

ALBERTA LAW REFORM INSTITUTE

Alberta Rules of Court Public Consultation Report

September 19, 2002

For more information contact the

Alberta Law Reform Institute

402 Law Centre
University of Alberta
Edmonton, Alberta T6G 2H5
reform@alri.ualberta.ca
www.law.ualberta.ca/alri
t: (780) 492-5291
f: (780) 492-1790

ALRI claims copyright © in this work. ALRI encourages the availability, dissemination and exchange of public information. You may copy, distribute, display, download and otherwise freely deal with this work on the following conditions:

- (1) You must acknowledge the source of this work,
- (2) You may not modify this work, and
- (3) You must not make commercial use of this work without the prior written permission of ALRI.

TABLE OF CONTENTS

| | | |
|-------------------|--|-----------|
| <u>1.0</u> | <u>STUDY BACKGROUND</u> | 2 |
| <u>2.0</u> | <u>STUDY FINDINGS</u> | 4 |
| <u>2.1</u> | <u>Procedure in the Court</u> | 4 |
| <u>2.2</u> | <u>Alternative Dispute Resolution</u> | 24 |
| <u>2.3</u> | <u>Self-Represented Parties</u> | 30 |
| <u>2.4</u> | <u>Appeals</u> | 32 |
| <u>2.5</u> | <u>Legal Fees</u> | 34 |
| <u>2.6</u> | <u>Technology</u> | 37 |
| <u>2.7</u> | <u>Respondent Involvement in the Civil Courts</u> | 40 |
| <u>3.0</u> | <u>CONCLUSIONS</u> | 42 |

Appendix A – Survey Instrument

1.0 STUDY BACKGROUND

The Alberta Rules of Court (the Rules) govern practice and procedure in the Alberta Court of Queen’s Bench and the Alberta Court of Appeal. The Rules also apply to the Provincial Court of Alberta when no other practice or procedure is applicable. While subject to an on-going process of amendment, the Rules have not been comprehensively revised since 1968. Consequently, some of the Rules are out of date, the language legalistic and the practice overly complex.

The Alberta Rules of Court Project is a 3-year project that will undertake a major review of the Rules with the purpose of recommending a new set of Rules which address the needs of the users of the civil courts. The objectives of the project are to:

1. Make the Rules clearer, more effective and user-friendly.

2. To promote fairness, accessibility, timeliness and cost effectiveness of practice and procedure in civil actions.

As part of this comprehensive review it was important to gain input from both stakeholders and the broader public. Consequently, the Alberta Law Reform Institute (ALRI) commissioned Banister Research & Consulting Inc. to report on the findings of the public consultation paper and questionnaire distributed to the public.

All components of the project were designed and executed in close consultation with the ALRI. At the outset of the project, all background information relevant to the study was identified and subsequently reviewed by Banister Research. The consulting team completely familiarized itself with the objectives of the client ensuring a full understanding of the issues and concerns to be addressed in the project.

Following the initial meeting, the public consultation paper and questionnaire, developed by the client, was reviewed and modifications were incorporated into the design. Once representatives of the ALRI reviewed the draft survey instrument, necessary revisions were made. A copy of the final questionnaire is provided in Appendix A.

The ALRI was responsible for the distribution of the public consultation paper and questionnaire. Distribution was province-wide and included locations such as the courts, Members of the Legislative Assembly (MLA), Legal Aid and lawyer's offices. The paper was also featured in the publication *Law Now*. Potential respondents were given the option of mailing the questionnaire back directly to the ALRI in an attached self-addressed stamped envelope, by fax or completing the questionnaire via the ALRI Internet web site.

A total of 98 questionnaires were received by the cutoff date of June 30, 2002. Completed questionnaires were forwarded to Banister Research for data entry, coding and analysis.

Upon receipt of the completed questionnaires, the questionnaires were reviewed for completeness and the list of different responses to each open-ended or verbatim question was reviewed and a code list was established. To ensure consistency of interpretation, the same team of coders was assigned to this project from start to finish. The coding supervisor verified at least 20% of each coder's work. Once the responses were fully coded and entered onto the data file, computer programs were written to check the data for quality and consistency.

Data analysis included cross-tabulation, whereby the frequency and percentage distribution of the results for each question were broken down based on respondent characteristics such as if the individual was a member of the public or if they connected to the court system. For the purposes of this report, individuals connected to the court system were defined as lawyers, non-lawyer service providers, probation officers, judicial clerks, social workers, claims adjusters and bailiffs. Tabulations of the detailed data tables have been provided under separate cover.

This report outlines the results of the self-completion survey of the 98 Alberta residents. It is important to note that readers of this report should be **cautioned** as to the interpretation of results obtained from this process. Although quantitative information has been provided based on the 98 respondents who participated in the study, this report should be considered as qualitative information. While valuable insights were gained through this process, the results cannot be considered statistically representative, particularly when looking at analysis by respondent sub-groups.

2.0 STUDY FINDINGS

Results of the study are presented as they relate to the specific topic areas addressed by the public consultation paper and questionnaire. It is important to note that a description of a civil action and the Alberta Rules of Court were presented in the public consultation paper and questionnaire.

2.1 Procedure in the Court

To begin, it was stated that there are three stages to civil actions in the Court of Queen's Bench, including the following:

1. the filing and serving of the pleadings, which are the formal written claims and defenses used to start and defend a lawsuit;
2. the discovery process, where each side in a lawsuit must provide the other party with access to all documents relevant to the lawsuit; and
3. the trial process, which is a fundamental part of the civil justice system and must be available to appropriate cases.

Survey participants were asked to indicate their level of satisfaction with 14 aspects related to the practice and procedure in the Court of Queen's Bench. The research results are presented in Figures 1 to 14. To better evaluate respondents' degree of satisfaction, the results of each aspect are based on the survey participants who provided a rating, excluding those who indicated "don't know" or "not applicable/no experience".

Respondents that responded as dissatisfied to each aspect were asked to explain why they were discontent with that particular aspect. While comments have been provided within the body of this report, the majority of respondents did not provide any comments to explain their level of dissatisfaction. Therefore, qualitative responses should not be interpreted as a general consensus amongst all respondents that reported being dissatisfied.

As shown in Figure 1 on page 5, 23% of respondents indicated that they were either very satisfied or satisfied with the overall process, while 26% were neutral in their level of satisfaction and 50% indicated that they were dissatisfied overall. Individuals connected to the court system were more likely to be satisfied with the overall process (38% versus 5% of members of the public).

Respondents dissatisfied with the overall process indicated that there were too many opportunities for lawyers and their clients to manipulate the legal process to their advantage. The result of this was increased delays, elevated legal fees and a system that is highly inefficient.

“The system is too involved, lengthy, complicated and stressful. By the time my lawsuit was settled and the money was available, my lawyer got nearly 50% of the settlement.”

“All proceedings were to the advantage of lawyers and insurance companies...the whole process left us with no choice but to settle due to lack of funds.”

“The number of times a plaintiff or defendant is allowed to stall by firing lawyers, not having required documentation, etc. should be addressed.”

“Generally speaking the “system” is fraught with loopholes, is cumbersome and, at times, procedures are in place simply because that’s the way they’ve always been done.”

Concern was expressed by some respondents regarding the system being biased favoring lawyers, judges and parties with money over the average citizen. Respondents also claimed that lawyers misled judges and that judges were unprepared to hear cases.

“The whole court process is confusing and difficult to follow. The system is designed to protect the lawyers and judges. Little is done for clients.”

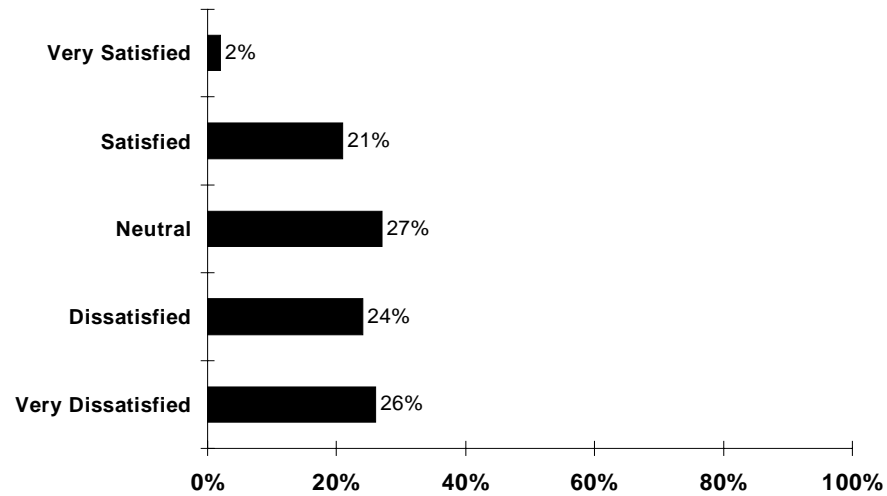
“Lawyers regularly tell the judge ‘facts’ that are not in the affidavit material filed and judges do not check the file for the correct facts.”

“Counsel encourages exaggerations and even false statements to produce their desired outcome.”

*“The entire system is only truly accessible to trained professional lawyers.
“The average middle-class citizen really has no access to justice.”*

Figure 1

With respect to practice and procedure in the Court of Queen's Bench, how satisfied are you with the overall process?



n=87 who provided a satisfaction rating

In terms of the pleading stage, among the 81 respondents who provided a satisfaction rating, 38% were either very satisfied or satisfied with this aspect, while 28% provided a neutral satisfaction rating and 33% indicated that they were dissatisfied or very dissatisfied. See Figure 2 below. Individuals connected to the court system were more likely to be satisfied (44%) than members of the public (26%), in terms of the pleadings stage.

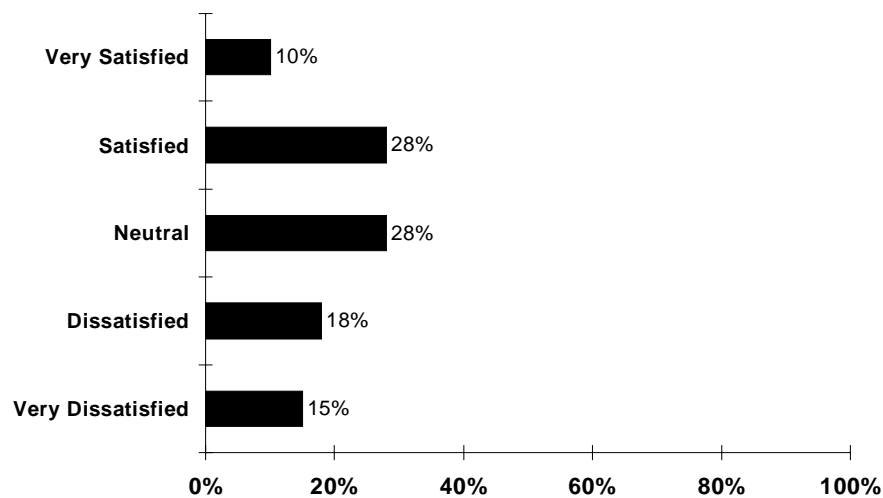
Many of the respondents dissatisfied with the pleadings stage suggested that rather than going directly to trial after this stage, cases should go to some form of mediation. Also commonly noted was the need to make the rules and procedures more concise / easy to follow.

“Have each party submit their position in writing, outlining what settlement would be acceptable. A judge or arbitrator will then select the best (most reasonable) proposal which would be binding on both parties.”

“Only matters that can’t be settled by mediation should go to trial or examination.”

Figure 2

With respect to practice and procedure in the Court of Queen’s Bench, how satisfied are you with the pleading stage?



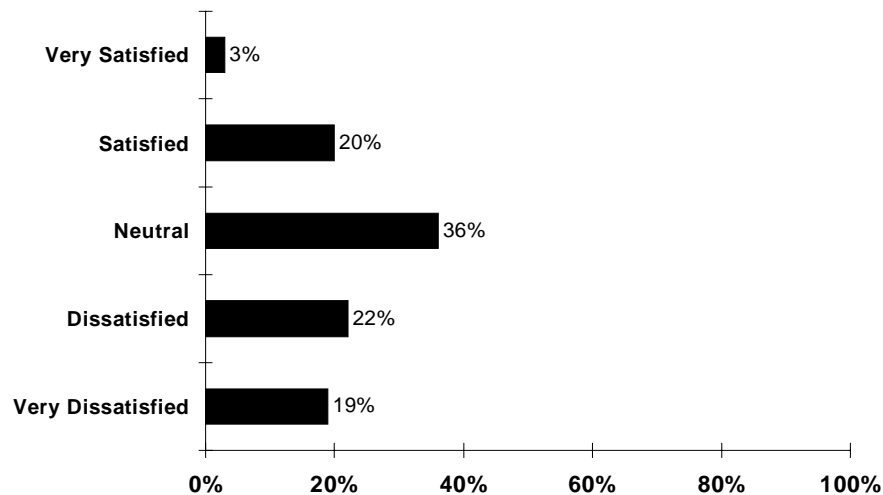
n=81 who provided a satisfaction rating

Twenty-three percent (23%) of respondents indicated that they were satisfied overall with the interlocutory hearing or hearings in the Court of Queen’s Bench. Thirty-six percent (36%) of those who provided a rating (n=59) stated that they were neither satisfied nor dissatisfied and 41% of respondents commented that they were dissatisfied overall. See Figure 3 below. Individuals connected to the court system were more likely to be satisfied with the interlocutory hearing or hearings (29% versus 17% of members of the public).

The most frequently noted reason for respondents’ dissatisfaction with the interlocutory hearings was that the motions and procedures needed to be more clearly defined and that evidence at this stage needed to be made more easily available. Also mentioned under this topic was that eviction matters should be handled by the Provincial Court.

Figure 3

With respect to practice and procedure in the Court of Queen’s Bench, how satisfied are you with the interlocutory hearing(s)?



n=59 who provided a satisfaction rating

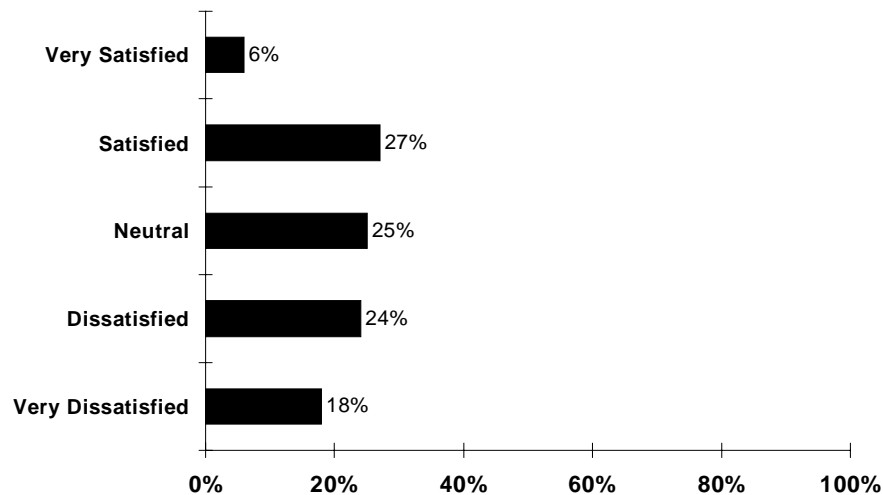
Among the 78 respondents who rated their level of satisfaction with the discovery stage, 33% were either satisfied or very satisfied, while 25% indicated a neutral satisfaction rating and 42% were dissatisfied overall with this stage of the procedure. See Figure 4 below. Individuals connected to the court system were more likely to be satisfied with the discovery stage (54% versus 12% of members of the public).

Comments from those respondents dissatisfied with the discovery stage indicated that these individuals felt the process was not useful and was fairly costly. The difficulty incurred trying to get one's case from this stage to trial was also commonly noted as an area of discontentment.

“Discovery: a process where lawyers can go on an all expense paid fishing trip without leaving the office – an expensive fishing trip.”

Figure 4

With respect to practice and procedure in the Court of Queen’s Bench, how satisfied are you with the discovery stage?



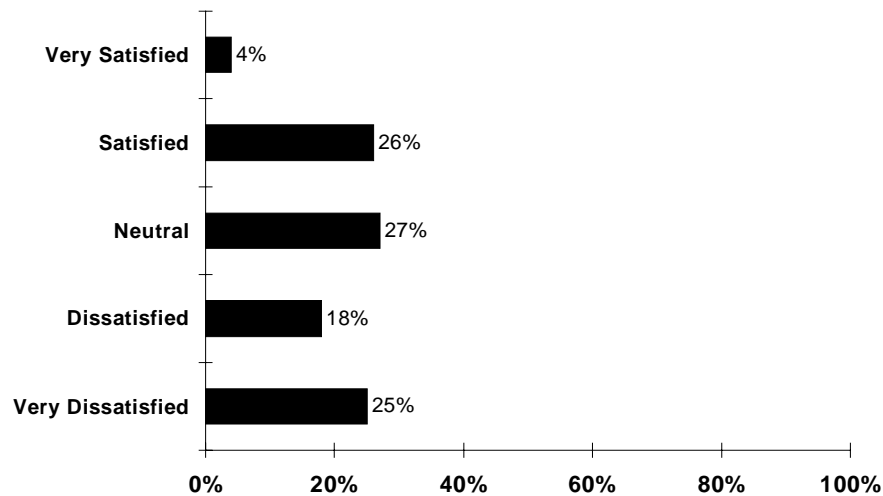
n=78 who provided a satisfaction rating

Seventy-seven respondents provided a satisfaction rating in terms of the trial. As shown in Figure 5, 30% of respondents commented that they were generally satisfied with the trial stage, while 27% provided a neutral rating and 43% were either dissatisfied or very dissatisfied with this aspect. Individuals connected to the court system were more likely to be satisfied with the trial (38% versus 16% of members of the public).

Most respondents that were dissatisfied with the trial generally commented that those accused have more free resources available to them than the victims. Also mentioned was the adversarial approach used by lawyers is ineffective and can be damaging to innocent parties (e.g. children in a family case).

Figure 5

With respect to practice and procedure in the Court of Queen’s Bench, how satisfied are you with the trial?



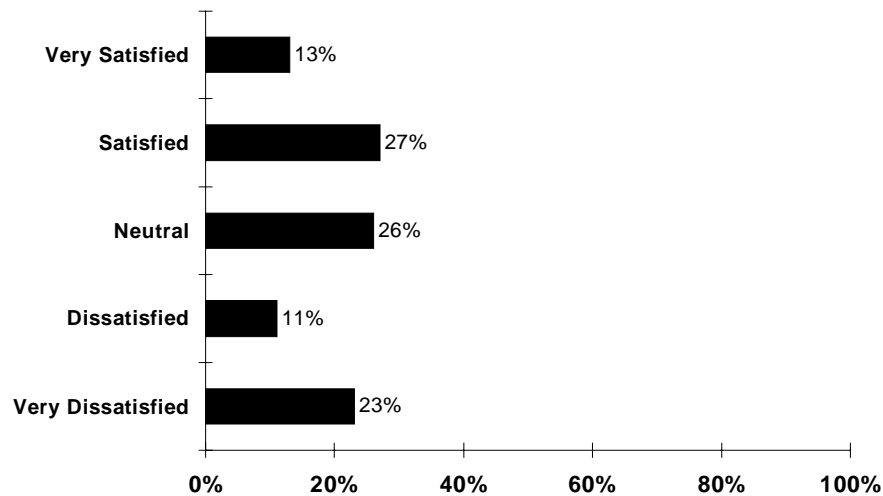
n=77 who provided a satisfaction rating

In terms of alternatives to a full trial, for example a summary trial, 40% of respondents who provided a rating (n=62) stated that they were satisfied overall. Twenty-six percent (26%) of respondents indicated a neutral satisfaction rating, while about one-third (34%) of respondents stated that they were either dissatisfied or very dissatisfied with the alternatives to a full trial. See Figure 6 below. Individuals connected to the court system were more likely to be satisfied with alternatives to a full trial (47% versus 27% of members of the public).

Those respondents dissatisfied with the alternatives to a full trial provided no specific comments regarding their discontentment with this aspect.

Figure 6

With respect to practice and procedure in the Court of Queen’s Bench, how satisfied are you with alternatives to a full trial?



n=62 who provided a satisfaction rating

About one-quarter (26%) of respondents who rated the aspect of court forms, indicated that they were satisfied overall, while a similar proportion (27%) provided a neutral satisfaction rating. Almost half (47%) of the respondents commented that they were either dissatisfied or very dissatisfied with court forms. See Figure 7 below. Individuals connected to the court system were more likely to be satisfied with court forms (35% versus 10% of members of the public).

Most respondents dissatisfied with court forms indicated that the forms were too difficult and confusing for the average citizen to interpret and fill out properly.

“Forms are very long and hard to understand...require training to understand.”

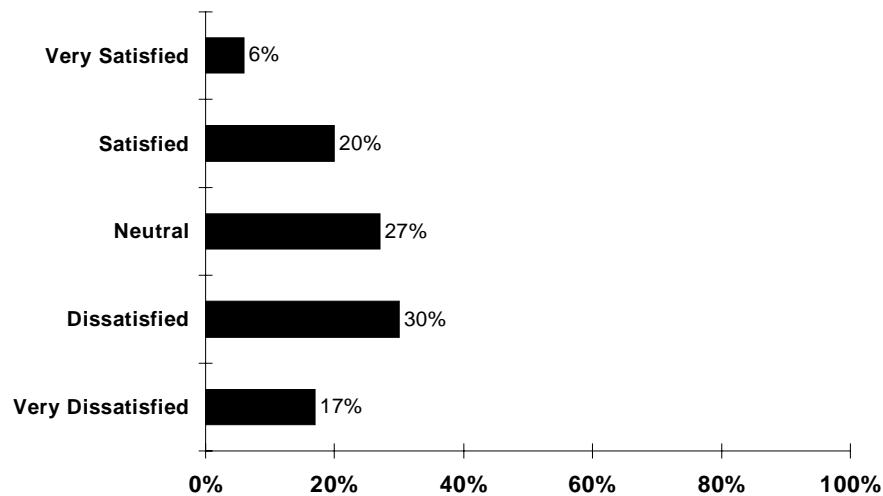
“I had to have a lawyer help me, which is expensive, because there are no “fill in the blank” forms for the process I was following.”

“The forms are very good and straight forward to some, but the ones that use them are usually those who cannot afford a lawyer or can not understand them.”

Also mentioned by a number of respondents was the need to have court forms made available via the Internet.

Figure 7

With respect to practice and procedure in the Court of Queen’s Bench, how satisfied are you with court forms?



n=77 who provided a satisfaction rating

As depicted in Figure 8 below, 44% of respondents who provided a rating (n=84), stated that they were satisfied or very satisfied with the level of formality with the procedure in the Court of Queen’s Bench. Twenty-four percent (24%) of respondents provided a neutral satisfaction rating in terms of this aspect, while 32% felt dissatisfied overall. Individuals connected to the court system were more likely to be satisfied with the level of formality (46% versus 37% of members of the public).

Generally, respondents dissatisfied with the level of formality in the court felt the proceedings were too formal for today’s standards and only added to the length of the process.

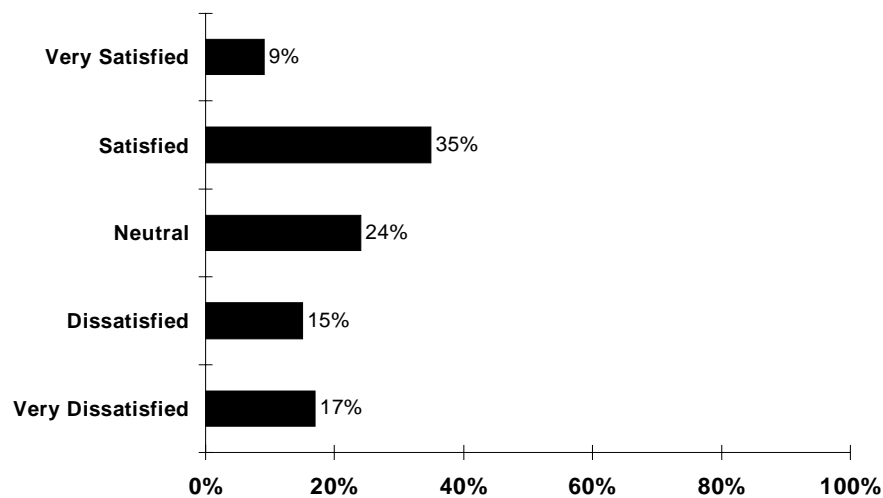
“Formality is at a high. Life in today’s society is not that formal and should be reflected.”

“Too formal. Procedure sometimes is more important than substance.”

“The formality is very intimidating to people not used to the court process.”

Figure 8

With respect to practice and procedure in the Court of Queen’s Bench, how satisfied are you with the level of formality?



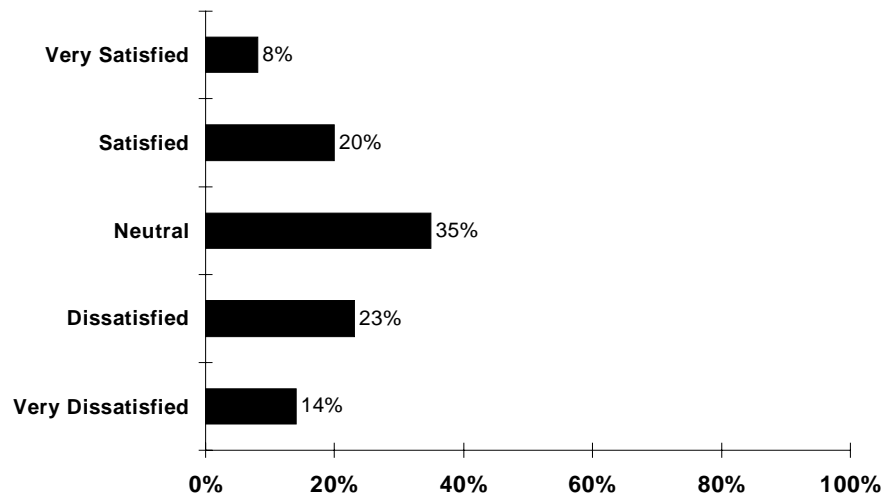
n=84 who provided a satisfaction rating

In terms of the documentation required among the 84 respondents who provided a satisfaction rating, 28% were satisfied overall, 35% were neutral and 37% were dissatisfied overall. See Figure 9 below. Individuals connected to the court system were more likely to be satisfied with the documentation required (31% versus 22% of members of the public).

Overall, most dissatisfied respondents indicated that the length of time to produce these documents was too long, resulted in unnecessary delays in the trial process and were too difficult to produce.

Figure 9

With respect to practice and procedure in the Court of Queen’s Bench, how satisfied are you with the documentation required?



n=84 who provided a satisfaction rating

Eighty-five respondents provided a satisfaction rating in terms of the time to resolve the matter in the Court of Queen's Bench. As depicted in Figure 10, 15% of respondents indicated that they were either satisfied or very satisfied and 15% said their level of satisfaction was neutral. Sixty-nine percent (69%) of respondents remarked that they were generally dissatisfied with the time required to resolve the matter. In fact, a substantial proportion of respondents stated that they were very dissatisfied (48%) with this aspect of the practice and procedure in the Court of Queen's Bench. Members of the public were more likely to be dissatisfied with the time to resolve the matter (82% versus 60% of those connected to the court).

Many of the respondents dissatisfied with the time to resolve the matter felt that the entire process was too long and cumbersome which only led to increased costs. It was suggested that fines should be administered to those parties that delay proceeding for extenuating periods of time.

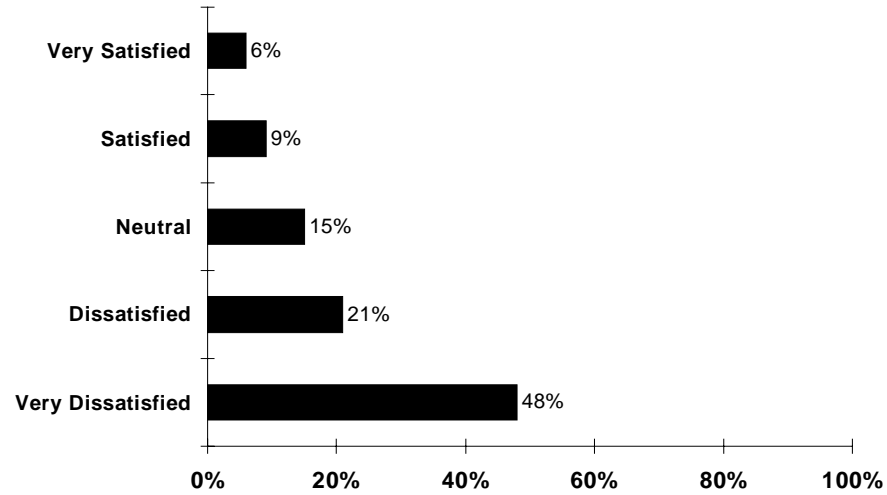
"Far too long between actual criminal occurrence and court date for justice in both civil and criminal cases."

"Generally...unduly slow and cumbersome and, therefore, increase costs and time necessary to resolve the case."

"It seems that court proceedings take an exorbitant amount time to complete any given matter."

Figure 10

With respect to practice and procedure in the Court of Queen's Bench, how satisfied are you with the time to resolve the matter?



n=85 who provided a satisfaction rating

As represented in Figure 11 below, eleven percent (11%) of respondents indicated that they were satisfied overall with the aspect of cost, while 18%, of those who provided a rating (n=82), stated that they were neither satisfied nor dissatisfied. Seventy-one percent (71%) of respondents commented that they were dissatisfied overall with the cost (23% dissatisfied and 48% very dissatisfied). Members of the public were more likely to be dissatisfied with the costs involved (78% versus 59% of those connected to the court).

The most frequently noted reason for respondents' dissatisfaction with the costs was that costs were simply too high. Respondents cited excessive legal fees, delays and extensions in proceedings and the lack of knowledge and training of judges as all contributing factors to the increased costs associated with a legal proceeding.

“Cost of legal services is out of reach for most Canadians.”

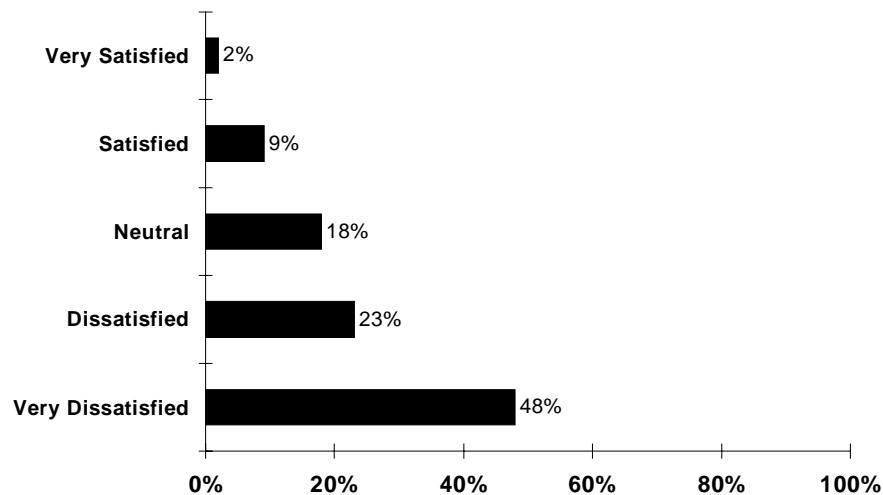
“The cost of proceeding to trial often results in one party not receiving justice because they cannot afford the whole process.”

“Non-compliance produces delays, inconsistencies, unfairness and significant costs. The court must attribute those costs early in the proceedings to establish an attitude of seriousness.”

“Cost is always a factor which we, as a society, like to keep to a minimum.”

Figure 11

With respect to practice and procedure in the Court of Queen’s Bench, how satisfied are you with the cost?



n=82 who provided a satisfaction rating

In terms of ease of understanding the process, 26% of respondents who provided a rating (n=86) stated that they were satisfied overall. Twenty-eight percent (28%) of respondents indicated a neutral satisfaction rating, while 46% stated that they were either dissatisfied or very dissatisfied. See Figure 12 below. Members of the public were more likely to be dissatisfied with the ease of understanding the process (69% versus 29% of those connected to the court).

Dissatisfied respondents generally found the process to be difficult, confusing and often intimidating. Several respondents indicated that they were too reliant upon lawyers and clerks to provide insight and guidance through the court process.

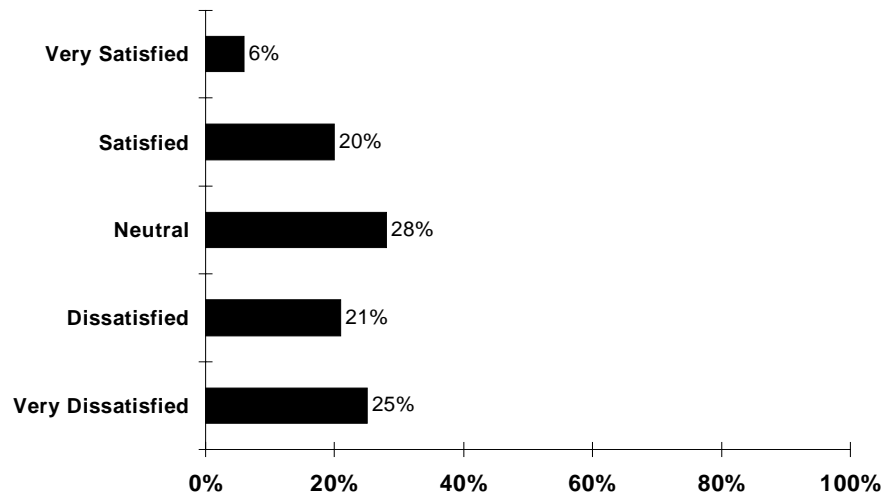
“The process seems designed to be confusing to persons not versed in the legal process. This makes any attempt at a civil case very difficult for the average person unless a lawyer is retained.”

“The whole court process is confusing and difficult to follow. Participants are at the mercy of lawyers who often go to extreme and unnecessary lengths for their clients.”

“Unfamiliarity with court procedures can be disconcerting.”

Figure 12

With respect to practice and procedure in the Court of Queen’s Bench, how satisfied are you with the ease of understanding the process?



n=86 who provided a satisfaction rating

Approximately one-quarter of respondents who indicated a satisfaction rating with assistance available through the court stated that they were satisfied overall (24%) or neutral (23%). Over half (53%) of the respondents indicated that they were dissatisfied or very dissatisfied with the assistance available. See Figure 13 below. There was no notable difference between members of the public and those connected to the court system in regards to the assistance available through the court.

Generally, most respondents disappointed with the assistance available through the court felt that the court staff needed to be more understanding of their situation and their needs. Many respondents indicated a need for more support staff, while others felt that public expectations of court staff were too high.

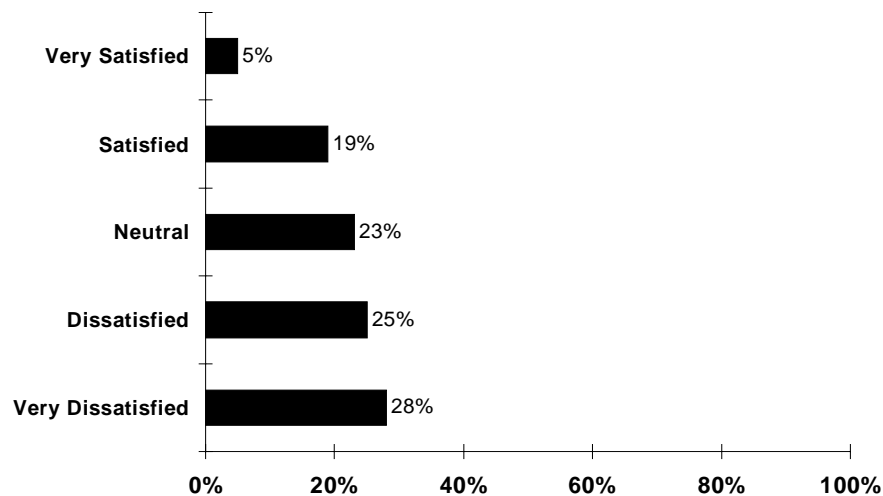
“Because we provide the forms, the public now expects the court clerks to answer all their legal questions and interpret the Rules of Court, but we are not in a position to provide legal advice.”

“Clerks spend too much time teaching the general public how to run a lawsuit when they should be filing documents.”

“Court clerks are not helpful to the public. They seem to look down on people who need assistance – maybe they are short staffed.”

Figure 13

With respect to practice and procedure in the Court of Queen’s Bench, how satisfied are you with the assistance available through the court?



n=75 who provided a satisfaction rating

Seventy-seven respondents provided a satisfaction rating in terms of the information available through the court. As shown in Figure 14, 20% of respondents indicated that they were either satisfied or very satisfied and 34% said their level of satisfaction was neutral. Forty-six percent (46%) of respondents commented that they were dissatisfied overall with information available through the court. Members of the public were more likely to be dissatisfied with the information available through the court (55% versus 38% of those connected to the court).

Those respondents dissatisfied with the information available through the court most often mentioned that the staff was not knowledgeable or well enough informed and that there was not enough information or resources made available to them.

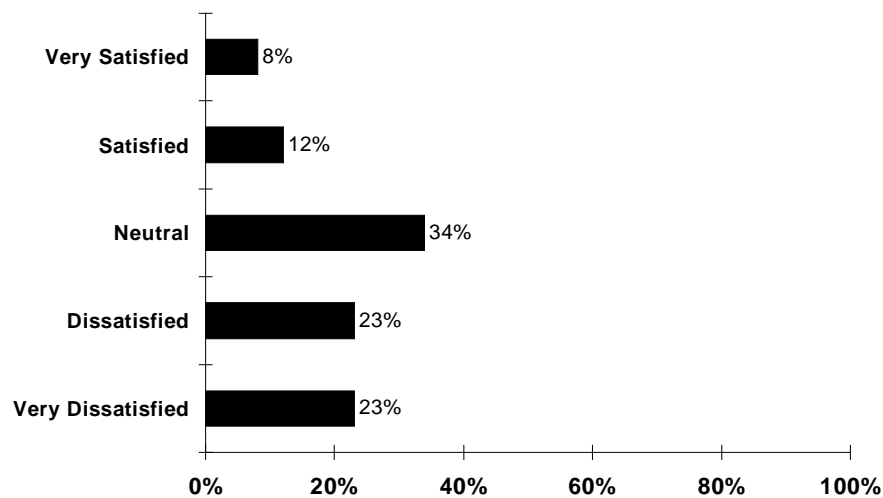
“Lack of knowledge or helpful personnel at the Law Courts building...no one seems to know what the procedure is on an appeal of a small claim matter.”

“Staff at court of Queen’s Bench are not helpful”.

“The court provides little assistance or information on civil matters.”

Figure 14

With respect to practice and procedure in the Court of Queen’s Bench, how satisfied are you with the information available through the court?

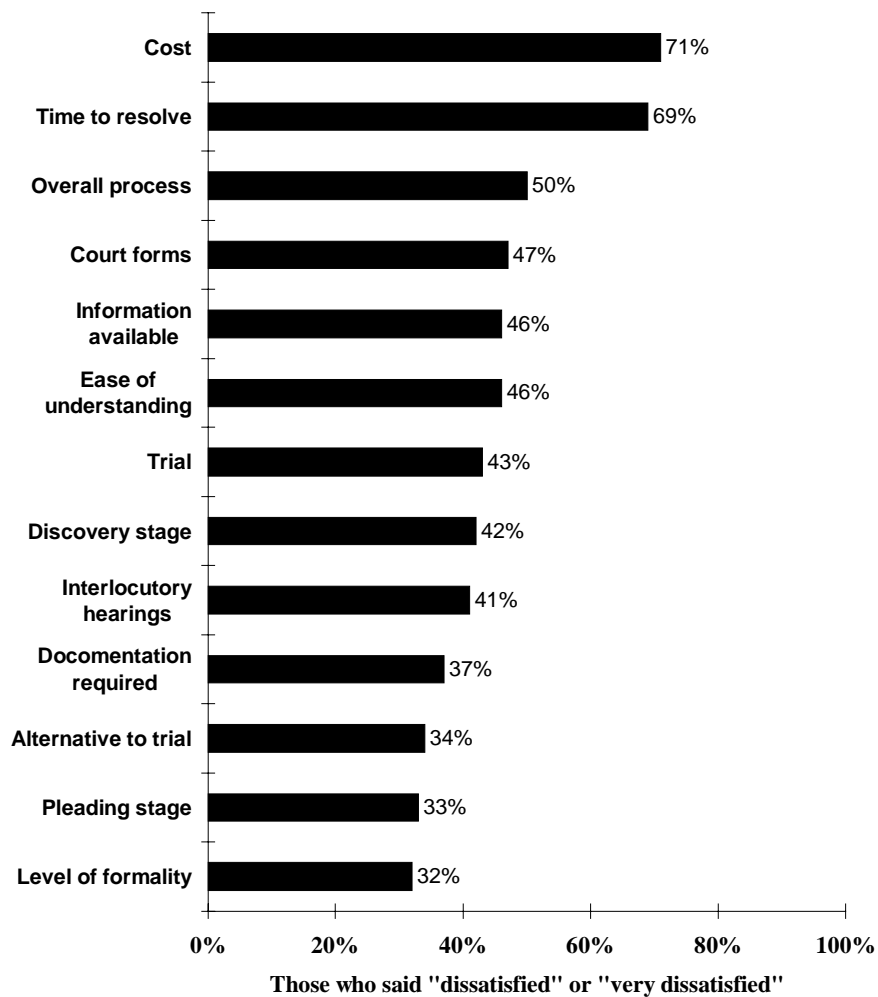


n=77 who provided a satisfaction rating

For ease of reference, the following graph summarizes the proportion of survey participants who indicated that they were either dissatisfied or very dissatisfied with several aspects regarding the practice and procedure in the Court of Queen's Bench. As shown, dissatisfaction was highest in terms of the cost and time to resolve the matter.

Figure 15

Percent of Respondents Dissatisfied Overall with Aspects of the Practice and Procedure



Next, respondents were asked to indicate what changes they would make to improve practice and procedure in the Court of Queen's Bench. While approximately 40% of respondents did not provide any comments, others articulated a long and diverse list of suggestions and recommendations.

Comments indicated that individuals connected to the court system were more interested in ensuring that court practice and procedures were streamlined and made easier to understand than were members of the public. Members of the public, however, were more concerned about judges being more empathetic to the public than were individuals connected to the court system. Members of the public also were more critical of lawyers and their costs, accountability and in their helping of their clients.

Overall, the most commonly noted suggestion was the need to provide more information to the public regarding court practices and procedures. Respondents suggested this could be accomplished either through pamphlets distributed at the courthouses or through a well organized website.

"Practice and procedure needs to be explained to clients both from Crown and lawyers. A document explaining terms used in court."

"Make available to the public the rules of evidence allowed in our courtrooms. This could be in pamphlet form at the court house. This and the disclosure entitlement are at the heart of any citizen's self representation."

"Have unlimited information packages made up of practice and procedures."

Other frequently noted remarks included streamlining the procedures of the Court of Queen's Bench and making the process easier to understand and less formal. Generally, respondents felt that the formality of the system was both unnecessary as well as a waste of the client's, the lawyer's and the court's time. Many respondents also suggested that using plain language and more clearly defining the rules and procedures would be of benefit.

"The process would be more user-friendly if the formality was reduced. If the judge was closer to eye level it would be much less intimidating for witnesses, many of whom feel they are on trial."

"Eliminate some of the formality and "custom" and streamline the entire process."

"I would do away with lawyers wearing robes, bowing to the bench and using titles such as "My Lord"."

“Make it less formal.”

A number of respondents suggested that more training for staff of the Queen's Bench was necessary. This was to ensure that they may be more helpful and provide better customer service to those in need.

“Train Queen’s Bench staff fully...to understand and provide customer service. Have staff offer explanations/solutions as opposed to rejecting documents with no explanation.”

“Establish a Customer Service Office so the first time and/or low functioning individuals would be able to participate and be more active in the process.”

Timeliness was also mentioned by several respondents as an area of improvement. Respondents felt that timelines set by the court needed to be more strictly adhered to and that fines should be established and assessed for delays to the proceedings.

“When defendants continuously fail to provide their documentation within the required timelines, those timelines should be enforced, not manipulated to cause further delays and wasting of court time.”

“Create and implement heavy penalties to discourage frivolous delays and applications.”

“Improve and enforce strict deadlines at every stage of the process.”

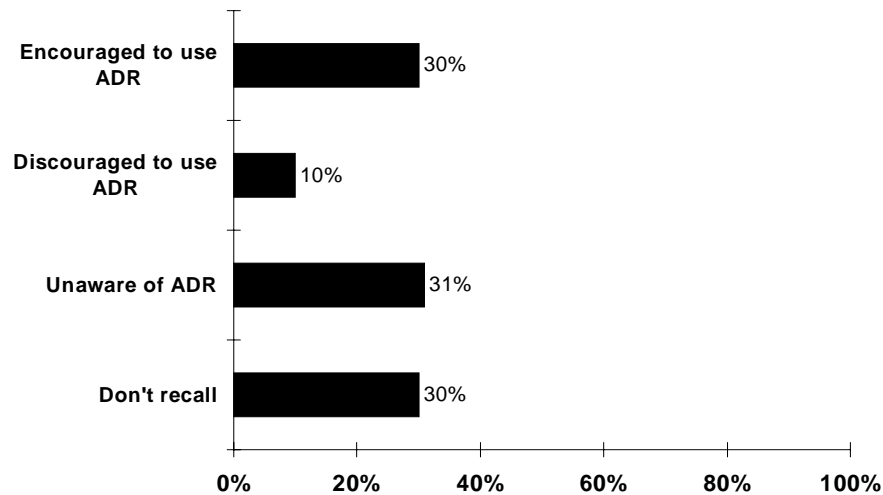
2.2 Alternative Dispute Resolution

Alternative dispute resolution or ADR refers to ways of resolving a dispute other than bringing it before a judge to make a binding decision. It was explained in the consultation paper that mediation and early neutral evaluation are among the ADR techniques that are commonly practiced in Alberta. Mediation is a process where a neutral third person, called a mediator, helps the opposing parties discuss and try to resolve the dispute. Early neutral evaluation is a process where a lawsuit is referred to a senior lawyer or a judge, although not the trial judge, who assesses each side's strengths and weaknesses and provides an evaluation of the likely outcome at trial.

All survey participants (n=98) were asked to indicate if they had been in a lawsuit, if they were encouraged to use ADR. As illustrated in Figure 16, below, 30% of respondents stated that they had been encouraged to use ADR, while 10% were discouraged. About one-third of respondents commented that they were unaware of ADR (31%) or could not recall discussing the option of ADR (30%). Interestingly, 43% of members of the public were not aware of ADR (versus 20% of those connected to the court system).

Figure 16

If you have been in a lawsuit, were you encouraged to use ADR?



n=98 all respondents

Among those respondents who indicated that they were encouraged to use ADR, most indicated that they were motivated to use ADR as a more cost effective alternative. Other reasons respondents were encouraged to use ADR was that the mediation process was successful at providing a quick resolution and to avoid trial.

"It was suggested that mediation was cheaper, quicker and easier to understand."

"Less costly and greater time efficiency."

"My client was encouraged by counsel and social workers in order to achieve a quick, less costly outcome that would be easier on the children."

A variety of reasons were provided by respondents as to why they were discouraged from using ADR. Most frequently, these included being told that ADR was not used for their type of case and that ADR decisions are not binding.

"Told that the matter is too difficult to solve in ADR. Told only court decisions are binding."

"Told mediation was not used for our type of case."

There were no notable differences between individuals connected to the court system and members of the public in regards to reasons why they were either encouraged or discouraged from using ADR.

Generally, most respondents agreed that people involved in a lawsuit should either be encouraged (49%) or required (25%) to use ADR to settle matters out of court (Figure 17). Among the 18% of respondents who said using ADR would depend, most felt that the complexity of the case should determine whether or not ADR should be used.

"Cases should be assessed...if ADR is appropriate then this method should be used for resolution. Trials by judge should be for more complex cases."

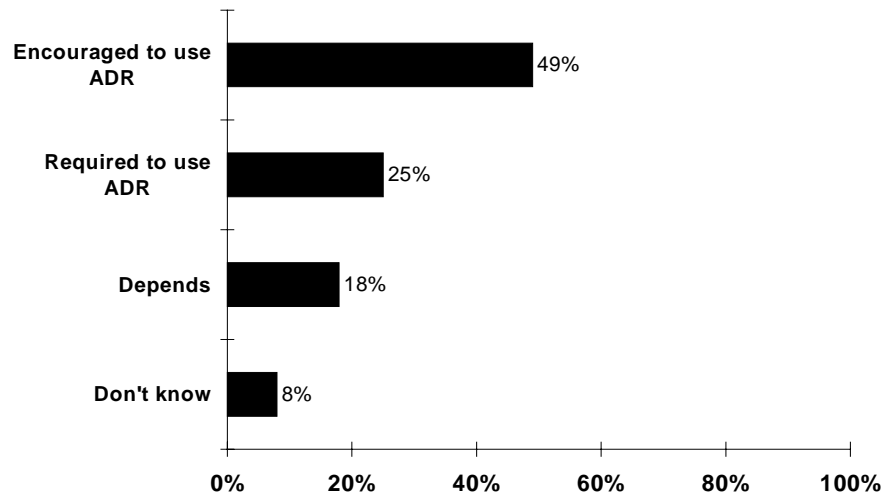
"Depending on the issue(s) that need to be resolved."

"With respect to ADR, it is appropriate in certain circumstances and parties should be advised that it exists...a process that involves compulsory mediation early on in the litigation, prior to the parties understanding their own position, is of little or no use."

There was no notable difference between members of the public and those connected to the court system in regards to their opinions on the use of ADR.

Figure 17

Should people involved in a lawsuit be encouraged or required to use ADR?



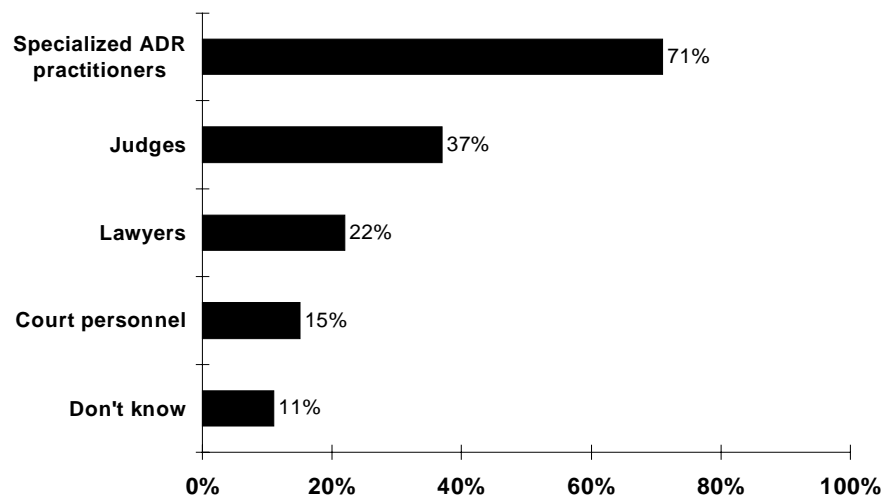
n=98 all respondents

In terms of carrying out these alternative forms of dispute resolution, most respondents (71%) believed that a specialized ADR practitioner would be most appropriate. Additionally, about one in every four respondents (37%) felt that a judge, outside of the court, should be involved. Significantly fewer respondents cited that lawyers (22%) and other court personnel (15%) should carry out these alternative forms of dispute resolution. See Figure 18 below.

While the majority of both individuals connected to the court and members of the public felt that practitioners specializing in ADR should carry out these alternative forms of dispute resolution, those connected to the court were more likely to mention judges (48%) or lawyers (28%) as others who could oversee these types of hearings (versus 26% and 17%, respectively, of members of the public).

Figure 18

Who should carry out these alternative forms of dispute resolution?

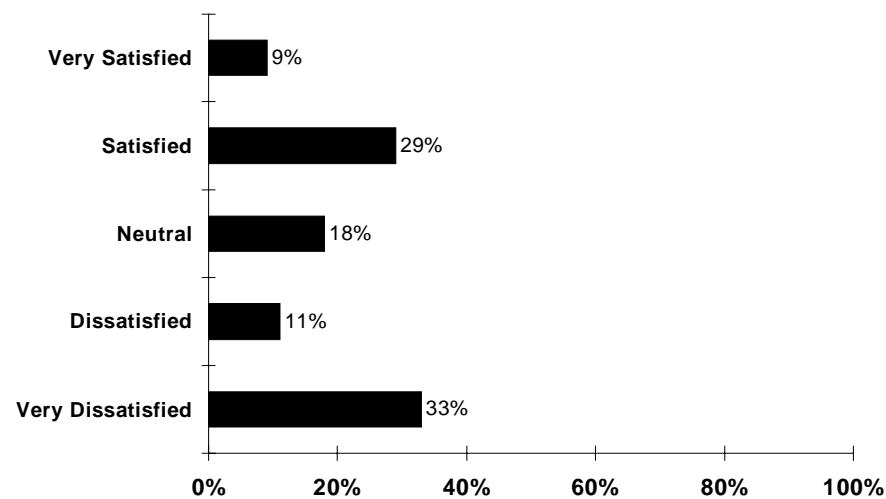


n=98 all respondents
Note: multiple mentions

Forty-five respondents provided a response in terms of their level of satisfaction with the ADR services available to them. Of those respondents, 38% stated that they were either very satisfied or satisfied with the ADR services available, while 18% provided a neutral rating and 44% were dissatisfied overall. See Figure 19 below. Individuals connected to the court were more likely to be satisfied with the ADR services available to them (30% versus 5% of members of the public).

Figure 19

How satisfied are you with the ADR services available to you?



n=45 who provided a satisfaction rating

Generally, comments regarding ADR were focused on the process being a highly useful and effective means of resolution. Respondents also commonly noted that the process reduces much of the time and costs usually associated with resolution. There were no notable differences in comments from individuals connected to the court system and members of the public regarding ADR.

"The two times I used ADR it resulted in a settlement, so I believe it is a highly useful process for some types of cases".

"This is an area (ADR) that can make the legal process smoother and more cost efficient for users and governments, freeing up the courts."

"I think ADR is a good idea because it should help to speed up the process which can be very time consuming and frustrating."

“ADR could be a valuable tool to resolve disputes more quickly and economically as long as it does not evolve into a process which becomes as complex as the traditional court system.”

Generally, respondents felt that the public was not aware of the availability of ADR, and that efforts needed to be made to educate and encourage this form of dispute resolution.

“I think the biggest downfall is that people do not know how to access alternatives. There is not much public education or promotion of other methods.”

“There is not enough information out on it. Where do you get in touch with the people who sit on ADR?”

“Perhaps doing more to educate the public about ADR and how it are used would encourage more people to ask for them. This would eliminate some of the court backlog.”

2.3 Self-Represented Parties

It was explained that the issues in a lawsuit can be legally complex and the court procedures complicated. Parties without lawyers pose special challenges for the justice system. A party's lack of familiarity with law and legal procedures may cause delay and may result in injustice. Respondents were asked to comment on what they felt was the biggest hurdles to representing oneself in court. The most frequently noted response related to the complexity of court procedures. In fact, about six in every 10 respondents mentioned the complex procedures as a barrier to successful self-representation. Also, over half of all respondents indicated that a lack of understanding of the law and difficulties articulating one's case were major hurdles faced by self-representing parties.

Individuals connected to the court system were more likely than members of the public to indicate lack of understanding of the law and difficulty articulating one's case as the biggest hurdles to representing oneself in court.

Approximately one-quarter of respondents stated that difficulties with particular court procedures were a barrier to self-representation. When respondents explained which procedures in particular were difficult, common responses included the steps involved in a court hearing, distinction between argument versus evidence, legal jargon, filing and affidavits.

Other mentions included judges actively discouraging self-represented parties and difficulty in understanding judges. Respondents also noted the need for more respect from judges and lawyers towards self-representing parties.

"The lack of understanding by judges, the usual comments by judges – 'Get a lawyer.'"

"Judges do not want unrepresented parties. They make it very difficult (to self-represent)."

"More respect from the courts and from lawyers for the efforts of those that represent themselves."

"The judge must ensure that the unrepresented party gets a fair hearing, even if this means more time for explanation and some extra costs."

"The court should be as amenable to self-represented parties as to those with counsel. There should be no prejudice toward self-representation."

“Some people can’t access counsel. They have a right to represent themselves. Judges try to make it so hard that people have to have a lawyer.”

Respondents were asked to suggest or recommend changes to the justice system to deal with self-represented parties. Members of the public were more likely to suggest that equal rights and more respect for self-representing parties is needed, while those connected to the court system felt that more legal support is needed for those not capable of representing themselves. The most common suggestion, among all respondents, was to provide a kit or instruction package on court rules and procedures.

“Have packages free of charge in the civil and criminal justice systems explaining in great detail what to do, when to do, why to do, and how to do. This would minimize delays in the law and legal procedures.”

“Provide a booklet on the legal language the judges use.”

“Send handouts on court procedures to all self-represented parties ahead of time. Also send pamphlets explaining the law on the relevant issue.”

Simplifying procedures was also mentioned by a number of respondents. Respondents felt that the current procedures are too complicated and favor lawyers, making it difficult to adequately and fairly represent oneself in a court of law.

“Simplify the system and processes so the legal system serves the public not the lawyers.”

“Explain in simple terms court procedures and law.”

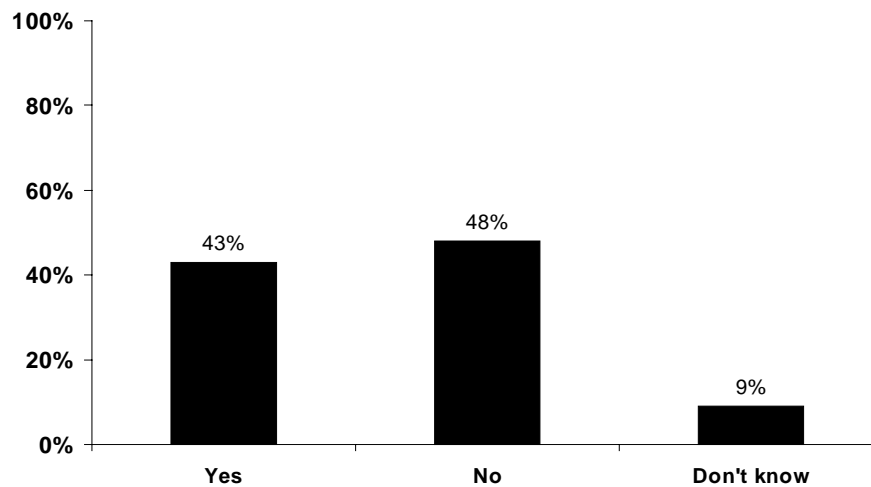
Other comments and recommendations included having court-appointed guides, or aides, to assist those unfit to represent themselves and having a separate courtroom with a judge willing to oversee self-represented cases. Some respondents also felt that the types of self-represented cases should be limited and that self-represented parties should have to prove they have sufficient understanding of court practices and proceedings to carry on with a hearing. Additionally, some respondents suggested that more Legal Aid should be provided to those who cannot afford to hire a lawyer.

2.4 Appeals

It was explained that the right to appeal to the Court of Appeal is an established feature of the justice system. Respondents were asked to indicate if they felt there should be a right to appeal every case. As depicted in Figure 20, respondents reaction was somewhat mixed as 43% said yes, every case should be afforded the right to appeal and 48% said no. Nine percent (9%) of respondents were uncertain. There was no notable difference between members of the public and individuals connected to the court system in regards to the right to appeal.

Figure 20

Should there be a right to appeal in every case?



n=98 all respondents

Among the 47 respondents who indicated that not every lawsuit should have the right to appeal, about half cited that there should be no appeal of the decision if there is a limited prospect of success. Many of these respondents also reasoned that an appeal was not appropriate when the decision is interlocutory, in other words, when it is not the final decision of the lawsuit or when the monetary claim is less than a certain amount.

Respondents opposed to a universal right to appeal also felt appeals should not be allowed when the trial judge follows proper procedure, the case is a murder trial or involves minors, and when the appellant has appealed previously.

Again, there was no notable difference between members of the public and those connected to the court system in regards to what circumstances there should be no right to appeal.

Many respondents felt that a stronger stance needs to be taken against frivolous appeals and that penalties should be assessed to deter excessive use of the appeal process.

“Appeals judged frivolous by the appeal court should have realistic costs assessed against the appellant.”

“Raise the ante for all involved. They may think twice before appealing then.”
“There needs to be a reason beyond not liking the decision. Assess penalties for wasting the courts time.”

“Truly frivolous or vexatious appeals can be dealt with by the Court of Appeal through costs.”

“There should be an intermediate step where a judge from the appellate level can review the appeal documents and summarily dismiss a matter where it appears to be unnecessary.”

Other respondents felt that the appeals process was an important and integral component of the legal system as it allows for integrity and fairness within the legal system.

“If changes are made that require a large monetary threshold prior to having the right to appeal, this can lead to a situation where a relatively small award can have province-wide application that may be wrong at law. As a result, the client does not have recourse and the impact on like matters may result in having to follow an erroneous decision.”

“All citizens should have the right to the appeal process to ensure proper justice.”

“Appealing allows for a check and balance of the system.”

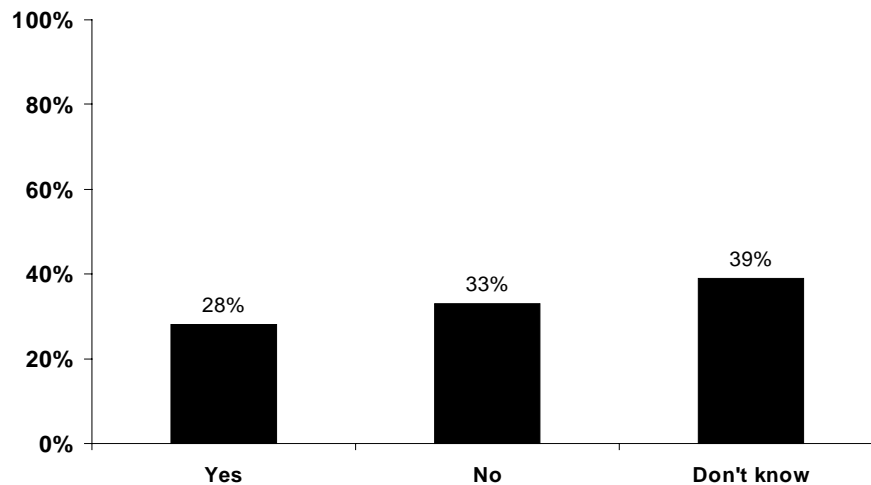
2.5 Legal Fees

Legal fees are determined by an agreement between the client and the lawyer. Clients may be charged by the hour worked, or there may be contingency fees in which the lawyer receives a percentage of the client's award if the lawsuit is successful. The court can review contingency agreements and lawyers' bills and can make changes if the fees are not reasonable. Furthermore, it was explained that at the conclusion of a lawsuit the losing party is ordered to pay a portion of the legal fees of the winning party.

Generally, respondents were uncertain (39%) as to whether or not the review by the court provides adequate protection to ensure the reasonableness of contingency fee agreements and lawyers bills. However, 28% of respondents did feel there was adequate protection, while 33% stated that the protection offered by the court was inadequate. See Figure 21 below. Interestingly, members of the public were more likely to disagree that review by the court provides adequate protection (48%) than those connected to the court system (20%)

Figure 21

Does the review by the court provide adequate protection to ensure the reasonableness of contingency fee agreements and lawyers' bills?

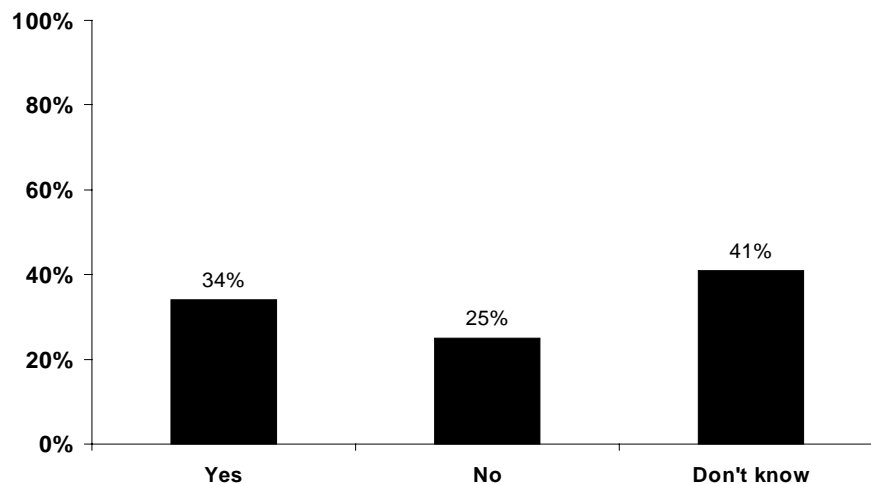


n=98 all respondents

In terms of the losing party being required to pay a sufficient proportion of the winning party's legal fees, most respondents (41%) were unsure as to whether the amount was sufficient. Although, as shown in Figure 22, 34% reported that the proportion was adequate and 25% felt it was inadequate. Individuals connected to the court system were more likely to agree that the losing party is required to pay a sufficient proportion of the winning party's legal fees (37% versus 26% of members of the public).

Figure 22

Is the losing party required to pay a sufficient proportion of the winning party's legal fees?



n=98 all respondents

In general, respondents felt that legal fees were too high. Members of the public, however, were more concerned about overly expensive legal fees than were individuals connected to the court system. Overall, respondents commented that excessive legal fees have put access to legal representation beyond the means of the average individual and that the government should be involved in regulating the fees associated with legal services.

“Court costs are excessive for lawyers to appear in courts.”

“Legal fees and the industry of so-called experts that work in the field are way too expensive.”

“They are too exorbitant for people who are at the Legal Aid cut off level.”

“Legal fees are unreasonably high and out of reach of the average citizen, making justice a rich person's right and a poor man's obligation.”

“If the plaintiff feels they do not have the money to pay a lawyer and they do not qualify for Legal Aid, they will probably attempt to represent themselves, which leads to other problems.”

“We have government control of doctor fees...the same should be applied to the legal business.”

In terms of who should have to pay legal fees, some respondents felt that the losing party should have to pay all of the fees of the winning party, while others felt that the losing party should only have to pay a portion of the winning party's fees, if at all.

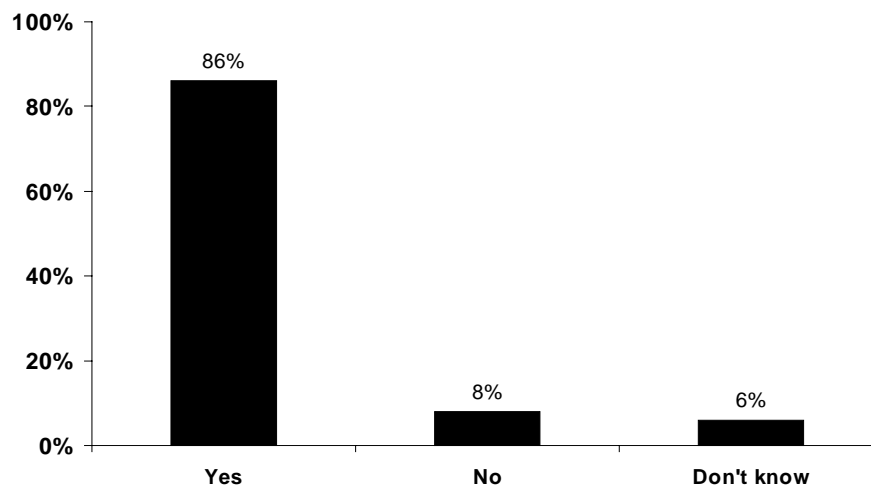
2.6 Technology

Sophisticated audio and video technology now allows people to meet fact to face without having to be in the same room, thereby creating the possibility of a “virtual” court. Additionally, documents can now be prepared and exchanged electronically. Currently, all documents are produced on paper, exchanged between the parties and filed in the Court.

When asked to indicate if a “virtual” court should be used in some circumstances, 86% of respondents said yes, while 8% said no and 6% were uncertain. See Figure 23 below. There was no notable difference between members of the public and those connected to the court system in regards to the use of a “virtual” court.

Figure 23

Should a “virtual” court be used in some circumstances?



n=98 all respondents

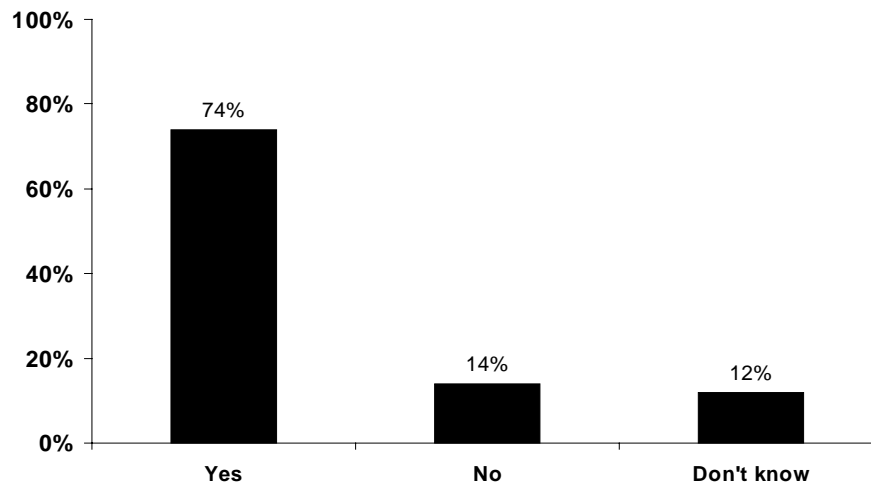
Generally, most respondents felt that it would be appropriate to have a virtual court when physical disabilities may prevent or impede travel, when parties reside in different cities and when one or more of the parties does not reside close to a court. Additionally, respondents felt that virtual courts would be appropriate in cases involving murder, violence, rape, children, or when the time and costs involved could be reduced or minimized.

Members of the public were more likely to feel that virtual court would be appropriate whenever it was a convenient alternative and in cases where one or more of the parties did not reside close to a court. Individuals connected to the court system were more likely to feel that rape and known violence cases were appropriate circumstances to use a virtual court.

Approximately three-quarters (74%) of respondents supported the development of an electronic system for filing and service of court documents. Fourteen percent (14%) of the respondents were opposed to an electronic system and 12% were uncertain. See Figure 24 below. Members of the public were more likely to support the development of an electronic system for filing and service of court documents (83% versus 63% of those connected to the court system).

Figure 24

Should an electronic system for filing and service of court documents be developed?



n=98 all respondents

Comments indicated that individuals connected to the court system were more likely to comment on the room for error, deceit and breaches of confidentiality through the use of technology than were members of the public.

Of all respondents, approximately one in 10 felt that technology was a definite benefit to the court system. Respondents noted that technology helps to facilitate court procedures and

reduce costs. Many respondents were in favor of any system that reduced both time and costs to the legal system.

“Every local provincial court could be equipped so that a client from Whitecourt with a lawyer from Grande Prairie and a matter to be spoken to in Fox Creek can do this more conveniently.”

“(I Support) anything that makes it easier and faster and will reduce costs.”

“The justice system appears to be way behind the rest of society in regards to technology use.”

“(Technology) would make the legal system more open and available to the public and litigants.”

“These days many of us are connected. If I could access forms and rules that apply and general processes from home on my computer that would be great...because I wouldn’t have to miss work to complete the process.”

Some respondents were wary of the use of technology in the justice system for a variety of reasons. Some of these reasons included too much room for error, or deceit or breach of confidentiality.

“Everyone experiences technical difficulties with equipment. One must not be compelled to rely solely on it.”

“The accelerated use of computer filing may lead to lack of confidentiality through hacking or other interference. Computers are so fallible.”

“There must be an acknowledgement and tracking system in place so that documents are not lost. It must be verified that the court received them.”

Many respondents felt that the inherent nature of the legal system is reliant on human interactions and were concerned with courts becoming too heavily reliant on technology.

“The virtual court may become “unreal” and be taken for granted.”

“Technology may replace the human elements in the justice system making it faceless, impersonal, unfeeling and implacable.”

2.7 Respondent Involvement in the Civil Courts

The following table provides a description of all respondents' involvement in the Civil Courts.

Table 1

| Respondent's Involvement in the Civil Courts | |
|--|--------------------------------------|
| | Percent of Respondents (n=98) |
| Involved in a Civil Action: | |
| Yes | 74 |
| No | 25 |
| Refuse, Don't Know | 1 |
| Number of Civil Actions Involved in (n=73): | |
| 1 civil action | 16 |
| 2 to 4 | 30 |
| 5 to 10 | 10 |
| More than 10 | 42 |
| Refuse, Don't Know | 1 |
| Capacity Involved in a Civil Action (n=73): | |
| As a party (a person suing or being sued) in a personal matter | 47 |
| As a party (a person suing or being sued) in a business matter | 34 |
| As a non-lawyer service provider (someone who provides assistance to a party in court) | 22 |
| As a lawyer | 20 |
| As a witness | 18 |
| As an adjuster | 4 |
| As a counselor | 3 |
| Other (jury member, court clerk, relative, friend) | 4 |
| Refuse, Don't know | 4 |
| Represented by (n=73): | |
| Lawyer | 53 |
| Myself | 27 |
| Non-lawyer service provider | 10 |
| Court counselor | 8 |
| Legal aid | 1 |
| Refuse, Don't know | 23 |

| Respondent's Involvement in the Civil Courts | |
|--|--------------------------------------|
| | Percent of Respondents (n=98) |
| Status: | |
| Member of the public | 43 |
| Lawyer | 13 |
| Non-lawyer service provider | 11 |
| Social worker | 8 |
| Claims adjuster | 6 |
| Probation officer | 4 |
| Professional association | 3 |
| Judicial clerk | 3 |
| Other (Student, bailiff, library technician, engineer, retired lawyer) | 5 |
| Refuse, Don't know | 3 |
| Accessed Paper from: | |
| The court | 35 |
| Mailed to individual | 21 |
| Lawyer's office | 20 |
| Legal Aid Office | 8 |
| Online | 2 |
| ALRI | 2 |
| MLAs office | 2 |
| Not-for-profit agency | 2 |
| Refuse, Don't know | 7 |

3.0 CONCLUSIONS

Overall, survey respondents provided insightful feedback and suggestions on various aspects of the Alberta Rules of Court. While many areas received moderate to relatively high satisfaction scores, the purpose of this study is to focus on areas of improvement, or areas receiving relatively high dissatisfaction ratings. Aspects under study can be grouped into high, medium and low levels of respondent dissatisfaction.

Aspects with **high** levels of dissatisfaction (50% or more of respondents dissatisfied) included:

- cost of legal fees;
- time to resolve legal cases; and
- the overall legal process.

Aspects with **medium** levels of dissatisfaction (40 – 49% of respondents dissatisfied) included:

- court forms;
- information available through the court;
- ease of understanding of the legal process;
- the trial;
- the discovery stage; and
- interlocutory hearing(s).

Aspects with **lower** levels of dissatisfaction (30 – 39% of respondents dissatisfied) included:

- documentation required;
- alternatives to a full trial;
- the pleadings stage; and
- formality of the legal process.

Generally, respondents were positive towards the concept of Alternative Dispute Resolution (ADR). Seventy-four percent (74%) felt that litigants should either be encouraged or required to use ADR because of its capability to resolve disputes and reduce time and costs.

Over half of all respondents felt there were major barriers to self-representation. These barriers included the complexity of court procedures, a lack of understanding of the law and difficulties in articulating a legal case. Many respondents suggested that information packages or kits would assist self-representing parties. Respondents also favored a simplification of court procedures as well as more respect from those in the legal profession towards self-representing parties.

Overall, respondents were split on the issue of appeals. Approximately half of all respondents (48%) felt that there should not be a right to appeal in every case while 43% felt the right to appeal should be universally available.

Respondents generally felt that legal fees are too high and have put access to legal representation beyond the means of the average citizen. As well, only 28% of respondents felt that the court offered adequate protection against inappropriate contingency and legal fees.

The vast majority of respondents felt that a virtual court should be used in some circumstances (86%) and that an electronic system for filing and service of court documents should be developed (74%). Comments regarding the use of technology in the court system were generally favorable as many respondents felt technology would reduce both the time and costs of legal proceedings.

Significant support and financial contributions
to the Rules of Court Project were received from

**Alberta Justice
Alberta Law Foundation
Law Society of Alberta**

Alberta Law Reform Institute

402 Law Centre
University of Alberta
Edmonton, Alberta T6G 2H5
reform@alri.ualberta.ca
www.law.ualberta.ca/alri
t: (780) 492-5291
f: (780) 492-1790