussion of IBN and of IRPD’s ADR process (Anonymous 2007c).

An interviewee emphasized the usefulness of the inclusion of BC local government ADR vignettes and testimonials on MCD’s website (Anonymous 2007c). However, local governments are generally reluctant to share their stories as they do not want to be perceived as being in conflict or to “air their dirty laundry”; the BC local government community is too small even to guarantee anonymity by omitting descriptors (Anonymous 2007c).

**5.1.4 Process Delivery**

Prior to this section the discussion of the interviews focused on the IRPD priority areas of monitoring, measuring and communicating its ADR process. Section 5.1.4 elucidates other insights into IRPD ADR process delivery according to MCD staff who have participated in the process.

There was great variety in the length of time and number of ADR processes with which individual interview participants had been involved. In terms of experience, interviewees generally fell into two categories: about half had been involved with IRPD’s ADR process for less than five years, while the other half identified themselves as having career-long histories of work in the field of ADR and decades of experience doing so at MCD specifically. Most interviewees had facilitated between one and three formal processes, with no one facilitating more than six formal processes. However, many interviewees perceived themselves to be doing ADR “all the time.” Most of the participants interviewed were process facilitators, although a few were people who participated in a resource capacity to provide specialized information.7

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7 References to specific interview numbers have been intentionally omitted from this paragraph due to its descriptive nature and the potential for matching duration of time at MCD and work experience in this paragraph with participant comments in following paragraphs. This was done in order to protect the anonymity of interview participants.
When first becoming involved in the ADR program, interviewees usually attended one process as an observer, and then took a more involved role in the next process with which they were involved. Participants identified first being able to observe a resolution process as “really valuable” in terms of “understanding how the formal legislation works and seeing it applied” (Anonymous 2008b).

Almost all the processes interview participants were involved with were Service Review or Service Withdrawal processes, and all formal processes involved intra-local government conflict (Anonymous 2008a; Anonymous 2008e; Anonymous 2008d; Anonymous 2008b; Anonymous 2008f; Anonymous 2008c). The ADR work between ministries, agencies, and local governments usually took place informally (Anonymous 2008a; Anonymous 2008f). Additionally, those who conceptualized their ADR work on a broader level reported using ADR skills when working with other ministries, local governments, co-workers, and at home (Anonymous 2008a; Anonymous 2008f).

a) Process Issues

Participants cited frequent issues brought forward for resolution as being: recreation, water, and waste management (Anonymous 2007b; Anonymous 2008a; Anonymous 2008e; Anonymous 2008d; Anonymous 2008b; Anonymous 2008f; Anonymous 2008c). Other issues included: cultural and library services, general administration, urban containment boundary/sprawl/a rural right to growth, airport, broadcasting radio services, transportation, economic development, and Regional Growth Strategies in general (Anonymous 2008a; Anonymous 2008e; Anonymous 2008d; Anonymous 2008b; Anonymous 2008f; Anonymous 2008c).

One participant indicated that disputes involving public goods like water and sewage can be easier to resolve because they are easier to measure, but when benefits are more diffuse—such as policing, economic development, etc—disputes can become more protracted (Anonymous 2008f). Another participant indicated all disputes came down to land, such as territory, boundary extensions, and amalgamations; money, such as cost-sharing of services, fairness of funding formulas; and power, such as say, influence, who’s making decisions, and control, and that each of these can overlap (Anonymous 2008f). Generally, disputes were thought to be caused by one-sided information, if service costs were not fully understood, if there were a lot of assumptions being made by
parties, a sense of inequity, a perception that others were benefiting more from or as not paying their share of service arrangements, an imposition or lack of fairness, or a feeling of exclusion from decision-making (Anonymous 2008a; Anonymous 2008e; Anonymous 2008d; Anonymous 2008b; Anonymous 2008f; Anonymous 2008c).

Other elements considered to significantly impact process included participant personalities, attitudes, and values (Anonymous 2008a; Anonymous 2008d; Anonymous 2008b; Anonymous 2008f; Anonymous 2008e). One interviewee explained “some people want to fight” (Anonymous 2008e) and this can especially complicate a binary dispute where one party is more assertive than the other (Anonymous 2008b). In addition to this, “certain parties come and aren’t prepared to negotiate openly and fairly; they stick to their positions” (Anonymous 2008e). Some people’s voices can become too dominant in the process, and at times they use Interest Based Negotiation language, but their attitudes are positional: they try to force their solutions by framing them as the only “logical” approach so that if people disagreed they are “illogical” and therefore wrong (Anonymous 2008e).

b) Dispute Composition

Interviewees had mixed perceptions about how the number of parties involved in a process impacted the process. Several interviewees discussed the difficulties two parties can pose during a process, as it is easier to slip into binary opposition (Anonymous 2008a; Anonymous 2008f). As one interviewee stated: “it [makes] it really difficult because there [is] no third opinion, no one to balance it, no one else to speak up. With 8 to 10 people there were such different perspectives and we didn’t get into the back and forth approach” (Anonymous 2008b). Though an increased number of parties can add to the complication and length of a process and make it difficult to meet everyone’s needs (though this is not always the case), it can also provide more opportunities to discover mutual interests and creative solutions (Anonymous 2008a; Anonymous 2008b; Anonymous 2008f).

Interviewees noted local government senior staff personalities were critical to consider throughout proceedings. Though members of local government senior staff do not participate in negotiations, their perspectives are often seriously adhered to by the local government officials who do (Anonymous 2008b). Senior staff set up the process,
and throughout the process “you have to take a break so politicians can talk to their staff and talk about solutions, because otherwise officials won’t move” (Anonymous 2008b). If senior staff does not have a deep understanding about regional district financing and staffing, it can be an impediment to the process (Anonymous 2008b). As one participant stated: “Sometimes they wanted it the way it was and would influence the people sitting at the table….It’s important to go and talk to the people so you really understand where each of the parties is coming from and what they want from the process and whether they’re sincere about it” (Anonymous 2008b).

The experience a local government might have in successfully resolving past disputes, its capacity, and the extent to which it integrates IBN principles are major factors in the successful resolution of disputes (Anonymous 2008f).

c) Environment

Many interviewees found the environment had an effect on the process. Facilitators would sometimes arrange people in the room by using place nametags so that participants weren’t sitting in spots that re-enforced their historical roles and so that the seating arrangement would encourage collaboration instead of confrontation (Anonymous 2008a; Anonymous 2008e; Anonymous 2008c). Others found that a room with windows that was not crowded, yet still imparted a sense of intimacy –especially in large groups– was ideal (Anonymous 2008d; Anonymous 2008b; Anonymous 2008f).

Another environmental factor was the significance of the building within which an ADR process took place. According to one interviewee, places of symbolic importance such as a room in the Provincial Legislative Assembly, or the Provincial cabinet offices in Vancouver which carry both the weight of importance and a spectacular view “seem to make people behave better” (Anonymous 2008f). A change from the usual meeting rooms of a town hall can reinforce that it is not normal business, increasing or decreasing the level of formality of a meeting place were both seen as tools for facilitating the ease of the meetings (Anonymous 2008a; Anonymous 2008d).

Ensuring a location was “neutral” until rapport was built was also thought important, and one way to do this was to move the meetings around, so that everyone took a turn travelling as well as hosting, and everybody has a chance to pick the times and other meeting details (Anonymous 2008a; Anonymous 2008d; Anonymous 2008f).
Locations where there was a sense of “turf” should be avoided, as this could cause people to fall into their old roles (Anonymous 2008d; Anonymous 2008c).

A noisy environment could break concentration and increase tension, and it would prevent participants from adequately hearing one another (Anonymous 2008a; Anonymous 2008c). The amount of light in the room also affected proceedings, and the temperature was noted as needing to be at a level that comfortable for participants (Anonymous 2008b).

d) Rural and Urban Identities

Most interviewees believed that rural and urban identities played strong roles in the instigation and unfolding of disputes. It is important to note, as one participant pointed out, that urban and rural identity is relative, and that in a region considered rural by those from larger cities, there are often one or two municipalities very much thought of as urban by those living in them as well as those in the surrounding rural areas (Anonymous 2008c).

Interviewee perceptions of the impact that rural and urban identity had on the process varied; some thought that urban and rural parties “definitely [had]…very different perspectives” and that “there was definitely a perception that the city didn’t understand what was needed to run a rural area” (Anonymous 2008c). Such perceptions can be complicated by technical structures like the linkages between shared service costs and property assessment values; while those living in urban areas may contribute more financially, those in rural areas may have less access to services (Anonymous 2008d). One interviewee noted that there can be a perception that an urban area is always deciding what direction the region takes, and “always get what they want”; “both the urban and rural areas feel they need to protect themselves” (Anonymous 2008b). Another interviewee indicated that rural areas are more likely looking to affirm their identities when they are involved in an ADR process, and this can impact their willingness to actually resolve the issues, as well as create a situation where emotions run high (Anonymous 2008f). For this type of emotional encounter “you need to be prepared or it blows you away” (Anonymous 2008f).

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8 Assessment values usually increase more quickly in urban areas, leading to a higher rate of contribution to services for urban citizens than for rural ones.
Another aspect of the rural-urban split was not so much identity as it was the contrast in rural and urban local government capacity with respect to local government support staff and experience; some rural areas don’t have their own staff and have to rely on Regional District staff; additionally, while Electoral Area directors may have an advisory group but largely act on their own, larger municipalities have councillors to assist in the deliberation of ideas, suggestions, and next steps to take (Anonymous 2008f). Clarifying the roles and “say” mayors and Electoral Area Directors have can be helpful (Anonymous 2008f). One interviewee commented that if communities had been through contentious issues and participated in an ADR process in the past, they tended to be more comfortable with the process: “We use exit surveys to see if people have learned anything, had a transformational experience, and we often get [the] feedback” that this has been the case (Anonymous 2008f). This interviewee continued to go on to say: “The process is applicable to everywhere, it’s just whether people have experienced it. If they’ve had a divorce, if they’ve been to court, these experiences will flow into the negotiations. If communities have been through contentious issues and they’ve experienced participation, they’re more used to it” (Anonymous 2008f).

e) Culture

Though some interviewees did not find a pronounced rural/urban split or identify other cultural factors as impacting processes, other interviewees did find culture (beyond rural/urban identities) influenced how processes unfolded. Some discussed the dominant culture of settler groups such as Italians or Duukhabour Russians, while others discussed the strong labour history in some communities, or traditions such as using Robert’s Rules of Order, which “flew in the face of the ADR approach of telling stories and reaching consensus” (Anonymous 2008a; Anonymous 2008f). “Historical baggage” was brought up by several, including situations where parties would bring up past wrongs unrelated to the present negotiation (Anonymous 2008e; Anonymous 2008f). One participant commented on working through contentious issues with First Nations communities:

I can use a lot of my ADR techniques but…it’s much more complex; you have to understand the history, the culture, the government structure [and how they have historically interacted with the province (i.e. litigiously, business-like,
etc.).] You need to do a lot of homework, which is more challenging, but it’s very interesting” (Anonymous 2008f).

f) Tension

When asked about the level of tension at the beginning of disputes, participants invariably responded that it was extremely high: “The tension is always high because everything has been fermenting” (Anonymous 2008a). This is due to the nature of provincial-local relations in BC as well as to the legislation. In addition to both levels of government preferring local governments solve their own problems, “….local governments don’t want the Province involved in their affairs, so by the time they call on us it is as a last recourse. To make a request for dispute resolution assistance, it has to be pretty far gone” (Anonymous 2008c). In addition to these reasons for delayed provincial involvement, local governments may hesitate to ask the Province for ADR assistance as it creates a potential for either a perceived or real conflict of interest. For example, if a local government becomes involved in a conflict but also has a grant application into the Province for something unrelated to the conflict, Provincial knowledge of the conflict is perceived as impacting the chances of the local government receiving a grant (Anonymous 2008c).

Strategies for dealing with, and experiences of, this initial tension varied, but one strategy that several interviewees found useful was to get the parties together ahead of time to share a meal, which tended to help ease the tension (Anonymous 2008b; Anonymous 2008c). Having “good food” available at the “right time” throughout the process was also thought important, as well as ensuring participants have coffee (Anonymous 2008a).

g) Process Rules

Some interviewees found the early process stage where rules and norms for the negotiations were created by the participants had relatively little tension and that these were ways to build up the confidence of the parties in their abilities to come to agreement; there was easy agreement around the rules and for the most part people followed them; there was an eagerness to participate and resolve these longstanding problems; it was easier because it wasn’t personal (Anonymous 2008a; Anonymous 2008e; Anonymous 2008d; Anonymous 2008f; Anonymous 2008c).
Others found that setting the rules of engagement was extremely tense: process participants “are eager to get started on the ‘real’ problems, and [they find] the amount of meetings required up front before they actually began addressing the problems are draining” (Anonymous 2008b). This interviewee continued to say that, “By their nature, the first part is always rocky because people are feeling feisty and feel slandered when they have to listen to the other’s story….Getting started it’s typical for people to try and get ‘early wins’ and test people” (Anonymous 2008a). Another interviewee noted:

[There’s] a period of time of just agreeing on rules, and people need to do that because otherwise things fall apart. That adds to the tension because people get sick of it because they’ve never gone through it and don’t realize the importance of it. When they can’t agree on the rules it’s frustrating, and there isn’t trust. It’s an interesting time because you have to do whatever you can to get patience and acceptance (Anonymous 2008b).

Actually following the rules was another story, and several cited problems with this and the need to have firmer discipline throughout the process (Anonymous 2008e; Anonymous 2008b). One participant believed firmer discipline could be achieved if MCD ADR process facilitators were coupled with an external facilitator, perhaps as this external facilitator, being outside government, would carry more authority; or perhaps as this external facilitator, being a professional mediator, would have greater mastery of ADR facilitation skills (Anonymous 2008e). This interviewee also suggested using flipcharts during the process to identify scope and ground rules and to post these during meetings (Anonymous 2008e). Another suggestion is to intensify MCD staff training on working constructively with disruptive personalities, discussed further in section 6.2.5.

**h) Timing**

After the rule-setting stage, further process challenges included slow-moving periods “where [participants are] slogging through history. Sometimes you have to wait until they’re exhausted” (Anonymous 2008a). An interviewee explained: “You can’t quickly lead people to a solution, they’ve got to vent first. Sometimes you have to push them by asking them what’s going to happen if they keep on fighting, if they don’t break the pattern, or these opportunities are missed” (Anonymous 2008a).
Timing throughout the process was important: “We were…careful about timing and breaks. We’d break if major realizations or new information occurred or if tensions were getting high and we needed to caucus” (Anonymous 2008e). Another interviewee highlighted that it is important participants are energized, otherwise a great idea may come up and participants can’t agree on it because it has been too long a day (Anonymous 2008b). One interviewee recommended ensuring the food provided would not cause sugar highs and crashes, and to ensure people would not work through their lunches (Anonymous 2008c).

Though processes typically lasted from a few months to half a year, “many disputes are ongoing”; “some go on for years, others are over really quickly….it depends on the history” (Anonymous 2008f). The time between meetings impacted the process in a number of ways. Sometimes these periods could be used for “cooling off,” digesting what has happened, taking information back to those not at the table, reflecting, and information collecting (Anonymous 2008a; Anonymous 2008e; Anonymous 2008c). However, sometimes these periods can slow progress and “fatigue” the parties due to lack of continuity, additional review of progress at each meeting, or the use of time to “stir up the community” (Anonymous 2008e; Anonymous 2008c). One interviewee noted that dragging a process out affects the probability of success, and that while one should not “jam” things through, it’s important to “harness the energy” generated during meetings (Anonymous 2008f). A need to address the lack of formal resolution to the processes was also identified (Anonymous 2008a).

One interviewee described a situation where the parties requested an expedited process where negotiations were to last one day, and if no solution was found, the mediator would propose a solution (Anonymous 2008a). In the end, the mediator’s proposal was rejected by the parties, indicating that the time it takes to come to mutually agreed solutions is critical; “if you push too quickly, you miss issues. In one day you don’t have time to change attitudes….There was no buy-in” (Anonymous 2008a).

i) Shifts

Though process “breakthrough moments” were keenly noticed by interviewees, their causes tended to be somewhat elusive. One interviewee noted that “There were some issues that people were so wedded to, but by the end they realized how much they
were accomplishing” (Anonymous 2008a). Another described that “People were hearing and beginning to understand each other. I can’t remember why; the words were right and resonated at that point” (Anonymous 2008c).

Other interviewees noticed changes came with the clarification and sharing of information, brainstorming, collaboration for the benefit of all, getting to know one another, seeing that there is more at stake than their individual pursuits, putting interests above positions, and improving communication and listening skills; once people took the time to listen and not jump to conclusions, they were able to see the other’s side (Anonymous 2008a; Anonymous 2008e; Anonymous 2008d; Anonymous 2008f). One interviewee indicated that the shift can be brought about by anger at inappropriate behaviour, like when “someone crosses the line of civility” or “makes it too personal”; “the meeting blows up and they realize the other person is a person and they start to listen” (Anonymous 2008a). Another noted:

I think it’s often that there’s some individual who is respected even though not agreed with by everybody. [This person] will have an idea and is articulate enough to explain it well. It may not be what their group agrees they want, but having that spark – and it doesn’t come early on, it’s when everyone is exhausted and fed up, and then this idea will come up, combining options that have come up, or talking about implications of ideas that came before. It comes from an individual, but it’s usually the right person at the right time, not just any individual (Anonymous 2008b).

Having a representative from the Province also influenced discussions: “We’re guests, we’re connected to the Minister, we break the pattern and they use a different tone” (Anonymous 2008a). Information provided by Provincial staff was seen as more objective than information coming from the other parties; “When there’s no information missing, people feel they can be objective and step away from it whether it is in their favour or not” (Anonymous 2008d). One interviewee noted that the shift was demarcated by the process participants beginning to address one another, as opposed to the facilitator (Anonymous 2008a). Once a shift in attitude took place, process participants were “in a different game, with different thinking, it comes to an agreement quickly” (Anonymous 2008a).
j) Resolution

Once an agreement is decided upon, “The actual solution requires a lot of number crunching to make sure no one is getting a bad deal” (Anonymous 2008a). One interviewee noted that “the end is difficult, because people think they’ve got the solution, but you can see there needs to be a bit more detail and getting support of their councils” (Anonymous 2008b).

There were a number of things identified as impairing resolution. One was weather; if the weather turns bad, process participants can’t travel to meet and “strike while the iron is hot” (Anonymous 2008c). Timing can be impacted in other ways like when a process participant has a personal emergency and meetings cannot go forward as scheduled (Anonymous 2008e). It was also considered important to have resource people with access to technical information on hand (Anonymous 2008a). Again, people’s personalities were mentioned as potentially problematic if they “just don’t get along,” if parties or individuals have a long history of non-cooperation, or if they will not negotiate openly and fairly (Anonymous 2008e; Anonymous 2008b; Anonymous 2008f). One of the challenges is to impart IBN skills onto process parties, and that in MCD staff capacity “we’re used to being experts, which is dangerous because you might give [local governments] too many solutions; we think we have the answers” (Anonymous 2008a).

According to one participant (Anonymous 2008a):

As soon as you’re judgmental, you’ve stopped being curious. I’ve thought people were [imprudent], but they just weren’t willing to tell me their concerns because they were embarrassed by them, or because they’ve raised the issues in the past and been shot down. I’ve seen it more than once. The terms of reference may be inadequate; if negotiations aren’t going well or if someone looks unreasonable or like they’re not participating, you have to be curious….We want there to be a transformative experience, not just putting out fires.

Power imbalances can also cause trouble, people have to authentically want to reach agreement, and there must truly be a mutually beneficial solution available (Anonymous 2008f). If there are a number of parties, finding time when representatives are all available can be very challenging, which protracts the process, and requires “rebuilding” at each meeting and keeping good records so people “felt they were making
some progress” (Anonymous 2008b). Success leads to success, so building on small collaborations can lead to a resolution (Anonymous 2008f). Discussing the role of media was also thought important, and a process spokesperson should be designated at the beginning of the process, otherwise negative press can stall agreements (Anonymous 2008e).

l) Facilitators

In terms of the value of having Ministry and/or External Facilitators available, one interviewee noted that a Ministry facilitator can spot problems to certain solutions that External Facilitators don’t spot because they aren’t familiar with the local government context; technical support from local government staff and the ministry is needed (Anonymous 2008a). This interviewee thought that, ideally, processes would have a combination of one Ministry and one External facilitator (Anonymous 2008a). While having a Ministry official present can influence the process for the good, there was a perception that an External Mediator would be able to be firmer with the parties, especially when it involved enforcing process rules (Anonymous 2008e). Having an external mediator present could assist during times where parties need to be challenged or where the process “playing field” needs to be levelled; some participants were considered hardened, emotional, and positional, and an outside facilitator was considered helpful in these situations (Anonymous 2008e; Anonymous 2008f).

Other perspectives on facilitation included the importance of having two facilitators; one helping facilitate the conversation and the other taking notes, communicating to ensure the process is on track (Anonymous 2008e). There also needed to be good communication amongst the facilitation team including how to approach the situation, expectations, roles, check-ins, up-dates, feedback, and debriefing (Anonymous 2008d). One interviewee commented on the level of attention needed to facilitate: “I’d want to help on a few more before I wanted to lead, it’s too easy to direct things too much” (Anonymous 2008 d).

k) Training

Interviewees noted that they appreciated the training provided and made available to all staff, that they can use it in a lot of job facets, and that there is always something
more to be learned (Anonymous 2008e; Anonymous 2008d; Anonymous 2008b; Anonymous 2008f; Anonymous 2008c). From the perspective of one interviewee, “it’s really good that every staff person was trained, in terms of the climate and awareness of how to be with each other, and what disputes meant if you were involved with them… I thought the training was excellent” (Anonymous 2008b). One interviewee explained that while more training is always useful, ideally skills could be developed while doing more actual facilitation (Anonymous 2008c). Another backed up this perspective by saying: “Experience teaches you the right questions to ask in order to get the right information, without the experience it can be unclear, as sometimes details can’t be shared due to issues of confidentiality (Anonymous 2008d).

I) Background Information

Types of information interviewees would find useful when working on a case include process history, if there have been other attempts at ADR, who initiated the case and why, key personalities, how party representatives were chosen/the roles of key staff (Anonymous 2008a; Anonymous 2008e), a library, binder, or website with information on ADR, and an internal drive with case information, (Anonymous 2008f). One interviewee mentioned that the “core” of a dispute was not usually a technical component, but about issues of power and equity, so there isn’t always a need for a lot of technical background information (Anonymous 2008c). Another (Anonymous 2008b) stated:

I had everything I needed in terms of information. What really helped me was to observe [a process] first; that was really valuable. For IPRD employees [handling disputes] comes with the territory. They’re going to walk into [a process] ready to do this kind of thing. [But first you need to] understand how the formal legislation works and see it applied. One of the neat things was that you really get charged –your adrenaline gets going, if you like doing it. It’s kind of neat because it’s such a big challenge to work through it without finding the solution yourself –because it’s not yours; it’s theirs- seeing the next question or comment [you should make] to take the next step, or when [to tell them] they need to back off without putting them in their place, or when they’ve had a brainwave. It’s very exhilarating, but it’s very exhausting and you don’t always get a positive solution.
Interviewees named a number of ways they would like to get information, most of which are already in place. These included paper or electronic folders with old e-mails, decisions, historical pieces, summaries of parties’ perspectives, final reports, process evaluations, lessons learned, past meeting minutes (in order to recreate what has happened), and financial information (Anonymous 2008b; Anonymous 2008c; Anonymous 2008e; Anonymous 2008d). It was felt that templates for how to record meeting minutes would be useful (Anonymous 2008e). Flipcharts were used during the process to identify scope and were posted during meetings (Anonymous 2008e).

Interviewees also indicated they would like the opportunity to pre-interview parties and senior staff people in person in order to facilitate inter-relations and trust and to find out “how serious they are about getting a solution” (Anonymous 2008e; Anonymous 2008b). This enables MCD ADR process staff to understand where each of the parties is coming from, what they want from the process, and party buy-in to the ADR process (Anonymous 2008e; Anonymous 2008b).

m) Process Overview

All interviewees agreed that the ADR process was a vital part of their work with local government and, where applicable, other provincial ministries and agencies. There were some areas, however, that could be improved. Among these was the resolution that there was a need for more time to be committed both to preparation and for negotiations (Anonymous 2008f; Anonymous 2008c). One participant stated: “we need to find out what we can do to support them taking an agreement to council, to help explain the process to council. If we’re going to be involved in dispute resolution, we need to commit to more meetings more closely together” (Anonymous 2008c). MCD staff capacity needs to be “ramped up,” as “outdated agreements and local government transitions naturally lead to disputes,” so local government awareness of the ADR services needs to be broadened, the program needs to be more adapted to local government users (Anonymous 2008c).

Another interviewee commented that the ADR process is really useful for Regional Growth Strategy conflicts, but that when applied to Service Reviews –as is frequently the case- “it’s been used to beat up on the other guy, to exhaust them, to drag them down” (Anonymous 2008f). There is a need to have participants truly commit to
Interest Based Negotiation, and one interviewee suggested the importance of authentically engaging in the ADR process could be emphasized by having participants signing their name to the statement “I will negotiate fairly and I have the authority to negotiate on behalf of my council” (Anonymous 2008e). Signing a name to an agreement can increase the significance and seriousness one attaches to one’s actions. Another interviewee suggested more scope could be given to the Minister “who can act as a referee and say whether disputes are substantive or merely vexatious” (Anonymous 2008f).

One interviewee discussed the draw of participating in an ADR process, saying: “It’s really satisfying when there’s a solution –it may not be what you wanted, but there’s buy-in. It was a good experience for me…. [The processes] are not pleasant, but they’re very satisfying” (Anonymous 2008d). In contrast, another interviewee found participating in an ADR process less appealing: “It was a really interesting process -a challenging one- I’m glad I did it but I wouldn’t leap up to do another one” (Anonymous 2008e). These contrasting perspectives suggest that there are some staff who are more comfortable or drawn to the work of ADR than others. Discovering who is well-suited to ADR process participation and considering this when assigning MCD staff to work on cases could help ensure that staff are enjoying their work and that processes are being staffed by enthusiastic participants.

One interviewee emphasized that everything done has an element of negotiation, be it policy analysis, personnel management, and so on; “It starts with a set of principles with how you’re to treat someone: dialogue, listening, understanding, separating the people from positions and issues, seeing where the heart of agreement and disagreement is. It is very principled” (Anonymous 2008f).

Situations where interviewees thought the process shouldn’t take place included when people were unwilling to engage fairly in the negotiation process, where “nasty personal inter-jurisdictional politics” were taking place “and they don’t want a solution; they want to vanquish the other person” (Anonymous 2008e; Anonymous 2008f). One interviewee suggested there could be some sort of screening provision to discover “vexatious” situations not appropriate for Interest Based Negotiation ADR (Anonymous 2008e).
Others thought it was always useful to initiate the process, even if it ended up being a dispute that needed to go through the courts (Anonymous 2008b; Anonymous 2008c). As one interviewee put it, the potential that the process will not resolve the matter is “not a reason to not initiate a process, because many become willing to negotiate as they go through the process” (Anonymous 2008c). Another interviewee explained: “I don’t think it’s always going to work….It doesn’t mean it’s not worthwhile trying….Give it a shot, but don’t be disappointed if it doesn’t work, because it won’t always work” (Anonymous 2008b;).

In situations where there is resistance by one or more parties to the process, one interviewee suggested following a script similar to this: “I’m not hearing that you really want to participate in this process. What is your expectation from this? Are you feeling like you’re willing to give this an honest shot?” (Anonymous 2008b). If process participants indicated they weren’t willing to do this, a facilitator could make sure this was discussed immediately in the first meeting, “so the group as a whole could agree on what they wanted to do” (Anonymous 2008b). An interviewee commented: “You’re successful if the process helps the tension get out; people to have a civilized dialogue; to share information, and understand others” (Anonymous 2008a). Another indicated that “Despite the problems we had, there were good things that came out of [the processes]” (Anonymous 2008e).

5.1.5 Summary

So far Chapter 5 has relayed the researcher’s interview findings on IRPD’s ADR process. Section 5.1.1 examined IRPD’s ADR process description including objectives, mission, vision, and goals of both its formal and informal components. Sections 5.1.2-5.1.3 looked at measurement, monitoring, and communication tools currently in place to capture the informal and formal aspects IRPD’s ADR process. Section 5.1.4 articulated the perspectives of the research’s interview participants on a number of the features of the ADR process’ delivery, including process issues, dispute composition, environment, rural and urban identities, culture, tension, process rules, timing, shifts, resolution, facilitators, training, background information, and process overview. In the following section, 5.2, Chapter 5 shifts its focus from the dominant qualitative research findings to the nested quantitative research findings.
5.2. Quantitative Findings

In order that data analysis and interpretation be competent, clear, and critically examined, presentation and reporting of the findings are presented fully, comprehensibly, fairly, honestly and objectively, with full reporting of all relevant findings, including any that may seem contradictory or unfavourable. Sampling and nonsampling errors including coverage, measurement and reporting errors, response variance, interviewer and respondent bias, non response, imputation error and errors in processing the data are taken into account.

The IRPD ADR post-process survey is used to get a sense of the experiences local government process participants had when participating in the process. The data was analysed via a one-way distribution of attitudinal preferences on the dimensions of fairness, efficiency and wisdom. These kinds of data are more meaningful if they can be compared to findings in other jurisdictions or if they are used in some simple forms of bivariate analysis within a jurisdiction to explain variation along dimensions such as regions and local government size.

This type of more sophisticated analysis was attempted but was impossible to achieve due to the unavailability of comparative data in the first case and the incomplete nature of the survey data for BC local governments in the second case. Due to the difficulty in determining when a process is completed and the corresponding reluctance of participants to fill out the survey before such a time, as well as due to some inaccuracies in data collection, complete data was only available on 4 of 13 cases that had undergone the IRPD process. This was an insufficient number to make statistically relevant generalizations about the population.

It is difficult to discuss the survey results with any kind of authority, due to the imbalanced nature of distribution, as well as the method of collection which enabled multiple persons from one party to respond to the survey. For these reasons statistical analysis was impossible, as the results would be statistically insignificant. It is of utmost importance that this reality is kept in mind when ruminating over the results of the survey. They are, however, reported here despite their shortcomings.
5.2.1 Respondent Descriptors

At the time of analysis, 40 process participants had responded to IRPD’s ADR post-process survey between January 2000 and December 2006. Of these, 27 represented municipalities or electoral areas, while the remaining 13 represented regional districts. Those involved in the processes were located in the south-central, south-eastern, and south-western areas of the province. Of those involved in the process, 62% were from areas under 100,000 in population. Of all IRPD ADR processes respondents had participated in, 77% involved more than 6 parties, and of these cases with more than 6 parties, 55% involved 10 parties or more. The size of local governments represented ranged from populations of 70 people to 345,000 people, with 38% under 2,000, 37% between 2,000 and 10,000, 12% between 10,000 and 50,000, and 11% 50,000 and above.

Of parties reported to undergo IRPD related ADR, 57% were not provided with the survey for various reasons including: their process was outside the legislative framework the survey is meant to measure; or their process was incomplete. Of all parties involved in IRPD’s ADR process, only 8% responded to the survey (the number rises to 19% when parties not provided the survey are excluded), with 62% of respondents being the party that initiated the process. On one occasion all parties (2/2) involved responded to the survey. Excluding ADR processes where no participants responded to the survey, an average of 41% of ADR process parties responded to the survey. Excluding the occasion where 100% of parties responded, this average falls to 29%. Overall, these numbers suggest a strong need for survey follow-up if this instrument is ever to be used as a performance measurement for the IRPD process.

The duration of 54% of the processes is unknown; however of the processes where the duration is known, they averaged 10 months in duration. The time between process initiation and the first meeting of the parties was not tracked in 39% of the processes, but of those where it was tracked, the average time between process initiation and the initial meeting was 4 months. The LGA stipulates that an RD arrange a preliminary meeting with 120 days of Service Review initiation. Ensuring accurate notes on ADR process status are taken would greatly improve the reliability of the information available for tracking the timelines of the processes.
Of the processes documented, only one was a Service Withdrawal, the remaining being Regional Service Reviews, 25% of which were outside the legislated process. Figure 3 summarizes the issues that initiated the ADR processes:

![Figure 3: Reasons for ADR Processes](image)

The processes were either facilitated by both IRPD and an External Mediator, solely by an IRPD facilitator, or without any formal facilitation (though informal assistance such as advice, information gathering, etc. would have been provided). Figure 4 compares the type of facilitation provided to the rate of resolution:

![Figure 4: Types of Facilitation and their Resolution](image)

It is interesting that the rate of resolution decreases with a corresponding increase in the amount of formal facilitated assistance a process receives. Though there is a lack of evidence supporting any theories of why this might be, it could be hypothesized that the difficulty or intractability of a dispute necessitates a corresponding increase in the amount of formal support received by process participants. Overall, those processes not ending in resolution amount to 54%. Of resolved disputes 15% ended in agreements to initiate Service Withdrawals.

Of all respondents, 29% had been in office for one term or less, 50% for more than three terms, and the remaining 21% for two terms. Of total respondents, 29% represented municipalities and the remaining 71% Electoral Areas; 93% were
additionally representatives in Regional Districts. Due to the anonymized nature of the data it was not possible to discern the population of the local governments respondents represented, nor was it possible to discern the regions they represented.

5.2.2 Likert Findings

In order to gauge their process experiences, the post-service survey asked participants to strongly agree, agree, neither agree nor disagree, disagree, or strongly disagree with the following statements:

1. The process helped me work with the other parties to define the issues for discussion
2. The issues we agreed to address were addressed.
3. The process allowed me the opportunity to address my concerns.
4. The process helped me understand other participant’s interests and perspectives.
5. The process provided equal opportunities for participation by all parties.
6. I had the opportunity to identify potential solutions to the issues.
7. The Ministry facilitators added value to the process.
8. The process outcome was worth the time and resources spent.
9. Overall, I was satisfied with the service review process.
10. I was satisfied with the Ministry’s process advice and assistance.

Though Figure 5 does not permit much room for speculation, it does enable a taste of how respondents’ survey responses were distributed from the perspective of 100% stacked columns (the numbers along the bottom of the chart correspond to the survey statement number). For ease of reading, Figure 5 does not display the “disagreed” measurement, as no respondents selected “disagreed” on any of the survey questions.

Figure 5: ADR Process Survey Responses
As intimated in a previous thesis segment (section 2.2.4), the Likert scale statements offered by IRPD’s formal process survey allows extrapolation of indicators of “smart” ADR processes, including fairness, efficiency, and wisdom (Picard 1998; Karambayya and Brett 1989, 690; Susskind, Lawrence, McKearnan, S., and J. Thomas-Larmer, eds. 1999). There is a fourth indicator of smart ADR practices not included in IRPD’s ADR formal process survey, that of stability. The measurement of stability is problematic as IRPD has no means to track the longevity of the resolutions arrived at through its ADR process. In addition to fairness, efficiency, wisdom, and stability, other indications of smart practices discussed in section 2.2.4 are measured by ADRs post-process survey, and these success indicators are discussed below, statement by statement.

In reference to survey statement 1, 80% of respondents agreed or strongly agreed that the process helped them work with the other parties to define issues for discussion, indicating that it improved their working relationship. This is a fairly encouraging response. Survey statement 2 is indicative of whether the issues agreed to discuss were discussed. With 94% agreeing or strongly agreeing, and the remaining 6% neither agreeing nor disagreeing, the process appears to be succeeding in the area of process content satisfaction.

Survey statements 3 and 6 relate to the empowerment of process participants, or the giving of process control to participants, and while 100% agreed or strongly agreed with survey statement 6, that the process gave them the opportunity to identify potential solutions, only 19% agreed or strongly agreed with survey statement 3, that the process allowed them the opportunity to address their concerns. This suggests that empowerment was unequally felt throughout the different stages of the process. By contrasting survey statements 2 and 3 it is possible to come to the understanding that while participants felt they had the opportunity to address the concerns they raised, they did not feel they had the opportunity to raise all of their concerns. Ensuring all relevant issues are on the table is a part of the process that could be improved.

Survey statement 4 is perceived by this researcher as an indicator of process wisdom, and Figure 6 shows that 58% percent of respondents either agreed or strongly agreed that the process helped them understand the views of the other participants.
Though this is a majority of respondents, the process could stand to improve along this indicator of success.

Survey statement 5 is perceived by this researcher as a measure of process fairness, and 78% of respondents agreed or strongly agreed with this indicator that the process provided equal opportunities for all to participate. This suggests compellingly that according to respondents, the process is successful along the indicator of fairness.

Survey statements 7 and 10 look at the Ministry’s role in the process, and while 86% agreed or strongly agreed that the Ministry facilitators added value to the process, only 31% of respondents agreed that the Ministry’s process advice and assistance were satisfactory, while 65% neither agreed nor disagreed, and 4% strongly disagreed. This indicates that while the role of the Ministry facilitators was recognized as valuable, respondents perceived a need for improvement in this area in order to be completely satisfied with their experience.

Of respondents, 74% agreed or strongly agreed with survey statement 8, that the process was worth the time and resources that were spent. This indicates process efficiency. Of note is that while the majority thought the process efficient, 4% of respondents disagreed and 22% neither agreed nor disagreed with the statement.

Survey statement 9 was indicative of participant overall satisfaction with the process, with 96% agreeing or strongly agreeing. While this is extremely encouraging, 4% disagreed with the statement.

In sum, while this (incomplete) data and its analysis via one-way distributions of attitudinal preferences do not enable an accurate understanding of why IRPD’s ADR process is more or less successful for the various participants, they do provide a very basic gauge of how the process is doing based on the perceptions of some of its participants. Implications of survey results and recommendations for improvements to the survey are discussed in Chapter 6.

5.2.3 ADR Survey Comparisons

IRPD’s ADR post-formal process survey was compared to several other ADR process surveys discovered during the course of this research. Dolan (1989) and Roberts (1993) recommend including several survey questions relevant to IRPD’s ADR process but not covered in IRPD’s post-process survey, as follows:
• How did you hear about the process?
• Was the process clearly communicated and easily understood?
• Was the space used conducive to mediation?
• Did the process improve your relationship with the other party(ies) involved?
• Have the terms of the agreement been met (what is the cause of the terms not being met)? and
• What is the likelihood that you and the other party(ies) would have gone to court if the ADR process was not in place?

Dolan (1989) and Roberts (1993) also recommended surveying process administrators so as to gauge their thoughts surrounding the process. If such a survey were created, the following list offers a compilation of what Dolan and Roberts recommend including in order to capture ways in which program administration might be improved:

• What was the level of tension between disputants at the beginning of the session?
• Which parts of the session went well/poorly?
• Was there a point where you felt a breakthrough?
• Were there areas you think you and your co-facilitator could improve on?
• What was your level of satisfaction with the process?
• Do you perceive a need for more training, refresher courses, or the integration of different methods?
• Are there particular experiences or ideas you would like to relate? and
• Do you have additional observations or recommendations?

5.3 Summary

The various sources taken up in this research each represent different perspectives of IRPD’s ADR process. Combined they provide insight into a complex and multidimensional process with both many successes and challenges in its past and future.

Section 5.1.1 distilled descriptors of the process not necessarily available, refined, or current in textual information about the process. By reviewing the process objectives, mission, vision, and goals, and formal and informal aspects, its roles, responsibilities,
abilities, purposes, and fields of action were identified and clarified. As described in section 2.2.4 on performance measurement and evaluation, these kinds of program descriptors lay the groundwork for better external, lateral, and internal accountability by providing a base from which to derive program indicators. If made widely available, this increased comprehensiveness and clarity of program descriptors can augment internal and external understandings of the process and people’s ability to navigate through it and communicate about it.

Section 5.1.2 considered the various measurement and monitoring procedures in place for each of the formal and informal process aspects. It explored the pros and cons of additional measuring and monitoring mechanisms. Time for, and commitment to, these mechanisms, and lack of informal process and long-term result measurements were highlighted as challenges.

Section 5.1.3 looked at internal and external communication about the process. It reviewed the various audiences for which communications were needed and a range of options for these communications. It relayed interviewees’ experiences of successful communications practices as well as thoughts on ways to improve communication. Finally, it compared print and web communications and found areas where communication could be improved, which will be discussed in section 6.2.4.

Section 5.1.4 delved into process facilitator and resource people’s perceptions of process delivery, illuminating a wealth of information on IRPD ADR process issues, composition, environmental influences, rural and urban identities, cultural contexts, tensions, process rules, timing, shifts, resolution, facilitators, training, and background information that comprise the ongoing experiences of those involved in process facilitation and resourcing. Section 5.1.4 distilled potential ways to improve process delivery, and these are discussed in section 6.2.5.

Section 5.2 explored the quantitative data available on local government process participant survey respondents. It identified gaps in data collection and analysis and speculated about possible inferences from the available data. The analysis led to the identification of possible improvements to the process operations, which are discussed in section 6.2.3.
Together, these findings provide much food for thought on the topics of this thesis’ central question: what performance measurement and evaluation tools are useful for IRPD’s ADR processes, as well as its sub-questions: how can IRPD ADR Dispute Resolution Officers, internal facilitators, and resource persons inform an understanding of IRPD’s ADR process delivery; and how can information about ADR process best be monitored, measured, and communicated. In order to answer these research questions, Chapter 6 endeavours to make sense of the findings reported in Chapter 5, so that appropriate recommendations, areas for future research, and conclusions can be drawn. It also prompts the revisiting of the scenario of the BC region disputing over general administration that was introduced in Chapter 1 and mentioned periodically throughout this thesis in order to garner lessons learned regarding the practical application of the body of research conducted in this thesis.
Chapter 6: Recommendations and Conclusions

6.1 Recommendations

The descriptive case study undertaken for this research showed a clear picture: given the time and resources currently possessed by MCD and BC local government staff, IRPD’s ADR process is functioning well. However, with further resources the ADR process could be enhanced in terms of monitoring, measurement, communication, and overall delivery effectiveness. This research produced a basis for recommendations aimed at the (re)development of IRPD’s ADR process objectives, mission, vision, and goals, and for the generation of tools to monitor, measure, evaluate, and communicate the formal and informal process.

6.1.1 Process Description

Describing IRPD’s ADR process is the first step in answering the central research question “what performance measurement and evaluation tools are useful for IRPD’s ADR process?” This is because these ADR process descriptors can then be used to create indicators for monitoring and measurement. Descriptions of IRPD’s ADR process should be updated to reflect descriptors arising from the interviews. Specifically:

**Objectives:** To assist local governments in resolving inter-jurisdictional and intergovernmental disputes between both other local governments and the provincial government; to develop provincial government capacity in ministries and agencies to address issues of mutual interest to both local and provincial governments; to assist in the early resolution of intergovernmental issues to prevent issue entrenchment and escalation and to limit provincial involvement.

**Informal Activity Objectives:** to develop internal capacity for IBN in both local and provincial governments; to develop a culture of IBN that permeates relations between and amongst local and provincial governments and ministries; to be clear about the province’s interest in a non-positional way when facilitating discussions around common goals; to offer non-legislated services including providing advice to local governments and ministries to address areas of concern; and to ensure IRPD staff have IBN skills in order to de-escalate conflict in their day-to-day duties including internal workplace conflict as well as work with citizens.
**Formal Activity Objectives:** to assist local and provincial governments to resolve not yet deep-seated conflict and entrenched disputes; to ensure disputes are dealt with in a timely and efficient way by the ADR provisions laid out in legislation; and to assist local governments in resolving their disputes while maintaining good or improving working relations with one another.

**Mission:** To develop local and provincial government capacity to manage conflict using interest based negotiation skills and processes.

**Vision:** The provision of outstanding advice, facilitation, or other assistance in matters of dispute resolution to both local and provincial governments. The widespread use of interest based negotiation skills at both the provincial and local government levels amongst both staff and elected officials in day to day interactions. The reduction in number of disputes occurring between local and provincial governments.

In order for ADR process indicators to maintain their relevance, a way to periodically revisit IRPD’s ADR process descriptors should be put in place so that MCD staff involved in the process can revisit and update them as necessary. This could look like a yearly meeting with MCD DROs and Active Facilitators and resource people to touch base about their experiences and perceptions of the process, and their visions for its future. Additionally, a program Logic Model should be employed so as to facilitate the conception and analysis of links between program inputs, activities, outputs, and outcomes. Building on a Model developed by IRPD, using the information garnered from this research, a Logic Model prototype for this process is delineated in Figure 6.
Figure 6: IRPD ADR Program Logic Model

6.1.2 Process Monitoring

Process monitoring is the main way in which to aggregate data with which to measure and evaluate the relative success of a program. Recommendations for IRPD’s ADR process monitoring build on tools IRPD already has in place for this activity. IRPD has a spreadsheet which tracks dispute type, jurisdiction, status, background, and ADR process and ministry assistance in use. This must be kept up to date, and the likelihood of staff prioritizing this will increase if their involvement with and input into the ADR process as a whole is increased (Ury, Brett, and Goldberg 1988). Dispute tracking could also be modified and expanded to include the following: region, parties, dispute key issues, number of meetings attended by MCD staff, percentage of staff time spent on dispute per week, process budget (meetings, facilitator, etc.), whether surveys have been sent, and whether the agreement has been implemented (including a description of how and -if applicable- why not). These recommended modifications should further capture formal and informal activities undertaken by IRPD staff.
Monitoring could also include a contact log that staff could update when contacted about the ADR process. This could be organized by regional district and could include the following information: when the contact occurred (date), who initiated contact (name and title), how contact was initiated (e-mail, phone, etc.), and what was discussed (the subject of inquiry). This could provide a chronological trail of the unfolding of dispute events. The contact log could be used to inform the tracking log. Contact and tracking log prototypes modelling these recommendations are included in Appendix VI: Process Monitoring Tools.

Time could be scheduled on a quarterly or bi-yearly basis to review these tools to ensure they are up to date, and, if not, to follow up on dispute statuses with those responsible for guiding the respective processes. At this point it could also be useful to plot disputes on a map of BC so that over time patterns emerging in regions can be identified and diverse methods to address these employed.

To increase agreement implementation, process and agreement satisfaction, and post-process survey response rate, following the resolution of an ADR process, facilitators should monitor them by initiating follow-up via phone, e-mail, letter, or in person, at specified intervals. Alternatively, a monitoring committee comprised of process participants could be struck to monitor both agreement implementation and future dispute development. It is strongly recommended that parties sign an agreement at the conclusion of their ADR process, even though this is not required by legislation nor is it binding. The signing of such an agreement will bring closure, raise the level of commitment to the agreement, and generally add a sense of formality and decorum to the agreement. It will aid in increasing the response rate for process surveys, discussed in the following section, 6.1.3.

All proposed monitoring mechanisms are closely linked to both process measurement and process communication, the subjects of the next two thesis sections.

**6.1.3 Process Measurement**

In order to answer the central research question “what performance measurement and evaluation tools are useful for IRPD’s ADR processes”, IRPD’s ADR current measurement tools were reviewed and compared to general ADR process survey smart practices.
The IRPD ADR post-process survey is succinct and relevant, and measures many variables indicative of ADR process success. In addition to these measurements, the following statements (intended to be answered using a Likert scale) are recommended for inclusion in the survey, as additional indicators of procedural justice as well as indicators of distributive justice:

- The process was flexible and dynamic;
- The process enhanced personal growth;
- The process was fair;
- The process was open/honest;
- The process promoted information sharing;
- Process guidelines and procedures were clear;
- Process alternatives were clear;
- Plain language was used throughout the process;
- Participants were committed to the process;
- I learned/improved my dispute resolution skills;
- My capacity to deal with conflict increased;
- The facilitator was reasonably informed and prepared;
- The meeting facility was appropriate;
- Meetings started and ended on time;
- Sufficient time was booked for meetings;
- The dispute was handled in a timely manner; and
- The impact of the process on my time and workload was acceptable.

For inclusion without a Likert scale measurement are the questions: How did you hear about the dispute resolution process; what course of action would you have taken if this process was not available (i.e. going to court, avoidance, etc.)?

The current survey question 13, which asks “What changes, if any, would you make to improve the service review dispute resolution provisions contained in the Local Government Act (section 813-813.19)?” causes participants to refer to an outside document (the Local Government Act). This external reference might discourage
participants from answering the question accurately and this question should be modified so reference to an outside document is not required.

Because the ADR process provides no requirement for local governments to inform IRPD if and when agreement implementation occurs, the opportunity to receive process feedback via the survey can be lost (Anonymous 2007c). To combat this gap surveys could be sent electronically with the option of filling them out and sending them back electronically. Creating an online survey could not only encourage survey completion but could also ease use as well as facilitate statistical analysis. Tracking survey completion via a tracking log and having parties sign a formal agreement, suggested in the previous section 6.1.2 could also assist in ensuring feedback is received. Advance notice of the survey, incentives, and follow-up reminders to those who do not respond initially could also increase response rates. Survey administrators should be given the authority to effectively deal with the concerns of reluctant respondents.

Ideally, there should not be more respondents from one party than from another. If it is not possible to have an equal number of respondents from each party, survey responses at least need to be tracked in a way that indicates how many participants from one party responded in order to ensure the validity and reliability of the survey. More care should be taken to collect survey data. This data should enable bivariate analysis.

Indicators of smart ADR practices are currently captured by statements 1 (improvement of working relationship), 2 (process content satisfaction), 3 and 6 (process empowerment), 4 (wisdom), 5 (fairness), 7 (skilled facilitation) 8 (efficiency), 9 (overall process satisfaction), and 10 (knowledgeable process advice and assistance). Analysis of these smart practice indicators suggests that while performing well on some indicators, there was room for improvement on others.

The current ADR process was thought efficient by most participants. However some found the time and resources spent on the process to be excessive. To discover further information about participants’ perceptions of process efficiency, survey questions could be created to address these, or additionally qualitative probing could be undertaken. An open-ended survey question that would address this concern could be: in your opinion, how would the way in which time and money were invested into this ADR process be improved? A qualitative probing approach might involve MCD ADR
facilitators initiating a brief phone call with ADR process participants to ask open-ended questions about participant perceptions of efficiency throughout the ADR process, such as: were there investments of your/your staff time/money that were inefficient and what could MCD do to support you/your staff to improve these inefficiencies?

The indicator of process efficiency is quite nebulous and specific as the process frequently does need to be quite time and resource intensive in order to be effective. Participant buy-in is essential in order that this significant use of resources is not perceived as wasteful. Perhaps a screening process for participant fit could be instituted or creative ways to share resources brainstormed by all those participating in an ADR process. It may also help to ensure that participants are aware prior to ADR process participation of the intensity of resource use the process entails.

Empowerment of ADR process participants throughout the course of the ADR process can be improved by maintaining this objective in the forefront of facilitators’ minds throughout the duration of the process. Specifically, it could be improved by assuring participants have a greater opportunity to address their concerns throughout the process. The increase of facilitator awareness of when participants are holding back and all relevant issues are not on the table should be cultivated through training.

Though many participants found that the ADR process helped them understand the views of the other participants, a strong showing of respondents felt that it hadn’t helped on this indicator. As understanding the views of other participants is essential to an authentic negotiation, this aspect of the process should be improved. Ways to improve this could include developing empathy, working on communication skills, and drawing on facts to help complete a picture.

Empathy development is not something that occurs as the result of a formulaic approach, however, some exercises that might encourage empathy amongst disputing parties are: role playing, visual reflection techniques, and other group capacity building exercises⁹. Though empathy development takes time and bringing a group of disputants through group exercises may be difficult, if it is possible to undertake some empathy

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⁹ An internet accessed example of ADR skill building role play is described in Massengill (1979). For internet accessed descriptions of several visual reflection group exercises designed to create awareness of one’s actions in a group and how these actions affect other participants, see Greenway (n.d.). For internet accessed ideas of group exercises encouraging empathy, one resource is TRP Enterprises Inc. (2006).
exercises, it is well worth the investment and trouble. ADR process and outcome results are likely to improve with group capacity building, as ADR literature indicated and as MCD ADR process facilitators and resource persons revealed in interviews.

In order to increase IRPD’s ADR process participants’ understandings of the views of other participants, participants’ access to information and communication skills should be improved. Drawing on facts to complete a picture can be accomplished via good communication and attention to process. Improved communication can be accomplished via facilitator modelling of good communication skills and by providing communication training to participants. According to Chicanot and Sloan (2003), good communication skills include the following:

- Open probing, clarifying, justifying, and consequential questions;
- Assertions such as restating and paraphrasing;
- Summarizing;
- Interventions such as reframing, refocusing, mutualizing, normalizing, and immediacy;
- Seeing and addressing power disproportions; and
- Using prospective and retrospective imagination and creatively using language such as metaphors

According to IRPD’s ADR post-service survey, respondents found MCD facilitators’ roles added value to their experience of the ADR process, however, improvements to advice and assistance provided to participants were identified and requested by several respondents. Improvements to process advice and assistance could be achieved through improved communication, transparency, and clarity about the process at each stage, as well as facilitators continually seeking participant feedback.

IRPD’s ADR post-process survey indicated that overall ADR process satisfaction was very high, however, some participants indicated extreme dissatisfaction with it. Greater ADR process participant satisfaction could be achieved through more frequent and clear communication between MCD staff and ADR process participants, as well as through greater solicitation and response to ADR process participant feedback.

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10 For a detailed discussion of these skills see Chicanot and Sloan (2003).
Readers will note from the repetition in the preceding paragraphs that many of the aspects IRPD’s ADR post-process survey respondents indicated could be improved and would greatly benefit through increased training in and application of ADR skills and process in both ADR process facilitators and participants.

To further improve the measurement of distributive justice, as well as to commence the measurement of agreement stability, it is crucial that IRPD discover some way to track the long-term resilience of its ADR process agreements. A survey or short interview designed to follow up with ADR process results as they manifest in the long-term is one way to do so. Process facilitators or monitoring committees could undertake a survey or short follow-up interview six months, one year, and/or two years following the agreement stage of the process. Questions at each stage may repeat some from the previous survey, as well as explore the following reflections: Have any problems with agreement implementation or compliance surfaced; Have there been changes to the working relationship between the parties; Have further disputes arisen?

A survey measuring the experience of IRPD ADR facilitators (MCD staff and mediators and arbitrators contracted to facilitate the process) is also recommended in order to capture ways in which program administration might be improved. Suggested questions for inclusion are:

- What was the level of tension like between disputants at the beginning of the session?
- Which parts of the session went well/poorly?
- Was there a point where you felt a breakthrough? If so, describe.
- Were there areas you think you and your co-facilitator could improve on?
- What was your level of satisfaction with the process?
- Do you perceive a need for more training, refresher courses, or the integration of different methods?
- Are there particular experiences or ideas you would like to relate? and
- Do you have additional observations or recommendations?

Lastly, two more labour intensive recommendations are provided here which address the research questions: how can information about ADR processes best be monitored, reported, and communicated; and what do comparable ADR processes
incorporate into their ADR processes. These recommendations are to strike a partnership with other jurisdictions involved in local government ADR in order to collaborate on comparable ways of program measurement, as well as to reopen the legislation governing these ADR processes so as to refocus the legislative provisions on Regional Service Reviews and Service Withdrawals (the legislation was originally designed to address Regional Growth Strategy disputes).

6.1.4 Process Communication

In order to address the research sub-question “how can information about ADR processes best be monitored, reported, and communicated”, this research reviewed IRPD’s ADR process communication strategy as well as strategies of comparable programs in other Canadian jurisdictions. As discussed in section 2.2.1, the literature review identified many practices recommended for inclusion in ADR processes by ADR experts. A review of the IRPD documents and electronic information about its ADR process revealed that current documents and electronic information meet many of the literature review criteria, although there is some room for improvement. The following recommendations are aimed at ADR process communication improvement.

In the matter of Service Reviews, there are two guide booklets: *Regional Services Reviews: an Introduction*, and *Reaching Agreement on Service Review and Withdrawal. Regional Growth Strategies: an Explanatory Guide*. In order to better communicate its process, the IRPD ADR process objectives, mission, vision, and goals (detailed in subsection Process Description) should be prominently displayed on the IRPD ADR website as well as in electronic and print versions of relevant documents.

The types of activities performed in the carrying out of these objectives etc. should be described on the website as well as in internal communications so as to improve understanding by BC local government, BC provincial ministries and agencies, MCD staff, and other interested practitioners and researchers of ADR program parameters. These activities include:

- Advice and coaching to local governments and provincial agencies and ministries on Interest Based Negotiation (IBN), process facilitation or mediation, and relationship building;
- Attendance at or facilitation of meetings of disputing individual and joint parties;
- IBN educational sessions and workshops for local government politicians, planners, and senior staff;
- Researching ADR smart practices;
- Building local government and provincial ministry and agency staff capacity;
- Facilitating/mediating disputes;
- Dispute Resolution Officer review of disputes, assistance in resolving disputes via an appropriate process, and assistance in determining division of process costs; and
- Engagement of external mediators or arbitrators as necessary.

Internally, MCD should produce guidelines on how to undertake these responsibilities and provide these guidelines to those staff involved in ADR processes.

Descriptions of process responsibility allocation for DR process formal and informal activities should also be communicated externally and internally so as to increase understanding of the IRPD’s ADR process. In addition to details specific to IRPD’s ADR process, general information on ADR and IBN should be increased on IRPD’s website, and links to other websites with ADR information and best practices provided. The Nova Scotia partnership handbooks could be a starting point in this regard.

The IRPD ADR website should be amended to prominently display important ADR process information including:
- Emphasis on working together to come to a mutually satisfactory resolution;
- Information that normalizes conflict and mediation and indicates that the earlier a problem is dealt with the better;
- Descriptions of typical local government disputes and the complications of power, costs, and votes;
- A timeline showing how a typical dispute resolution process might progress;
- Requirements for ADR initiation such as written notices;
- Types of ADR process assistance available; and
- Information on what to expect from a facilitator or mediator.
The website should distinguish key PDF guides and documents from less important ones, and these guides should be streamlined and compiled to facilitate clarity. ADR process information should be immediately accessible from the main MCD and MCD website pages and included as a subject area on the website’s map.

IRPD could increase local government awareness of the program by contributing articles discussing the process to the Union of BC Municipalities and Planning Institute of BC newsletters on an annual or bi-annual basis. In order to create the potential for using participant testimonials in these articles and on the IRPD website, the post-process survey should include a check-box beside the statement: “Check here if you consent to the use of your comments for program promotion (your identity will not be disclosed).” Awareness of the ADR process amongst local government could also be raised via focus groups, mail-outs, training programs.

As print materials are being phased out, it could be useful to print a business card for the ADR process itself to be given out at meetings or conferences, directing people to the website or to IRPD facilitators. Alternatively, IRPD Dispute Resolution Officers or facilitators could have the website inscribed on their business cards.

The Minister and Executive need to know what has happened with the program in the previous year and this is ideally communicated in a short, briefing note style year-end report. This should include information on both the formal and informal process. It needs to be brief and concise, showing where things are at in certain regions with certain issues, a sense of how councils are working, indicating staff and monetary resources (including external facilitator hiring and cost sharing), advice given, and numbers of disputes. It could show local government and provincial satisfaction with IRPD assistance once adequate performance measurement indicators are in place. Anecdotes or testimonials could be included. It could also review successful performance, describe unsuccessful performance, detail any remedial action which may be required, and recommend any necessary changes to performance goals for subsequent fiscal years. A briefing note prototype is included in Appendix VIII.

Internal staff need access to information on where disputes are brewing, where they are currently occurring (this could involve a tool developed over a map of BC), what the disputes involve, and what has been resolved. There needs to be an internal update
which could take the form of the yearly report being circulated to IRPD, MCD, or even all MCD staff, so that they are up to date on new developments within the process. Brief quarterly updates could also be sent out to relevant staff.

The Nova Scotia government’s research indicated local governments would find a continuously updated description of examples of inter-local government co-operation within the province useful, in order to show benchmarks and best practices, although, as mentioned previously, information garnered through MCD interviews suggests that BC local governments would dislike having their “dirty laundry” available for all to see. Perhaps examples from other jurisdictions could be used, with permission, to help normalize disputes in the eyes of BC local governments. Other types of reporting tools could include process strategic plans (like the 5 year plans recommended in the U.S.A. Government Performance and Results Act) or report cards.

6.1.5 Process Delivery

The research sub-question “what perspectives can IRPD ADR process Dispute Resolution Officers, internal facilitators, and resource person offer to inform an understanding of IRPD’s ADR process delivery” was addressed through interviews with these persons. Interviews with MCD staff involved as facilitators or resource people for various ADR processes revealed a number of proposals for process improvement. These all stem from information and time management, and are the subject of the following paragraphs.

Many MCD staff desired more procedural examples, such as templates for recording meeting minutes and final reports. Ensure logs and dispute history files are kept up to date, and that final reports are written for every resolved process. Awareness of the ADR legislation and processes should be increased both internally and externally. A guide describing “Things to Consider before an ADR process” could voice the knowledge interviewees communicated on environmental considerations such as ensuring neutral territory, places of symbolism and beauty, imparting intimacy but not being crowded, quiet, temperate rooms with good quality of light, and collaborative seating arrangements. It could also discuss the importance of sharing meals and keeping nutritional stamina, acknowledging and celebrating progress, and discussing a plan for the role of the media. Facilitator communication could be discussed, such as addressing
strategies for approaching the situation, expectations, roles, check-ins, up-dates, feedback, and debriefing. An internal MCD ADR library accessible to all ministry staff could be created.

The amount of time staff have to prepare, facilitate, and debrief should be increased. This includes the time available to meet with and interview parties, build rapport and trust and to distil lessons learned. Local government representatives and staff also need more support to manage the additional work load participating in an ADR process may bring. Standing meeting dates and regular check-ins with parties between meetings could be set so as to avoid process protraction and stagnation.

In order to reduce the amount of resistance some participants have to the ADR process, it is recommended that prior to commencing formal ADR negotiations or mediations, all parties to the ADR process sign an “agreement to participate in negotiation/mediation,” which is a conventional practice in private mediations. An example of such an agreement is provided by Chicanot and Sloan (2003). This agreement can potentially help ease difficulties MCD interviewees reported experiencing with persons who did not authentically engage in the ADR process.

A culture should be cultivated where local governments ask for ADR before the dispute has become protracted. Local governments must have assurance that when they come forward for ADR, they will not be prejudiced against in other areas of provincial authority.

Some facilitators struggled with managing difficult personalities, and several communicated working in situations where culture played a role in the dispute. Training could be diversified to include courses on how to deal with difficult people as well as effectively working in culturally diverse contexts.

The benefits of having internal and external facilitator teams should be considered. Senior staff dissonance could be decreased by including them more in the process folds perhaps through formalized briefings after meetings or offering them IBN training. New ways should be created to deal with ongoing disputes.

6.1.6 Process Evaluation

Key in answering the research central question “what performance measurement and evaluation tools are useful for IRPD’s ADR process” is a discussion of current IRPD
ADR process evaluation tools in place as well as general ADR process evaluation tools recommended in the ADR literature. IRPD does not currently have process evaluation procedures in place for its ADR process. Evaluation procedures should be implemented and should build on the mechanisms for performance measurement proposed in sections 6.1.2 and 6.1.3.

The research undertaken in this thesis resembles the atypical program evaluation of a “best practice” review (Barzelay 1996, 26). The sector (provincial government) as a whole was reviewed and the process (ADR) was construed as generic; the mode of review was research, the scope of the evaluation included aspects of organizational and program operation, and the focus of the effort was to formulate sector-specific standards of best practice and to contemplate the relative operations of sector members. The results of this type of evaluation have been the subject of sections 5.2.1 and many of the recommendations consider heretofore.

However, this “atypical,” irregular kind of program evaluation does not sufficiently meet the heights of accountability MCD staff have communicated they would like. Program evaluation can demonstrate program effectiveness. This should include the participation of staff involved in the ADR process, and the importance of this function in relation to “more pressing” responsibilities should be emphasized.

As described in previous sections of this report, program objectives are the foundations of program evaluations as indicators of program smart practices. IRPD’s ADR process objectives were illuminated in interviews and summarized in section 6.1.1. Interview findings discussed in section 5.1.4 relate not only to intended program achievements, but also what is actually going on, and this can be compared to program objective expectations. The next step for setting up an evaluative system after discovering objectives and creating a program logic model is to use the logic model to develop performance indicators.

Though an example Logic Model has been provided in this report, MCD staff will ultimately need to be responsible for deciding which objectives are the most useful to measure and evaluate, and how this might be achieved. When selecting objectives, MCD staff must weigh whether the program has reasonable control over potential objectives, whether potential objectives have a logical link to outcomes, whether potential objectives
show meaningful changes annually, and whether objectives show a contribution to ultimate outcomes. Attention should be paid to whether the indicator is necessary, if the administrative capacity for its monitoring is available, if the data is readily accessible, and whether it is linked to a strategic program element indicating relevance. Care should be taken to avoid perverse incentives caused by inappropriate linking of outcomes with indicators, and tradeoffs by those maintaining program measurement and reporting mechanism between meaningful and controllable results, between meaningful results and meaningful results showing change over time, and between meaningful results and efficiently collectable data. Partnering with local educational institutions could be a cost and time-effective way of tackling this large undertaking.

Recommendations to continually update program objectives and resources in order to best respond to program user’s needs were made in previous sections of this chapter.

6.2 Areas for Future Research

The following paragraphs describe several specific areas that seem immediately advantageous for future research into the broad topic explored in this thesis.

This research indicated that while provincially administered inter-local government ADR processes are few in number, they do exist and yet little research has been undertaken on them. Such study would richly contribute to knowledge in the field of ADR. Further comparative work researching inter-local government ADR in other national jurisdictions, such as the U.S.A. and further abroad would also be useful.

Constant evolution of current and integration of new ADR practices is recommended in order to increase the dynamism of IRPD’s ADR process. Further research into additional ways to incorporate diverse methods and cultural approaches to address conflict and disputes could be undertaken.

While this research focused on the provincial MCD staff perspective, studies into local government perspectives are necessary companions to the work done here. Qualitative exploration of their experiences of the ADR process and types of training in the area of ADR that they would like to receive are some possible avenues.

Finally, research into how BC First Nations governments could be included in inter-local government ADR processes is very timely, especially given i) BC’s professed
quest for certainty in matters concerning relations to First Nations, ii) the tri-partite treaty process currently underway in BC, iii) the increasing assertion of First People’s rights in Canada, iv) and the current international climate, including the Declaration on Rights of Indigenous Peoples.

6.3 Conclusions

Guided by IRPD’s priorities to (re)develop its ADR process description (including its objectives, mission, vision, and goals) and to generate tools to monitor, measure, and communicate its formal and informal ADR processes, this research attempted to answer the question: what performance measurement and evaluation tools are useful for IRPD’s ADR process? In pursuit of this answer, the study was guided by the following sub-questions: what does ADR literature recommend incorporating into ADR processes; what do comparable ADR processes incorporate into their ADR processes; how can information about ADR processes best be monitored, measured, and communicated; and what perspectives can IRPD ADR process Dispute Resolution Officers, internal facilitators and resource persons offer to inform an understanding of IRPD’s ADR process delivery?

The research report began by discussing the purpose and contribution of this study to ADR knowledge including:

- Illuminating practical ways for government to track, measure, and communicate its services;
- Contributing to the feedback-rich environment for process delivery;
- Improving accountability and representation of ADR services to stakeholders;
- Addresses the void of academic literature on the intersections of ADR, performance measurement and evaluation, public administration, and intergovernmental relations.
- Capturing current theory on smart ADR practices; and
- Bettering relations between local and provincial governments.

In answer to the questions “what does ADR literature recommend incorporating into ADR processes”, and “how can information about ADR processes best be monitored, measured, and communicated”, this thesis then reviewed seminal articles in the fields of
ADR, Public Administration, Intergovernmental Relations, and Performance Measurement and Evaluation to provide context and gain insight into the intersections of these fields and how they support IRPD’s ADR process. The literature and theoretical issues review attempted to enable the positioning of IRPD’s ADR process within the literature on smart ADR practices, the constraints of publicly administered programs and intergovernmental relations, and the trappings of performance measurement and evaluation.

Next the thesis discussed local governments as positioned in the Canadian federation and then as positioned in British Columbia specifically. In answer to the question “what do comparable ADR processes incorporate into their ADR processes”, the research explored ADR provisions legislated in British Columbia through the *Local Government Act* and the *Community Charter*, and then contrasted these to ADR provisions found in the Canadian provinces of Alberta, Saskatchewan, and Nova Scotia.

At this point, the research report delineated the research procedures including methodology, method, data collection, and data analysis techniques employed. The report described the use of the pragmatist perspective and post-modern, social constructivism knowledge claims to position the mixed qualitative (dominant) and quantitative (nested) approach. These research approaches used case study and survey methodology, and interviews and document analysis and Likert scales respectively. The various sources taken up in this research each represent different factions or perspectives of IRPD’s ADR process. Combined they provide insight into a complex and multidimensional process with both many successes and challenges in its past and future.

In order to contribute to the penultimate question of this research, “what performance measurement and evaluation tools are useful for IRPD’s ADR process”, the lengthy Findings chapter related descriptors of IRPD’s ADR process via a review of its formal and informal objectives, mission, vision, and goals, roles, responsibilities, abilities, and purposes in order to provide opportunity to increase external, lateral, and internal accountability and internal and external ADR process understanding. Chapter 5 related the formal and informal ADR process measurement, monitoring, and communication procedures in place.
In response to the question “what perspectives can IRPD ADR process Dispute Resolution Officers, internal facilitators and resources persons offer to inform an understanding of IRPD’s ADR process”, Chapter 5 related IRPD’s ADR process facilitator and resource people’s perspectives on ADR process delivery, illuminating both challenges and successes.

Finally, Chapter 5 looked at the quantitative survey data available from IRPD’s ADR post-process survey and also compared this ADR survey to others used in similar programs. Gaps in data collection and analysis were identified and conjecture provided on possible inferences from the available data. This helped address the research question “how can information about ADR processes best be monitored, measured, and communicated”.

Chapter 1 relates the anecdote of a BC region coping with a long-standing dispute between constituencies over the distribution of the region’s water supply. One constituency involved in the dispute initiated IRPD’s ADR process with the intent of looking at the scope of the region’s general administration. Elected officials from each involved constituency then met several times over the course of a year in order to work together to successfully negotiate an agreement on regional general administration.

Musing about how this vignette might amplify what was learned through this research, one might hypothesize that participating in an ADR process began familiarizing local government participants with the ADR provisions available to them. Participating in the ADR process would have provided participants with the opportunity to see ADR skills in operation via the examples set by MCD staff working in both informal and formal capacities to provide local governments with ADR process advice and assistance. Local government representatives participating in the ADR process could experience the feeling of success derived from working together to solve difficult problems. These local government representatives might experience an improvement in the working relationships they have with other ADR process participants, as well as increased appetite and confidence in their ability to undertake an ADR process on other, perhaps more challenging issues, like region-wide water distribution.

Strengthening IRPD’s ADR process via the feedback rich environment enabled by enhanced process measurement and evaluation tools provides an opportunity to increase
the ability of local government and provincial ministries and agencies to come to good agreements through well conducted ADR processes. This thesis attempted to provide constructive suggestions on concrete ways to enhance IRPD’s ADR process measurement and evaluation tools with the aspiration of contributing not only to the improvement of IRPD’s ADR process functioning, but to improved inter-local and provincial-local governmental relations on the whole, and to an improved understanding of ADR measurement and evaluation practices in general.
Appendices

Appendix I
Ethical Considerations

The risk level in this study was minimal, and impacts on the participant small. The topic, methodologies, and methods were selected with the participant’s rights, needs, values, and desires in mind. The participant and MCD are in the public eye and the following safeguards were put in place to protect their rights: the research objectives were articulated in writing so that they were clearly understood by the participant; written permission to proceed with the study as delineated was received from the participant (informed consent form); the participant was informed of all data collection devices and activities; the conclusions drawn from the data were made available to the participant; the participant’s rights, interests, and wishes were considered first when choices were made regarding reporting the data; and the participant was given the choice whether or not to remain anonymous, in which case all references to and descriptors of the participant would be omitted (Miller 1992 quoted in Creswell 2003, 202).

An informed consent document was prepared for and signed by the participant communicating the purpose, procedures, and benefits of the study (Creswell 2003). Additionally, the form indicated the voluntary nature of study participation and the participant’s prerogative to withdrawal at any time (Creswell 2003). The consent form encouraged the participant to raise any questions or concerns that might arise throughout the course of the study, and indicated that the research results would be provided to the participant (Creswell 2003). Both researcher and participant signed the form agreeing to these conditions.

This research is expected to benefit the participant and MCD in reciprocation of the time and/or resources they provided throughout the research period. The participant was involved with the research design and question formulation, and the participant’s input was actively sought throughout all phases of the research (Creswell 2003). The site where interviews took place was respected by the researcher during the course of the research so as to ensure disruption of the physical setting was minimal (Creswell 2003). Interview visits to the site were timed so as to be convenient for the participant (Creswell 2003).
At no point throughout the research was language biased against persons due to gender, sexual orientation, racial or ethnic group, disability, or age, used (Creswell 2003, 67). Language with appropriate levels of specificity and sensitivity to labels that acknowledges the subjectivity of participant was employed (Creswell 2003).

Findings were not suppressed, falsified, invented, or misused to privilege one group over another (Creswell 2003). Non-sensitive details of the research are included in the study write-up so that research users can ascertain the integrity of the research for themselves (Creswell 2003).

i. Participant Consent Form

Intergovernmental Alternative Dispute Resolution: A British Columbian Case Study

You are invited to participate in a study entitled Intergovernmental Alternative Dispute Resolution: A Performance Measurement System for the British Columbia Ministry of Community Development that is being conducted by Emma Sharkey. Emma Sharkey is a Masters student in the department of Dispute Resolution at the University of Victoria and you may contact her if you have further questions by phone at: 250-595-7674; by email at: emma@uvic.ca ; or by post at: Department of Dispute Resolution, University of Victoria, Box 2400 STN CSC, Victoria, BC, V8W 3H7.

As a graduate student, I am required to conduct research as part of the requirements for a degree in Dispute Resolution. It is being conducted under the supervision of Dr. Herman Bakvis. You may contact my supervisor at 250-721-8065.

Purpose and Objectives

The purpose of this research project is to design a performance measurement system for the British Columbia Ministry of Community Development (MCD) Intergovernmental and Planning Division’s (IRPD) Alternative Dispute Resolution (ADR) process. The research question is: what does a Performance Measurement System look like for IRPD’s ADR process? Sub-questions include: what does ADR literature recommend incorporating into ADR processes; what do comparable ADR processes incorporate into their ADR programs; and how can ADR processes best be communicated both internally and externally?

IRPD’s Performance Measurement System will focus on: development of ADR program objectives; development of performance measurement tools for both formal and informal ADR services; development of yearly reporting tool; update of ADR service participant survey; improvement of ADR process website; and creation of printed ADR process informational materials.

Importance of this Research

Research of this type is important because it provides practical ways for IRPD to track and report on its ADR services, allowing better accountability and representation of these services to stakeholders. Additionally, this research will address the gap in the literature on ADR Performance Measurement Systems and help formulate ADR process best practices in order to
improve ADR processes on the whole. It is hoped that this will contribute to improved intergovernmental relations.

Participants Selection
You are being asked to participate in this study because of the role you have in the administration of the IRPD ADR process.

What is Involved
If you agree to voluntarily participate in this research, your participation is expected to involve 3 one-hour interview sessions over the span of a month, as well as review and provision of feedback on the research and its results at 2 stages of the research (first and second draft). These reviews are not expected to take longer than 2 hours each. The total amount of time required of the participant is an estimated 7 hours over the span of 5 months. Participation will take place at the participant’s workplace in a private office.

This study uses both qualitative and quantitative research methods. The dominant research approach is qualitative and involves informal interviews with the participant and document analysis.

The purpose of the interview portion of the research is to flesh out descriptors of the IRPD ADR process and to provide opportunity for the participant to give feedback and guidance on the research process. The information produced during these interviews will be recorded via written notes; no audio or visual devices will be used to record information during the sessions.

The document analysis portion of the research will compare information available to the public on ADR processes in Canada and the U.S.A. for the purpose of sussing out various approaches.

The quantitative portion of the research involves the use of secondary, anonymized data garnered from a survey prepared by a previous researcher which has been in distribution for a number of years. Data from this survey will be analyzed to generate information about how participants in IRPD’s ADR process perceive certain attributes of this process.

Inconvenience
Participation in this study may cause some inconvenience to you, including the time that may be required of you during interview sessions and research reviews.

Risks
There are no known or anticipated risks to you by participating in this research

Benefits
The potential benefits of your participation in this research include the provision of a Performance Measurement System with which to monitor and report on IRPD’s ADR services.

Benefits to society include improved accountability for a process administered and funded by the government.

Benefits to the state of knowledge include filling the literature gap on Alternative Dispute Resolution process Performance Measurement Systems as well as generating ideas around Alternative Dispute Resolution best practices.

Voluntary Participation
Your participation in this research must be completely voluntary. If you do decide to participate, you may withdraw at any time without any consequences or any explanation. If you do withdraw from the study your data will not be used.
On-going Consent
To make sure that you continue to consent to participate in this research, prior to each meeting or request for research review I will remind you of the voluntary nature of your participation and ask you if you still consent to participating.

Anonymity
In terms of protecting your anonymity, because of the nature of the research, your personal information and data will be known to the researcher. However, should you choose to remain anonymous at the research reporting and dispersal stages, all descriptors of you will be omitted and you will be given or can choose a pseudonym for use in these stages.

Confidentiality
Your confidentiality and the confidentiality of the data will be protected by the storage of personal information and data in a secured office and filing cabinet and protected computer files. Access to this information will be restricted to the researcher, research supervisor, and committee members.

Dissemination of Results
It is anticipated that the results of this study will be shared with others in the following ways: directly to the participant; published article; masters’ thesis, and presentations at scholarly meetings.

Request for Future Use
It is possible that this data may be analyzed by the researcher, research supervisor, or committee members in the future for purposes other than this research. This may include academic papers or books.

Disposal of Data
Data from this study will be disposed of within 5 years from the completion of the study; paper files will be shredded and electronic data will be erased

Contacts
Individuals that may be contacted regarding this study include Emma Sharkey and Herman Bakvis. Their contact information is available at the beginning of the consent form.

In addition, you may verify the ethical approval of this study, or raise any concerns you might have, by contacting the Human Research Ethics Office at the University of Victoria (250-472-4545 or ethics@uvic.ca).

Your signature below indicates that you understand the above conditions of participation in this study and that you have had the opportunity to have your questions answered by the researchers.

Name of Participant  Signature  Date

A copy of this consent will be left with you, and a copy will be taken by the researcher.
Participant’s Name  
Intergovernmental Relations and Planning Division  
Ministry of Community Development  
Box 9841, STN Prov Govt  
Victoria, BC, V8W9T2

Date

Dear Participant,

You are invited to participate in a study titled: Intergovernmental Alternative Dispute Resolution: A British Columbian Case Study, which I am conducting as a Masters student in the department of Dispute Resolution at the University of Victoria. The purpose of this research is to design a performance measurement system for British Columbia’s Ministry of Community Development Intergovernmental and Planning Division’s (IRPD) Alternative Dispute Resolution (ADR) process.

Research of this type is important because it provides practical ways for IRPD to track and report on its ADR services, allowing better accountability and representation of these services to stakeholders. Additionally, this research will address the gap in knowledge on ADR performance measurement systems and help formulate ADR process best practices in order to improve ADR processes at large. It is hoped that this will contribute to improved intergovernmental relations.

If you participate in this research, your participation is expected to involve 3 one-hour interview sessions over the span of a month, as well as review and provision of feedback on the research and its results at 2 stages of the research (first and second draft). These reviews are not expected to take longer than 2 hours each. The total amount of time required will be an estimated 7 hours over the span of 5 months. If you do decide to participate, you may withdraw at any time without any consequences or explanation. In this case, your data will not be used in the study.

You will have the option to remain anonymous at the research reporting and dissemination stages. It is anticipated that the results of this study will be shared with others in the following ways: directly to you; published article; masters’ thesis, and presentations at scholarly meetings.

If you would like to accept this invitation or if you have any questions about the research you may contact via the contact information at the top of this letter. My supervisor, Dr. Herman Bakvis, is also available for consultation and you may contact him by phone at: 250-721-8065.

I look forward to hearing from you.

Sincerely,

Emma Sharkey
Appendix II
Interview Questions

Interview questions underwent two sets of iterations. The initial iteration saw interview questions divided into 3 separate interviews, the first focused on understanding the program, the second on process monitoring, the third on process communication. This iteration saw a definitional sheet provided to participants ahead of time (item i. below). Subsequently, the questions were revised into the “Modified Interview” questions.

i. Definitions

Please consider the following prior to our first meeting:

Objectives: Program objectives can be understood as the broadest statement of what the program would like to achieve in the future. What are program objectives for IRPD’s ADR service?

Mission: Program mission statements can be understood as brief descriptions of the programs fundamental purpose including present capabilities, client focus, activities, and program makeup. The current IRPD ADR services mission is: to help resolve disputes between government jurisdictions. Please consider to what extent this is an accurate mission statement. Does it need to be modified? If so, what would that look like?

Vision: A vision statement would describe what the ADR program’s success would mean or look like. The IRPD ADR program has no vision statement. Please consider what a vision statement might look like for this program.

Goals: Program goals can be thought of as the purpose of an endeavour. IRPD ADR program goals include the following:

To resolve disputes collaboratively by helping parties to: identify their interests; explore options for resolution; develop and implement solutions acceptable to all; and obtain the services of a neutral mediator, if needed.

To solve disputes as early as possible in order to help parties avoid stressful and costly arbitration or court action.

To encourage open communication and help foster understanding between parties, building better long-term relationships.

Better decision making

Better local government intergovernmental relations
Less disputes requiring provincial involvement

Better local government understanding of legislated dispute resolution processes

Please consider to what extent these are accurate goals. Do they need to be modified? If so, what would that look like?

ii. Interview 1: Understanding the Program

Services as a Whole

1. Program objectives can be understood as the broadest statement of what the program would like to achieve in the future. Given this definition, what is your understanding of the program objectives for IRPD ADR services?
2. Program mission statements can be understood as brief descriptions of the program’s fundamental purpose including present capabilities, client focus, activities, and program makeup. Given this definition, what is IRPD’s ADR program mission?
3. Program vision statements can be thought of as a snapshot of the program in the future or what success will look like. Given this definition, what is IRPD’s ADR program vision?
4. Program goals can be thought of as the purpose of an endeavour. Given this definition, what are IRPD’s ADR program goals?

Informal Services

1. What are the objectives of the informal portion of the ADR services?
2. Describe the activities that comprise the informal services.
3. Who is responsible for carrying out these activities?

Formal Services

1. What are the objectives of the formal portion of the ADR services?
2. Describe the activities that comprise the formal services.
3. Who is responsible for carrying out these activities?

iii. Interview 2: Monitoring the Program

Informal

1. What tools are currently in use to monitor informal services?
2. What tools have been used in the past to monitor informal services? Why are they no longer in use?
3. What mechanisms can you imagine to monitor informal services?
4. What would a good monitoring system enable you to do?

Formal
1. What tools are currently in use to monitor formal services?
2. What tools have been used in the past to monitor formal services? Why are they no longer in use?
3. What mechanisms can you imagine to monitor these services?
4. What would a good monitoring system enable you to do?

iv. Interview 3: Communicating the Program

External

Website

1. Who is the audience for these materials?
2. What information do you imagine they would need most immediately?
3. What other information do you want available on the website?
4. What is important to display prominently?

Print Materials

1. Who is the audience for these materials?
2. What information do you imagine they would need most immediately?
3. What other information do you want available in the print materials?
4. What is important to display prominently?
5. What do you imagine these materials looking like (pamphlets, letters, fact sheets, testimonials, etc.)

Internal

1. Who is the audience for these materials?
2. What information do you imagine they would need most immediately?
3. What other information should be included in a yearly reporting tool?
4. What mechanisms can you imagine to report on informal services?
5. What mechanisms can you imagine to report on formal services?
6. What would a good reporting system enable you to do?

v. Modified Interview

1. How many years have you been involved with the MCD dispute resolution process?
2. How many dispute resolution processes have you been involved with (including in an informal, advisory capacity)?
3. How many disputes have you facilitated?
4. What types of dispute resolution processes have you been involved with (Service Review, Regional Growth Strategy review, Service Withdrawal, Other)?
5. What kinds of issues are commonly dealt with in the dispute resolution process (recreation, water, etc.)?
6. In general, are the dispute resolution processes you’re involved with between local 
governments or between local government and provincial Ministries or Agencies?
7. How does the number of parties involved in a dispute resolution process affect how 
the process unfolds?
8. How do rural or urban identities come into play?
9. How do other aspects of identity or culture come into play?
10. What is the level of tension like between disputants at the beginning of a dispute 
resolution process?
11. What parts of a dispute resolution process are likely to go well, and what parts 
poorly?
12. How does the physical environment affect the dispute resolution process?
13. What kinds of things tend to bring about dispute resolution process “breakthrough” 
moments?
14. What aspects of a process tend to affect whether parties can reach a mutually 
satisfactory agreement?
15. How many months do processes typically last?
16. How does the length of time between the commencement and completion of a dispute 
resolution process affect how the process unfolds?
17. What is your level of satisfaction with the process in general and why?
18. Is there anything you would change about the process?
19. Do you perceive a need for more training, refresher courses, or the integration of 
different methods?
20. Are there types of cases that you think are not suitable for this type of process (i.e. 
number of parties; certain issues; case complexity; rural or urban, etc.)?
21. If you think there are cases unsuitable for this process, how do you think these cases 
should be addressed?
22. What kind of information would it be useful for you to have available when working 
on a case (i.e. case history, timeline, process history, negotiation information)?
23. How would you like to access this information (charts, reports, shared drive, internet, 
etc.)
24. Are there further particular experiences or ideas you would like to relate?
25. Do you have any additional observations or recommendations?
### Appendix III
### List of Acronyms

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<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
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<td>AB</td>
<td>Alberta</td>
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<tr>
<td>ADR</td>
<td>Alternative Dispute Resolution</td>
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<td>BC</td>
<td>British Columbia</td>
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<tr>
<td>CC</td>
<td>Community Charter (BC)</td>
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<td>DRO</td>
<td>Dispute Resolution Officer</td>
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<td>IBN</td>
<td>Interest Based Negotiation</td>
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<td>Inter-Governmental Relations</td>
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<td>IRPD</td>
<td>Intergovernmental Relations and Planning Division</td>
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<tr>
<td>LGA</td>
<td>Local Government Act</td>
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<td>MCD</td>
<td>Ministry of Community Development</td>
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<td>NS</td>
<td>Nova Scotia</td>
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<tr>
<td>RGS</td>
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<td>RSR</td>
<td>Regional Service Review</td>
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<tr>
<td>RSW</td>
<td>Regional Service Withdrawal</td>
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<tr>
<td>SK</td>
<td>Saskatchewan</td>
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</table>
Appendix IV
Glossary

**Best Practices:** practices that are fairer, more efficient, more stable, and wiser (Susskind 2005).

**Conflict:** “divergence of goals, objectives, standards, attitudes or expectations between individuals or social units. Conflict can be latent (below the surface and not identified) or manifest (fully surfaced and particularized over issues with the parties clearly defined)” (Chicanot and Sloan 2003).

**Dispute:** “manifest conflict in which the issues are typically identified, the parties known, and the ‘particularity’ of the conflict is understood by those involved” (Chicanot and Sloan 2003).

**Facilitated Negotiation:** “a process of dispute resolution in which a third party is involved in any way in helping the disputants; often this is done by managing disputants’ discussions” (Ministry of Community Services n.d., 4).

**Final Proposal Arbitration:** “an arbitration method where disputing parties submit written dispute resolution proposals to an arbitrator. There are no oral hearings, testimony or other submissions allowed. The arbitrator chooses which proposal will be put into effect for each issue in dispute, meaning that one party ‘wins’ and the other ‘loses’” (Ministry of Community Services n.d., 6).

**Full Arbitration:** “a formal hearing in a court-like process with witnesses and evidence. An arbitrator reviews the testimony and submissions before making a final decision” (Ministry of Community Services n.d., 6).

**Mediated Negotiation:** “disputants’ election to meet with a third party for the purpose of assisting them to formulate their own resolution” (Ministry of Community Services n.d., 4).

**Mediation:** “a process of dispute resolution in which disputants elect to meet with a third party for the purpose of assisting them to formulate their own resolution to the dispute” (Chicanot and Sloan 2003).

**Negotiation:** “a consensual bilateral or multilateral dispute resolution through discussion” (Chicanot and Sloan 2003).

**Peer Panel:** three locally elected current or former officials (not from the local government involved in the dispute) or individuals who “in the opinion of the Minister, have appropriate experience in relation to local government matters” “will hear presentations from the local governments participating in the settlement proceedings and make any decision it considers appropriate to settle the disputed issues” (Ministry of Community Services 2006b, 23).
Regional Growth Strategy (RGS): this is a practical framework for coordinated planning and action for local governments in all parts of BC. RGS legislation is contained in Part 25 of the Local Government Act. One of its main purposes is to manage urban growth in ways that respect clean air and drinking water, affordable housing, protected farmland, wilderness and unique natural areas (Ministry of Community Services 2006b).

Regional Service Review: the Local Government Act provides opportunities for periodic service reviews to be undertaken when: “partners’ shared vision changes; service changes in scope and no longer fits the original vision; local conditions change; or scheduled by advance agreement in service establishment by-laws” (Ministry of Municipal Affairs n.d., 2). “These reviews let service delivery partners address their changing service needs, renegotiate the terms and conditions of a service arrangement, and resolve differences internally” (Ministry of Community Services n.d., 2). There are three types of Service Review, Informal review, by-law based review, and statutory review. Informal review is: independent of the Local Government Act’s provisions, proactive, [initiated] at any time by a regional district. By-law based review is: included in establishing bylaw, over-rules statutory review, once adopted, review timetable set in establishing by-law. Statutory Review is: default option, applies unless bylaw specifies and alternative, [initiated] by a service partner every three years, at most (Ministry of Community Services n.d, 2-3).

Regional Service Withdrawal: “the Local Government Act provides a process for a service participant to withdraw from a service if they cannot agree on changes to the terms and conditions for the service” (Ministry of Community Services n.d., 3). Service Withdrawal is not an option in the following capacities: core government functions, regulatory services, mandatory functions, services exempted by Cabinet regulation including emergency telephone system, transit, regional parks, regulation, storage, and management of municipal solid waste and recyclable materials (Ministry of Community Services n.d., 3).

Successful ADR program: a program that achieves a favourable end to its intended purpose.

Unassisted Negotiation: “consensual bilateral or multilateral dispute resolution through discussion” (Ministry of Community Services n.d., 4).
Appendix V
Relevant Legislation

i. British North America Act/Constitution Act 1867

*Distribution of Legislative Powers, Exclusive Powers of Provincial Legislatures*, section 92, states:

In each Province the Legislature may exclusively make Laws in relation to Matters coming within the Classes of Subject next hereinafter enumerated; that is to say,--

1. Repealed.

2. Direct Taxation within the Province in order to the raising of a Revenue for Provincial Purposes.

3. The borrowing of Money on the sole Credit of the Province.

4. The Establishment and Tenure of Provincial Offices and the Appointment and Payment of Provincial Officers.

5. The Management and Sale of the Public Lands belonging to the Province and of the Timber and Wood thereon.

6. The Establishment, Maintenance, and Management of Public and Reformatory Prisons in and for the Province.

7. The Establishment, Maintenance, and Management of Hospitals, Asylums, Charities, and Eleemosynary Institutions in and for the Province, other than Marine Hospitals.

8. Municipal Institutions in the Province.

9. Shop, Saloon, Tavern, Auctioneer, and other Licences in order to the raising of a Revenue for Provincial, Local, or Municipal Purposes.

10. Local Works and Undertakings other than such as are of the following Classes:--

   *(a)* Lines of Steam or other Ships, Railways, Canals, and other Works and Undertakings connecting the Province with any other or others of the Provinces, or extending beyond the Limits of the Province;
(b) Lines of Steam Ships between the Province and any British or Foreign Country;

(c) Such Works as, although wholly situate within the Province, are before or after the Execution declared by the Parliament of Canada to be for the general Advantage of Canada or for the Advantage of Two or more of the Provinces.

11. The Incorporation of Companies with Provincial Objects.

12. The Solemnization of Marriage in the Province.

13. Property and Civil Rights in the Province.

14. The Administration of Justice in the Province, including the Constitution, maintenance, and Organization of Provincial Courts, both of Civil and of Criminal Jurisdiction, and including Procedure in Civil Matters in those Courts.

15. The Imposition of Punishment by Fine, Penalty, or Imprisonment for enforcing any Law of the Province made in relation to any Matter coming within any of the Classes of Subjects enumerated in this Section.

16. Generally all Matters of a merely local or private Nature in the Province.

Section 1 was repealed by the Constitution Act, 1982, which now authorizes provincial legislatures to make laws amending the constitution of the province. The repealed section read as follows:

1. The Amendment from Time to Time, notwithstanding anything in this Act, of the Constitution of the province, except as regards the Office of Lieutenant Governor.

Sections 92A-95 delineate several stipulations around non-renewable natural resources, forestry resources and electrical energy, education, old age pensions, and agriculture and immigration.

ii. Community Charter (BC)

Request for assistance in relation to intergovernmental dispute, Section 285, Part 9, Division 3, states:

(1) If a dispute arises between a municipality and
(a) another local government, or

(b) the Provincial government or a Provincial government corporation,

and the parties cannot resolve the dispute, one or more of the parties may apply to a dispute resolution officer to help in resolving the dispute.

(2) If an application is made under subsection (1), the officer

(a) must review the matter,

(b) may attempt to help the parties to resolve the dispute by any process the officer considers appropriate, including by using or referring the matter to mediation or another non-binding resolution process, and

(c) may assist the parties in determining how costs of the process are to be apportioned.

iii. Local Government Act

Facilitation of agreement during development of regional growth strategy, Section 856 of Part 25, Division 2 of this act, states:

The Minister may appoint facilitators for the purpose of this Part, who responsibilities are

(a) to monitor and assist local governments in reaching agreement on the acceptance of regional growth strategies during their development by

(i) facilitating negotiations between the local governments,

(ii) facilitating the resolution of anticipated objections,

(iii) assisting local governments in setting up and using non-binding resolution processes,

and

(iv) facilitating the involvement of the Provincial and federal governments and their agencies, First Nations, school district boards, greater boards and improvement district boards.
Dispute Resolution in Relation to Services, Section 813.01 of Part 24, Division 4.5 of this act states:

The Minister may appoint facilitators for the purposes of this Division, whose responsibilities are to monitor service reviews and service withdrawals, and to assist the parties in reaching agreement in those processes, by

(a) facilitating negotiations,
(b) facilitating resolution of issues, and
(c) assisting in setting up and using mediation or other non-binding resolution processes.

…The authority for the facilitator to provide assistance in relation to a service withdrawal ends at the time an arbitration referred to in [this section] begins.

Principles for Governmental Relations, Part 1, Section 3 of this act delineates:

The relationship between regional districts and the Provincial government in relation to this Act is based on the following principles:

(a) cooperative relations between the Provincial government and regional districts are to be fostered in order to efficiently and effectively meet the needs of the citizens of British Columbia;
(b) regional districts need the powers that allow them to draw on the resources required to fulfill their responsibilities;
(c) notice and consultation is needed for Provincial government actions that directly affect regional district interests;
(d) the Provincial government recognizes that different regional districts and their communities have different needs and circumstances and so may require different approaches;
(e) the independence of regional districts is balanced by the responsibility of the Provincial government to consider the interests of the citizens of British Columbia generally.
Appendix VI
Process Monitoring Tools

i. Contact Log

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<th>Event</th>
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ii. Tracking Log

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<tr>
<th>Region</th>
<th>Parties</th>
<th>Dispute Type</th>
<th>Dispute Process</th>
<th>Dispute Background</th>
<th>Key Issues</th>
<th>Type of Ministry assistance</th>
<th># MCD attended meetings</th>
<th>% of staff time per week</th>
<th>Budget (meetings, facilitator, etc)</th>
<th>Surveys sent</th>
<th>Agreement implemented</th>
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Appendix VII
Process Measurement Tools

i. IRPD ADR Post-Process Survey

MINISTRY OF COMMUNITY DEVELOPMENT
Dispute Resolution Process Survey

This survey is to determine your satisfaction with the effectiveness of the service review dispute resolution process. Please use the rating below.

|-------------------|---------|------------------------------|-------------|---------------------|

1. The process helped me work with the other parties to define the issues for discussion
   1 2 3 4 5
2. The issues we agreed to address were addressed.
   1 2 3 4 5
3. The process allowed me the opportunity to address my concerns.
   1 2 3 4 5
4. The process helped me understand other participant’s interests and perspectives.
   1 2 3 4 5
5. The process provided equal opportunities for participation by all parties.
   1 2 3 4 5
6. I had the opportunity to identify potential solutions to the issues.
   1 2 3 4 5
7. The Ministry facilitators added value to the process.
   1 2 3 4 5
8. The process outcome was worth the time and resources spent.
   1 2 3 4 5
9. Overall, I was satisfied with the service review process.
   1 2 3 4 5
10. I was satisfied with the Ministry’s process advice and assistance.
    1 2 3 4 5
If Disagree, please explain why.

_____________________________________________________________________
_____________________________________________________________________

11. In your opinion, what aspects of the process were the most successful in resolving the differences between participants?
_____________________________________________________________________

12. Would you use a similar process for other disputes between government jurisdictions? Yes No
    If Yes, what type of disputes?
13. What changes, if any, would you make to improve the service review dispute resolution provisions contained in the *Local Government Act* (section 813-813.19)?

**BACKGROUND**

How long have you served in public office?
- Less than 1 term
- 1 term
- 2 terms
- More than 3 terms

Which local government do you represent?
- A municipality
- An Electoral Area

Are you currently serving as a representative on a regional district board?
- Yes
- No

Please provide further comments regarding the dispute resolution process or this survey on a separate sheet.

**THANK YOU FOR TAKING THE TIME TO COMPLETE THIS SURVEY**

**ii. Proposed Additions to Survey**

Change the prior question 13 to: What changes, if any, would you make to the dispute resolution process you have just completed?

Add the following statements for measurement with a Likert Scale:

1. The process was flexible and dynamic.
   - 1
   - 2
   - 3
   - 4
   - 5

2. The process enhanced personal growth.
   - 1
   - 2
   - 3
   - 4
   - 5

3. The process was fair.
   - 1
   - 2
   - 3
   - 4
   - 5

4. The process was open/honest.
   - 1
   - 2
   - 3
   - 4
   - 5

5. The process promoted information sharing.
   - 1
   - 2
   - 3
   - 4
   - 5

6. Process guidelines and procedures were clear.
   - 1
   - 2
   - 3
   - 4
   - 5

7. Process alternatives were clear.
   - 1
   - 2
   - 3
   - 4
   - 5
8. Plain language was used throughout the process.
   1  2  3  4  5
9. Participants were committed to the process.
   1  2  3  4  5
10. I learned/improved my dispute resolution skills.
    1  2  3  4  5
11. Participants had control over the process.
    1  2  3  4  5
12. My capacity to deal with conflict increased.
    1  2  3  4  5
13. I learned/improved my dispute resolution skills.
    1  2  3  4  5
14. The facilitator was reasonably informed and prepared.
    1  2  3  4  5
15. The meeting facility was appropriate.
    1  2  3  4  5
16. Meetings started and ended on time.
    1  2  3  4  5
17. Sufficient time was booked for meetings.
    1  2  3  4  5
18. The dispute was handled in a timely manner.
    1  2  3  4  5
19. The impact of the process on my time and workload was acceptable.
    1  2  3  4  5

Finally, in order to gather anecdotal evidence about the process, include the following checkbox:

☐ Check here if you consent to the use of your comments for program promotion (your identity will not be disclosed).
### Appendix VIII
**Process Reporting Tools**

#### i. Summary of Formal Outputs to Date

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<thead>
<tr>
<th>Year</th>
<th>Service Reviews Resolved</th>
<th>Regional Growth Strategy Disputes Resolved</th>
<th>Community Charter Disputes Resolved</th>
<th>Service Reviews Current</th>
<th>Regional Growth Strategy Disputes Current</th>
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#### ii. Summary of Informal Outputs to Date

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<th>Year</th>
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<th>MCD Active Facilitators</th>
<th>MCD Dispute Resolution Officers</th>
<th>Minister’s Letters Answered</th>
<th>LG Education and Training sessions</th>
<th>LG guides produced</th>
<th>ADR related meetings attended by MCD</th>
<th>% of staff time per week</th>
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iii. Briefing Note Template

Program Area: Local Government Department
Briefing Number: ####

Ministry of Community Development

BRIEFING NOTE

TITLE: Dispute Resolution Program Annual Update
ISSUE: The activities of the Local Government Department Dispute Resolution Officers, Active Facilitators, and staff trained in Interest-Based Negotiation affect Local-Government and Provincial Ministries and Agencies ongoing relations and have implications for program accountability and budget.

BACKGROUND:

- Context
- Purpose
- Objectives
- Approach
- Ministry Role
- Fit with MCD and IRPD mandate

Attachments: [X] Yes [ ] No

PROJECT MANAGEMENT:

- Administrative parties and their responsibilities
- Project monitoring, measuring, evaluation, and reporting
- Project Budget

OUTCOMES:

- Short Term
- Long Term

DELIVERABLES:

JUSTIFICATION:

- Comparison of budget, outcomes, and deliverables

SUMMARY OF ANNUAL ACTIVITY:

Formal
- Number of disputes, etc.

Informal
- Advice Given, etc.

REGIONAL HIGHLIGHTS:
RECURRENT ISSUES:

CHRONIC PROBLEM AREAS:

OPTIONS:
- Actions to change/improve program goals/delivery/ accountability, etc.

Attachments:
- Contact Log
- Tracking Log
- Logic Model
- Analysed Results of Survey
- Testimonials
- Summary of Formal and Informal Outputs to Date

Staff contact:

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Solicitor for the Attorney General of Canada: Thomson, George, and Solicitors
appointed by the Court as amicus curiae: Joli-Coeur, Lacasse, Lemieux,


