



# Appropriate Dispute Resolution for Immigrant Newcomers

## A Scoping Review

16 AUGUST, 2010

**Prepared For:**

Kathryn Platt,  
Dispute Resolution Office, Ministry of Attorney General

**Prepared By:**

Greg Tonn, Researcher,  
Knowledge and Information Services,  
Ministry of Citizens' Services

**With Contributions From:**

Alisa Harrison, Sara Parker-Toulson & Sharon Mah

**Acknowledgement:**

Knowledge and Information Services (KIS) would like to acknowledge and thank the 19 focus group participants for sharing their time, knowledge, and experience. Thank you also to Karolien Swaak, from The Inter-Cultural Association of Greater Victoria for her help in facilitating and co-moderating the focus group discussion in Victoria.

**FOR FURTHER INFORMATION ON THIS AND OTHER SCOPING REVIEWS, CONTACT:**

DAWN NICKEL, PHD, DIRECTOR OF RESEARCH SERVICES,  
KNOWLEDGE AND INFORMATION SERVICES, OFFICE OF THE CHIEF INFORMATION OFFICER,  
MINISTRY OF CITIZENS' SERVICES  
PHONE: (250) 356-0378  
E-MAIL: DAWN.NICKEL@GOV.BC.CA

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## **ABSTRACT**

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This Scoping Review focuses on appropriate dispute resolution services for recent immigrants and refugees to Canada. It is one of three Scoping Reviews prepared for the Dispute Resolution Office in the Ministry of Attorney General on matters pertaining to public legal education and information for new immigrants and refugees. The paper includes a review of the relevant literature and a summary of three focus group discussions conducted by the researcher with settlement workers from three immigrant settlement agencies in British Columbia. Topics covered include the types of disputes experienced by newcomers, how such disputes are resolved, the barriers to accessing appropriate dispute resolution services, the process for accessing dispute resolution services, and methods to engage the various ethnocultural communities and to disseminate information and build awareness of such services.

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## **EXECUTIVE SUMMARY**

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British Columbia has a very diverse population. According to data from the 2006 census, almost 27% of B.C.'s population are first generation immigrants. In Canada, Ontario is the only province with a larger total immigrant population percentage (28%). Greater Vancouver, where approximately 40% of the population are first generation immigrants, is B.C.'s most diverse region. The influx of newcomers (recent immigrants) to Canada is predicted to continue, and net international migration will be the largest contributor to B.C.'s population for at least the next 50 years. The numerous immigrants to this province come from a wide variety of source countries, speak many different languages, and observe an assortment of unique and sometimes divergent cultural traditions.

Generally, the use of Canada's justice system, especially court-based litigation, is considered a complicated, expensive, and overly formalized way of resolving disputes. A variety of appropriate dispute resolution (ADR) services are available throughout the province as a voluntary option for resolving disputes. Some of the more common ADR options include: mediation, arbitration, and negotiation. Where appropriate, these ADR options can be relatively more flexible, less formal, and less expensive alternatives to court-based litigation. Through a review of the literature and a series of focus group discussions with settlement workers, this Scoping Review explores some of the facets of delivering ADR services to the many diverse ethnocultural communities in British Columbia.

The dispute resolution literature and the focus group discussions indicate that the types of disputes that newcomers have can be divided into four categories:

- Intra-cultural disputes – conflicts among members of the same ethnocultural community;
- Intercultural disputes – conflicts among members of different ethnocultural communities;
- Institutional disputes – conflicts wherein a newcomer is disputing a matter with an organization, employer, or landlord; and
- Familial disputes – conflicts among members of the same family. Familial disputes are the most common type of conflict among recent immigrants to Canada.

Many newcomers, regardless of their cultural backgrounds, use strategies such as avoiding conflict and not acknowledging that a conflict exists. In these cases, the newcomers involved tend to believe that ignoring the existence of the conflict will help the conflict resolve itself. Newcomers may also avoid conflict as means to save face and not bring shame to their family. However, if a conflict is not addressed and adequately resolved, the issue can escalate and can result in significant consequences for the newcomer, such as, for example, divorce, loss of child custody, and/or a civil suit. If a dispute does require outside intervention from a third party, newcomers frequently seek assistance from within their trusted social networks before they turn to more formal external intervention, such as through professional mediators.

The context of a dispute and the newcomer's ability to overcome the barriers to accessing ADR services will inform how a newcomer decides to resolve a dispute. Common barriers for newcomers in accessing ADR services include, but are not limited to the following:

- Language fluency (speaking, reading, and writing);
- Lack of finances;
- Cultural differences and perceptions;
- Bureaucratic processes; and
- Competing life priorities, such as childcare, working, and/or getting an education.

An effective method for overcoming the access barriers to ADR services is through the provision of culturally relevant ADR services delivered by competent, professional ADR practitioners who can adapt to the needs of the disputants by speaking the first language(s) of the ethnocultural community they aim to serve. However, such services are not readily available to the variety of newcomers in British Columbia. Ethnocultural community-based ADR services can address many intra-cultural and familial disputes. However, disputes that transcend one culture, such as many institutional disputes, intercultural disputes, and certain familial disputes, may be better resolved through a team or council of ADR professionals that reflects the cultural differences of the disputants. Using a team-based approach, as in co-mediation where the team of mediators are culturally reflective of and can speak the variety of languages preferred by the disputants, is regarded as an effective strategy to resolve a variety of intercultural disputes.

If immigrants are going to make use of services, they need to be aware of and know how to access them. Recent immigrants typically gain awareness of an available service, and consequently access that service, based on advice and guidance from a trusted relative, friend or acquaintance within their community. Information providers, such as settlement workers and librarians, are trusted acquaintances who often help newcomers learn about and access available services. Newcomers also listen to a considerable amount of first language radio, watch local first language television, and read first language newspapers available throughout the Lower Mainland. These media channels are an effective medium for disseminating information to specific immigrant communities.

Many settlement workers in the focus group discussions mentioned that they would appreciate having more in-depth training programs that can improve the settlement workers' understanding and awareness of available ADR options. Such training programs should focus on legal topics relevant to newcomers, such as immigration law, tenancy law, employment law, and family law. In addition, English Language Services for Adults (ELSA) classes were recommended as another viable channel through which to improve newcomers' awareness and understanding of the available ADR options in B.C.

# **1 INTRODUCTION**

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## **1.1 ISSUE**

Immigrants and refugees face many challenges and complexities upon their arrival in a new country. Similarly, people providing services to the newcomers also encounter challenges in overcoming barriers, such as language, cultural differences, and a general lack of awareness of formal processes and procedures. The need to overcome such barriers is very evident when newcomers try to resolve disputes within Canada's justice system. Court-based litigation in Canada is widely regarded as being overly formalized, complicated, and expensive.

British Columbia has an incredibly diverse population, with almost one third of the population over the age of 15 being a first generation immigrant. As British Columbia's ethnocultural populations continue to grow, developing accessible legal resources, improving public legal education and information delivery, and designing culturally appropriate dispute resolution programs are all important methods of enhancing the immigrant experience, improving engagement with immigrant communities, and settling newcomers' disputes appropriately and fairly.

This paper explores some of the facets of providing public legal education and information about ADR services and delivering such services to the culturally diverse newcomers in British Columbia.

## **1.2 SCOPE**

This Scoping Review is one of three papers prepared for the Dispute Resolution Office in the Ministry of Attorney General on matters pertaining to public legal information and education for new immigrants and refugees. This particular Scoping Review analyses the topic of appropriate dispute resolution services for culturally diverse immigrant communities. The paper combines a review of the literature on the topic with a summary of focus group discussions with settlement workers from three immigration settlement agencies that serve the many ethnocultural communities in British Columbia.

The literature review includes academic studies, community surveys, dispute resolution guidelines, grey literature<sup>1</sup>, and appropriate web-based information from public agencies. The

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<sup>1</sup> Grey literature is defined as "Information produced on all levels of government, academics, business and industry in electronic and print formats not controlled by commercial publishing i.e. where publishing is not the primary activity of the producing body." The term refers to publications that are not published commercially or indexed by major databases (University of British Columbia Library, 2010).

Grey literature may include, but is not limited to the following types of materials: reports (pre-prints, preliminary progress and advanced reports, technical reports, statistical reports, memoranda, state-of-the art reports, and market research reports), theses, conference proceedings, technical specifications and standards, non-commercial translations, bibliographies, technical and commercial documentation, and official documents not published commercially (primarily government reports and documents) (Alberani, Pietrangeli, and Mazza, 1990).

research was limited to English language documents and draws primarily from Canadian sources.

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## 2 DEFINITIONS

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### ***Appropriate Dispute Resolution***

Appropriate dispute resolution (ADR) refers to the range of dispute resolution options, such as mediation, arbitration, and negotiation, which people can consider and select when attempting to resolve disputes. ADR options can range along a continuum from collaborative, non-binding processes to binding adjudication.

Originally, the term ADR referred to “alternative dispute resolution,” as dispute resolution options were historically regarded as an *alternative* to litigation in formal court proceedings. In some instances, the literature still refers to “alternative dispute resolution.” However, dispute resolution options exist along a continuum that includes litigation. At one end of the continuum are dispute resolution options that afford disputants a great degree of control over the process and outcome of that process (i.e. prevention, negotiation and mediation). At the other end of the continuum are dispute resolution options in which the disputants have relatively little control over the process and the outcome is imposed (i.e. adjudication and litigation). Because of the nature of this continuum, the term ADR was updated to “appropriate dispute resolution” to reflect the need to choose a dispute resolution option that is most *appropriate* for the dispute (B.C. Ministry of Attorney General, Justice Services Branch, 2003; B.C. Ministry of Attorney General, Dispute Resolution Office, 2004).

### ***Adjudication***

Adjudication refers to any dispute resolution process, mainly arbitration and court-based litigation, wherein a neutral third party hears each disputing party’s evidence and arguments, and consequently renders a binding decision (B.C. Ministry of Attorney General, Justice Services Branch, 2003).

### ***Arbitration***

Arbitration is a binding dispute resolution process in which a neutral adjudicator, who has the power to render a binding decision, strives to resolve a dispute between parties through careful consideration of the evidence and arguments presented by the disputing parties.

Generally, arbitration is a voluntary and private dispute resolution process. In some instances; however, a contract may provide that potential disputes will be resolved by arbitration rather than litigation. Furthermore, legislation, such as B.C.’s Residential Tenancy Act, can require that certain disputes be submitted to arbitration (B.C. Ministry of Attorney General, Dispute Resolution Office, 2004).

### ***Economic Class***

Immigrants who are granted permanent resident status in Canada based on their work-related skills and/or ability to contribute to Canada’s economy. This immigrant category typically includes: skilled workers, business immigrants, live-in caregivers, and provincial or territorial nominees. Live-in caregivers are granted permanent residency status after completing a prerequisite two years of live-in caregiver employment in Canada within a three-year period) (Citizenship and Immigration Canada, 2009).

## **Family Class**

The family class of immigrants are permanent residents sponsored by a Canadian citizen or a permanent resident living in Canada who is 18 years of age or older. Family class immigrants include spouses and partners (common-law partner or conjugal partner), parents, grandparents, and children, including adopted children, brothers, sisters, nephews, nieces and grandchildren who are orphans, under 18 years of age. Fiancé(e)s are no longer designated as a component of the family class under the Immigration and Refugee Protection Act (Citizenship and Immigration Canada, 2009).

## **Mediation (rights-based or interest-based)**

Mediation is a non-binding, generally private, dispute resolution process. Mediation requires a neutral, impartial third party who has no decision-making authority to facilitate a settlement between disputing parties. Mediation is often accessed on a voluntary basis, but mediation can be mandated or court ordered (B.C. Ministry of Attorney General, Dispute Resolution Office, 2004).

There are two different traditional concepts of mediation: rights-based mediation and interest-based mediation. In rights-based mediation, the dispute is analyzed in terms of opposing legal rights and duties. The mediator provides direction to the parties about appropriate settlement terms, but the focus of the rights-based mediation is to identify who is right or wrong. Unlike right-based mediation, interest-based mediation requires the dispute to be framed in terms of the parties' underlying concerns, goals, and needs, and not in terms of legal rights. Two key aspects of interest-based mediation are that it does not generate winners or losers, and it does afford the disputants an increased range of potential solutions not necessarily bound by legal precedent (B.C. Ministry of Attorney General, Justice Services Branch, 2003).

Over time, there has been a comingling of the two concepts, and skilled, professional mediators design the process to suit the needs of the parties in a proactive manner. When appropriate, different approaches to mediation can be incorporated into the mediation process to suit the needs of the parties involved in a particular dispute (Kari Boyle, Executive Director of Mediate BC, personal communication, July 6<sup>th</sup>, 2010).

## **Med-Arb**

Short for mediation-arbitration, med-arb is a dispute resolution process in which the neutral third party acts first as a mediator; however, if the initial mediation is unsuccessful, the mediator becomes an arbitrator and makes a binding decision(s) (B.C. Ministry of Attorney General, Justice Services Branch, 2003).

## **Negotiation**

Negotiation refers to any form of “un-facilitated” communication in which disputants discuss steps they could take to resolve a dispute between them. Negotiation can occur directly between the parties or indirectly through agents, such as lawyers, acting on behalf of the parties (B.C. Ministry of Attorney General, Dispute Resolution Office, 2004).

## **Neutral Evaluation**

Neutral evaluation is a process in which parties obtain from an experienced, knowledgeable, neutral third party a non-binding, reasoned evaluation of their case based on the case's merits. Because the neutral third party is jointly selected by the opposing parties, the opinion or assessment of the neutral third party is expected to have persuasive value (B.C. Ministry of Attorney General, Dispute Resolution Office, 2004).

## **Newcomer**

For the purposes of this Scoping Review, “newcomer” refers to anyone who fits into Citizenship and Immigration Canada’s (2009) immigration/refugee categories, including the three main groups of permanent residents: **family class**, **economic class**, and **refugees**, as well as other immigrants and refugees who do not fit into or qualify for the three main categories, such as: persons admitted into Canada for humanitarian or public policy reasons, Post-Determination Refugee Claimants, and persons landed through the Deferred Removal Order Class and Backlog Clearance program.

Although not a standard, the term “newcomer” typically refers to someone who has come to Canada within five years or less (Caidi and Allard, 2005).

## **PLEI**

Public Legal Education and Information (PLEI) is a comprehensive list of informative content and/or any activity that allows individuals or groups of individuals to better understand and use the law. PLEI, however, does not include legal advice, legal aid, or training intended specifically for lawyers (CS/RESORS Consulting Ltd., 2005)

Furthermore, PLEI can act as a tool that provides a foundation for the selection and subsequent use of appropriate dispute resolution options. In addition, PLEI can inform people about the nature and facets of the law. A deeper understanding of the law can help prevent disputes from occurring in the first place (Lisa Nakamura, Senior Policy Analyst, Dispute Resolution Office, Ministry of Attorney General, personal communication, July 6, 2010).

## **Refugees**

Refugees are a classification of newcomers who have been granted permanent resident status by Citizenship and Immigration Canada. Under the Immigrant and Refugee Protection Act, refugees that have landed in Canada are referred to as *Protected Persons in Canada*. The refugee class of immigrants includes government-assisted refugees, privately sponsored refugees, refugees landed in Canada, and refugee dependants, which includes dependants of refugees landed in Canada and spouses and partners living abroad or in Canada (Citizenship and Immigration Canada, 2009).

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## **3 BACKGROUND**

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British Columbia is one of Canada's most diverse provinces, second only to Ontario. According to numbers from the 2006 census, of B.C.'s overall population (4,074,385), just over 27% are first generation immigrants to Canada and currently are, or have previously been, granted permanent resident status by Citizenship and Immigration Canada. This is well above the immigrant population percentage for the nation as a whole; slightly less than 20% of the overall population of Canada is an immigrant or refugee with current or previous permanent resident status (Statistics Canada, 2009).

Within B.C., Greater Vancouver has the largest newcomer population, with almost 40% of the 2,097,965 inhabitants being a first generation immigrant to Canada. Abbotsford has the second largest newcomer population, with 24% of its overall population being a first generation immigrant. Greater Victoria has the third largest newcomer population percentage, with slightly over 19% of its overall population identified as first generation immigrants (Statistics Canada, 2009).

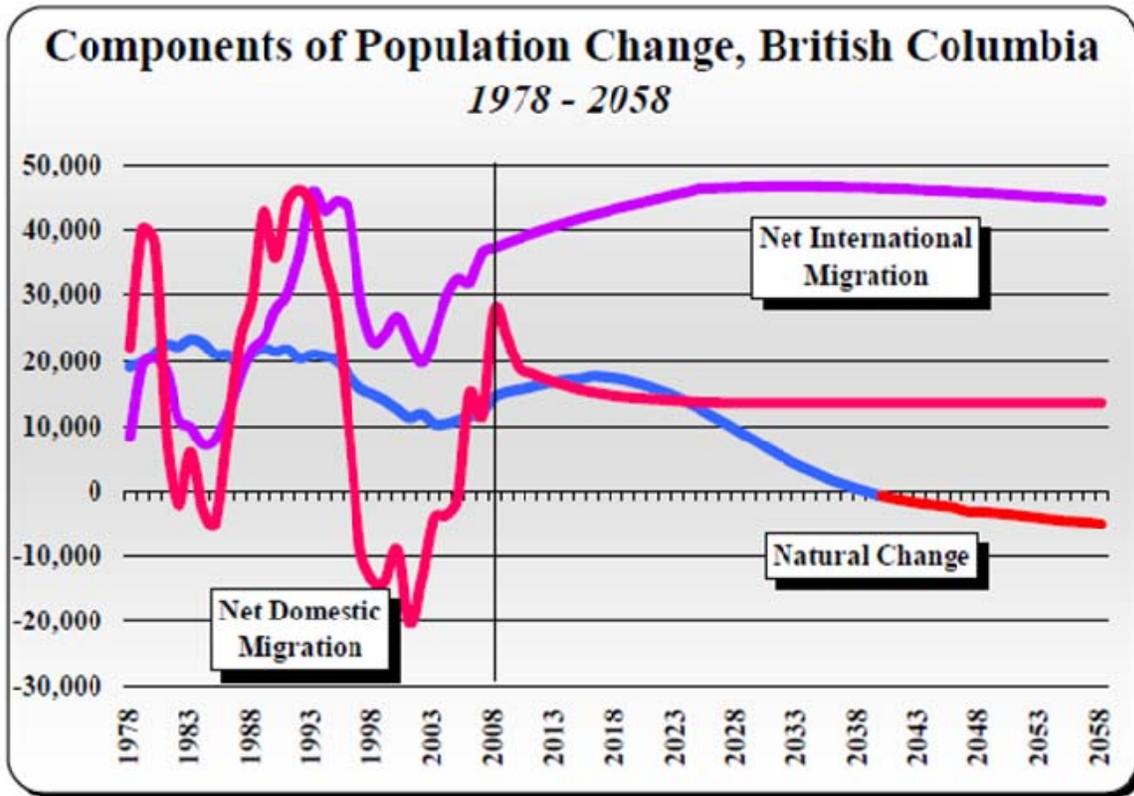
From 2004 to 2008, mainland China was the most prominent source country for newcomers to B.C. Just over one quarter (26%) of all newcomers to B.C. between 2004 and 2008 originated from mainland China. India (13%) and the Philippines (10%) are the second and third most common source countries for newcomers to B.C. in recent history, respectively. Other common source countries for newcomers to B.C. include South Korea, the United States (U.S.), the United Kingdom (U.K.), Taiwan, Iran, Japan, Pakistan, and Singapore (B.C. Ministry of Advanced Education and Labour Market Development, Labour Market and Immigration Division, 2009).

It is expected that B.C.'s immigrant population will continue to increase through net international migration. International migration is predicted to be the biggest contributor to B.C.'s population growth over the next 50 years (see Figure 1, below). Between 2008 and 2028, 847,591 newcomers are expected to immigrate to British Columbia from other nations. By 2058, the total number of net international migrants to B.C. is expected to rise to 2,033,048. (The Urban Futures Institute, Ramlo, Berlin, and Baxter, 2009).

With such a significant proportion of B.C.'s population being first generation international immigrants to Canada, there is a great deal of cultural diversity represented within the population. Culture is more than just the language, dress, and food customs of a particular group of people. Cultural groups may share a number of traits including, but not necessarily limited to race, ethnicity, nationality, age, socioeconomic class, sexual orientation, ability and disability, political affiliation, religious affiliation, and gender (LeBaron, 2003).

Whether it is the central issue or a subtle influence, culture is usually a factor in any conflict or dispute. People's varied cultural beliefs and lenses affect the manner in which they name, frame, blame, and tame a dispute. In fact, culture has a significant influence on whether or not a person acknowledges that a conflict/dispute even exists (LeBaron, 2003; Tulandi, 2003).

Figure 1: Components of Population Change in B.C.



From: The Urban Futures Institute, et al. (2009)

Like all Canadians, newcomers are not immune to becoming embroiled in disputes or conflicts. No matter how minor or insignificant a dispute is characterized to be by the disputants, the dispute can be a major source of difficulty and stress in the disputants' daily lives. Conflict based in disputes with authority figures or family members can, and often does, go unresolved, and thereby remains an irritant/source of stress in the disputants' lives. If disputes are not addressed and properly resolved, such conflicts can escalate to the point where the police and/or other government agencies may be called upon to intervene (Currie and Kiefl, 1994).

Regardless of the severity of a dispute, there is a common set of barriers to accessing the civil, criminal, or family courts if the state requires intervention in people's dispute(s). The Canadian justice system is widely acknowledged to be overly formalized, complicated, and expensive. These barriers to accessing the courts can be even more daunting for newcomers to Canada who may face additional cultural and/or language barriers. Consequently, voluntary, formal, community-based appropriate dispute resolution (ADR) services, such as cross-cultural competence in mediation or arbitration, are considered promising options for immigrant ethnocultural communities (Currie and Kiefl, 1994).

This paper explores some of the facets of delivering ADR services to the diverse ethnocultural communities in British Columbia.

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## **4 LITERATURE REVIEW**

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This section of the Scoping Review discusses some of the academic and grey literature on the disputes involving recent immigrants and how such disputes are resolved. It is necessary to use caution when interpreting and using such research as evidence for policy and/or service delivery decisions. Research in this area may highlight certain statistically significant behavioural norms of a particular cultural group; however, knowing the cultural norms of a particular group does not necessarily predict the behaviour of a member of that group, especially when the individual is embroiled in a conflict.

According to LeBaron (2003), depending on the context of a particular situation, individuals may not conform to the cultural norms of the various cultural groups to which they belong. Consequently, taxonomies about various ethnocultural communities, such as, “Chinese newcomers prefer to resolve disputes within their ethnocultural community,” or, “South Asian newcomers prefer adjudication over mediation,” have limited use and can be misleading when delivering ADR services.

### **4.1 TYPES OF DISPUTES**

Research by LeBaron Duryea and Grundison (1993) on dispute resolution amongst newcomers from five prevalent ethnocultural communities (Chinese, South Asian, Latin American, Polish, and Vietnamese) in B.C.’s Lower Mainland reveals that newcomers to Canada not only represent diverse range of ethnocultural communities, but individual newcomers can also differ in how much they have adopted the westernized Canadian cultural values. Moreover, the types of conflict/dispute these newcomers experience and the methods, means, and behaviours they use to resolve such conflicts/disputes are equally as diverse, and not easily generalized. “The etiology of conflicts as well as attributions of parties concerning conflicts is multilayered, complex, and not amenable to dissection or linear analysis” (LeBaron Duryea and Grundison, 1993, p. xxi).

Despite the complexity of the disputes experienced by newcomers to Canada, the types of conflicts/disputes can be classified into four main categories using data from quantitative surveys, qualitative interviews with newcomers, and qualitative focus group discussions with key informants from the five participating ethnocultural communities (LeBaron Duryea and Grundison, 1993). The categories are:

- 1) Familial disputes;
- 2) Institutional disputes;
- 3) Intercultural disputes; and
- 4) Intra-cultural disputes.

#### **4.1.1 Familial Disputes**

Familial disputes are common amongst newcomers, especially in well-established, immigrant communities in which many relatives have settled. As newcomers immigrate to Canada, settle,

and integrate into the westernized culture, they can face challenges with regard to traditional family structures, such as generational and gender roles. Role changes can lead to disputes amongst family members (LeBaron Duryea and Grundison, 1993).

Familial disputes can be especially difficult for the affected parties. The role of the extended family is very important in many ethnocultural communities, especially in collectivistic-oriented cultures where reputation of the group, interdependence, cooperation, and respect for and deference to elders are favoured over individualistic values, such as competition, self-reliance, individual achievement, and personal growth and fulfillment (LeBaron, 2003).

Some common sources of familial conflict/dispute experienced by newcomers highlighted in the research by LeBaron Duryea and Grundison (1993) include:

**Spouses immigrating at different times** – The spouse who comes to Canada first will take on a more dominant role as they have had more time to settle and integrate into Canadian society. The spouse to arrive first will typically have a better understanding of Canadian society, stronger language skills, and more knowledge of where to go to access services, thereby affording them a sense of power over the other spouse.

**Children challenging the extended family’s cultural values** – Intercultural marriage can cause familial disputes as some members of the family may feel such a marriage brings shame to the family. Certain career choices for children are favoured over others, and children going against their parents’ wishes regarding career choice can be a cause of conflict. For example, in Chinese culture, careers in law, medicine, and commerce are favoured career paths for children as they are regarded as providing significant financial security for the individual and his/her family, especially elders needing care. Careers in theatre, dance, or the arts are held in low regard in Chinese culture, as they are not considered good career paths for supporting a family. Another source of familial conflict may arise between brothers and sisters if the other members of the family show favouritism for the male children due to culturally based preferential treatment of boys over girls.

The changing role of and regard for elders can also be a cause for dispute within immigrant families. In collectivist cultures, elders are typically held in high regard and afforded considerable decision-making authority within the family. As older immigrant children spend more time in Canada and integrate into the relatively more individualistic Canadian society, their regard for and deference to their elders (typically their grandparents) can be less than the elders may be accustomed to according to the traditional cultural values of the source country. The perceived loss of power by the grandparents can create tension and divisions and consequently disputes within a family.

**Spousal role changes in the family** – Research participants noted that it is often easier for immigrant females to get meaningful employment where English language skills are not essential. Since newcomer females can often gain employment faster than their husbands can, women can gain authority over their husbands by being able to provide income for the family, while the husband may need to stay home to raise the children and maintain the home. This change in spousal roles can be especially frustrating for the husband if the newcomers originated from a country where patriarchy is a dominant aspect of the culture. The frustration caused by

the spousal role change and the newfound independence achieved by the women can potentially lead to spousal conflict and even violence, and is considered a common cause for divorce among newcomer couples.

**Children learning the language more quickly** – With the help of school-based English as a second language (ESL) classes, immigrant children tend to learn to speak, read, and write English faster than their parents and consequently are required to serve as interpreters for the family. Familial disputes can arise as the parents experience a sense of loss in status and control because they must rely on their children as interpreters.

**Underemployment** – When newcomers immigrate to Canada, their previous professional training or expertise may not be recognized. This can cause frustration as both men and women must obtain non-professional work and earn less income than they had expected based on their level of education in the source country. Conflict concerning money can exacerbate other spousal disputes and possibly lead to divorce.

Overall, familial disputes amongst newcomers can be very complicated and multifaceted. The extreme consequences of such familial disputes can be quite problematic. Consequences can include, but are not necessarily limited to: divorce; the isolation of elders; familial violence; and teenagers running away, becoming homeless, and/or resorting to crime (for example, selling drugs or joining gangs) to gain independence from their parents (Preston, Murdie, Wedlock, Agrawal, Anucha, D’Addario, Logan, and Murnaghan, 2008; LeBaron Duryea and Grundison, 1993).

Newcomers who are older adults, especially those individuals who have retired, can be particularly vulnerable to the consequences of familial disputes. Older adult newcomers who immigrate with their families to Canada often do not have an income, have limited English language skills, are not eligible for a pension, and may also not have any knowledge or awareness of social programs targeted at immigrant older adults. All of these factors can lead to isolation or exclusion if the family is the older newcomer’s only consistent source of social contact. Such isolation can exacerbate the hardships and embarrassment experienced by immigrant older adults, who often are reluctant to admit that problems exist within their families. Feeling that they have no one to turn to, many older adult newcomers remain in their families’ homes, isolated, trapped, embroiled in conflict, and in some cases, vulnerable to abuse (Preston, et al., 2008).

## **4.1.2 Institutional Disputes**

Another classification of conflict/dispute identified in the research by LeBaron Duryea and Grundison (1993) involves situations where the newcomer is in conflict with an organization. These organizations can be public or private institutions. Below are brief descriptions of some of the cause of conflict/dispute between a newcomer and such institutions.

**Conflicts at work** – A significant number of research participants indicated that disputes with supervisors, coworkers, and customers do happen regularly. Many of these disputes arise from difficulties with the language, personality conflicts, or the unethical treatment of newcomer employees due to their level of awareness and knowledge of their legal rights as an employee.

**Conflicts involving police** – Some research participants claimed that discrimination, stereotyping, and racial profiling occurs when newcomers interact with the police. Such treatment can escalate a relatively minor dispute that the police have been called to intervene in into a full-blown conflict that requires litigation for resolution. Furthermore, in certain source countries, the police and other public officials are widely considered to be corrupt and subject to bribery. When newcomers come to Canada, they may maintain such preconceptions and continue to be distrustful of the police and try to avoid interacting with and/or giving assistance to the police.

**Conflicts involving bureaucracies** – Some newcomers are refugees or immigrated to Canada to escape oppressive regimes. Certain newcomers, especially political refugees, may have considerable anxiety and distrust towards officials and persons of authority based on their experiences in the source country. Distrust of government officials and bureaucrats in source countries runs high in many ethnocultural communities. Research participants explained that unfamiliarity with the bureaucratic systems in place in Canada, arbitrary distrust of bureaucrats, perceived systemic racism, and, especially, difficulties with the language can escalate minor misunderstandings into significant disputes between the newcomer and an organization.

**Conflicts at Schools** – Some newcomers may not be familiar with the predominant teaching styles and methods used in schools throughout Canada. Furthermore, some immigrant parents may feel that their children are not being disciplined enough at school relative to their own educational experiences in the source country. Such differences in educational expectations can lead to frustration and disputes between parents and educators. According to the research participants, another source of conflict between immigrant parents and schools involves incidents of bullying or teasing that the parents feel the school has not sufficiently addressed.

**Conflicts with Professional Bodies** – Research participants explained that at times, newcomers, and especially those from Latin American source countries, can have difficulty having the professional credentials that they earned in their source country accepted by the professional regulating bodies within Canada. Being prevented from working in their field of expertise can frustrate the professional newcomers as they attempt to dispute the decision of the regulating body.

### **4.1.3 Intercultural Disputes**

Intercultural disputes refer to conflicts between members of different ethnocultural groups. The research on conflict and culture by LeBaron Duryea and Grundison (1993) explains that “multiculturalism” is a term that is often misunderstood by newcomers and is sometimes associated with a pressure to assimilate into other, dominant cultural norms. Many newcomers may have concerns or anxiety about losing their identity in an effort to be more multicultural. Moreover, the use of stereotypes by all cultural groups to identify members of various cultural groups is very common. Relying on stereotypes can be misleading, can lead to misunderstandings, and can escalate conflicts.

Research participants in the study by LeBaron Duryea and Grundison (1993) did note that, in the Lower Mainland, intercultural relations have been improving, but there continues to be room for further progress. A common source of intercultural disputes mentioned in the research involves people of various cultures living in close proximity, such as an apartment building; the strong

odours from certain culinary ingredients used in making cultural dishes can sometimes be seen to constitute a nuisance by a neighbour. This neighbour may complain to the buildings supervisor, owner, or strata council, thereby initiating a dispute between members of differing cultures.

#### **4.1.4 Intra-cultural Disputes**

Disputes/conflicts between members and/or groups of the same ethnocultural community also occur, and are referred to as intra-cultural disputes. Such conflicts are organized along several themes: religious differences, political differences, people's identities within the ethnocultural community, and images of the ethnocultural community itself (LeBaron Duryea and Grundison, 1993).

**Religious differences** – Differences in religious beliefs and practices within an ethnocultural conflict can be a source of dispute. Participants in the referenced study provided the example from the South Asian community, where Sikhs and Hindus have been struggling with conflict founded in their religious differences. These religious differences also correlate to political differences and language differences; most Sikhs speak Punjabi, and most Hindus speak Hindi.

**Political differences** – Historically, disagreement about politically charged issues between members of an ethnocultural group have also been a source of conflict. An example highlighted in the research is that after the events of the Tiananmen Square incident, members of the Chinese community were in conflict over the violent response by the Chinese government. Some Chinese immigrants who had arrived in Canada prior to the mid 1960s supported the aggressive response by the Chinese Government. Conversely, some Chinese immigrants who had arrived more recently, and who had experienced living under the Chinese Communist regime, felt that the Chinese government's response to the protest was too harsh. This disagreement over a politically sensitive issue was divisive within the Chinese community.

**People's identities within the ethnocultural community** – How members of a particular ethnocultural community view themselves can at times be a source of intra-cultural disputes. Examples of differing identities within one ethnocultural community are provided in the research by LeBaron Duryea and Grundison (1993). According to the key informants in this research study, some members of the Vietnamese community identify themselves as being supportive of the communist regime in Vietnam, while other members do not support the communist regime. Additionally, some Vietnamese immigrants and refugees identify themselves as coming from the northern region of Vietnam, whereas others identify themselves as coming from the southern region of Vietnam. These political and regional identities have been known to be the source of conflict between members of the Vietnamese community.

**Images of the ethnocultural community itself** – This source of intra-cultural dispute may be illustrated by an example mentioned in the research from members of Vancouver's Polish community. Some members of the Polish ethnocultural community who immigrated to Canada before World War II may regard the Polish government as benevolent, whereas many who immigrated after World War II and more recently as refugees do not share this belief. Despite an overall sense of pride in their Polish heritage, the difference in regard for the Polish government has caused divisions within the Polish community.

### **4.1.5 Prevalence of Disputes**

The research by LeBaron Duryea and Grundison (1993) identifies multiple sources of dispute/conflict for newcomers to Canada. The most prevalent sources of dispute/conflict for newcomers arise from interactions with various organizations (institutional disputes).

In a series of 116 interviews with members of the five ethnocultural communities (Chinese, South Asian, Latin American, Vietnamese, and Polish), participants recounted disputes that they had been involved in personally, or in which they were in close relation to a disputing party, or which were based in a generalized experience of a major conflict experienced by their ethnocultural community. Of the 116 respondents, 54 (47%) had been involved in some way in an institutional dispute. Familial disputes was found to be the second most common category of conflict, with 40 (34%) of respondents having had experience of such disputes. Only 14 (12%) of respondents shared experiences about intra-cultural disputes and seven (6%) shared experiences about intercultural disputes. Only one respondent claimed that he had not experienced any disputes (LeBaron Duryea and Grundison, 1993).

## **4.2 RESOLVING DISPUTES**

Being a newcomer to a country can be an unnerving and stressful experience that is fraught with a variety of challenges. Having to deal with a dispute with a family member, an employer, and/or an organization can make coping with the immigration experience even more difficult. Many newcomers to Canada, regardless of their ethnocultural background or source country, will do their best to avoid disputes/conflicts at all costs. There is a sense that good citizens do not cause or get involved with conflict. Some newcomers may go as far as ignoring a dispute because they feel if they do not recognize it and do not talk about the problem, there is no dispute to resolve. The use of forbearance and repression, often used by newcomers in culturally bound lower status roles, is a common strategy for coping with all types of disputes. This avoidance approach is pervasive amongst many different ethnocultural groups (Peters and Voert, 2006; LeBaron Duryea and Grundison, 1993).

In many instances, avoiding the conflict does not resolve the conflict. If the conflict is serious, newcomers must eventually face the conflict issues and attempt to deal with the dispute(s) in which they are engaged. Most newcomers are resistant to outside intervention on all matters of dispute. However, newcomers who come from collectivist cultures, where the well-being of the group and the honour of the family are favoured over the status of the individual, are especially resistant to outside intervention, as they do not want to bring shame to their family, or “air their dirty laundry.” Outside intervention, from actors such as the police, the courts, social workers, or dispute resolution professionals are often regarded as an absolute last resort to resolving a conflict (Stringer and Lusardo, 2001; LeBaron Duryea and Grundison, 1993).

### **4.2.1 Informal Dispute Resolution**

Generally, there is resistance among immigrant communities to outside intervention from bureaucrats or other professionals in the resolution of disputes. Due to the resistance against outside intervention, most immigrant families will try to resolve familial disputes informally within their immediate family. If members of the immediate family cannot help resolve the conflict, members of the extended family will typically be consulted to provide further advice,

guidance, and/or support. Oftentimes, it is the advice and guidance of the elders in the family that is sought; in some instances, elders act as informal mediators or arbitrators in familial disputes. Sometimes, elders may interject themselves into a conflict, even if their advice, guidance, or mediation is not wanted by the disputing parties (LeBaron Duryea and Grundison, 1993).

Fear of gossip and/or shaming the family are two key barriers that hinder informal dispute resolution outside of the family. However, some newcomers may not have sufficient familial support in their new country to assist in resolving familial disputes. Being isolated from their family can worsen issues, as the newcomers feel alone and less powerful because of that loneliness. If they feel it necessary, newcomers may engage a mutually trusted family friend, or they may engage prominent, trusted members within their ethnocultural community, such as doctors, lawyers, or religious leaders for advice, guidance, and assistance in helping them resolve disputes (LeBaron Duryea and Grundison, 1993).

In the case of disputes that occur within an ethnocultural community, external intervention is rarely the preferred choice. Trusted leaders of the ethnocultural community or religious leaders may be called upon to provide guidance and to act as informal mediators to resolve disputes. In some cultures, direct confrontation is regarded as an option to resolve disputes. Such confrontation can manifest itself in physical violence between the disputing parties, followed by emotional reconciliation of the conflicting parties. However, the use of violence amongst members of an ethnocultural community as part of a direct confrontational approach is rare (LeBaron Duryea and Grundison, 1993).

## **4.2.2 Formal Dispute Resolution**

Intercultural disputes, disputes with an organization or an employer, and cases of divorce do not always lend themselves well to culturally specific informal dispute resolution. If the dispute absolutely cannot be avoided or ignored, or the newcomers want to avoid further embarrassment to the family, they may seek formal legal action as a last resort. For newcomers who do not speak English well and/or lack adequate financial resources, going to court can be a very difficult and onerous process. Courts are bound up in a multitude of procedures, and hiring a lawyer can be very expensive (Currie and Kiefl, 1994; LeBaron Duryea and Grundison, 1993).

If newcomers feel legal action is their only viable course of action, they typically will seek advice about legalities first from family and friends within the ethnocultural community. This can be detrimental as, in most cases, the family members or friends typically will not have any formal legal training and may provide poor advice. Newcomers who are going to court also tend to access the assistance of a trusted community-based resource, such as an immigrant settlement agency. Settlement agencies can help newcomers translate documents and can provide assistance in referring to and accessing legal aid services (LeBaron Duryea and Grundison, 1993).

The ability and willingness of newcomers to access professional help from lawyers, counsellors, mediators, negotiators, or arbitrators to resolve disputes is dependent on: the newcomers' knowledge and awareness of the service they are seeking; any practical barriers they may face to accessing the service (e.g. transportation, language competencies); and their ability to meet the financial cost of using the service (LeBaron Duryea and Grundison, 1993).

Many ethnocultural communities regard courts as being strict and complicated. As a preferred community-centric alternative to courts, some ethnocultural communities have developed their own, culturally appropriate “formal” dispute resolution options.

### ***Polish Community Centre’s Resolution Council***

Members of Vancouver’s Polish Community Centre established a “Friendly Court” to which members of the Polish Community Centre who were engaged in intra-cultural disputes could bring their dispute to a Resolution Council. To be a member of the Polish Community Centre, one must be of Polish heritage, be able to read and speak in Polish, and pay the \$20 annual due. The Resolution Council consists of five elected Polish Community Centre members who act as adjudicators. The five adjudicators hear the parties’ cases, without the aid of lawyers, and then make a decision that ascribes varying degrees of fault to both parties, so that both disputants can save face. Decisions made by the Resolution Council may be appealed. Appeals are decided by a majority vote at the Polish Community Centre’s general meeting. According to Danuta Tokarczuk (2010), the Office Manager of the Polish Community Centre and the former President of the Polish Canadian Congress, the Resolution Council is active and continues to help resolve members’ disputes on a regular basis (LeBaron Duryea and Grundison, 1993; Danuta Tokarczuk, personal communication, May 4, 2010).

### ***South Asian Community Councils (Punchayat)***

Some South Asian participants in the research conducted by LeBaron Duryea and Grundison (1993) mentioned that in India, many small community or village councils provide a forum to mediate and help settle all forms of disputes. Referred to as a *punchayat*, a council of five or more elected members (male and female) use a number of methods to provide quick resolutions to the disputed brought before them. Reducing the shame and stigma for the families involved is the primary goal of the *punchayat*. Sometimes, community members may exert social or economic pressure on the party at fault in order to ensure their conformity with the council’s decision. The participants in LeBaron Duryea and Grundison’s study did not mention that any such council exists within their community in Canada (LeBaron Duryea and Grundison, 1993).

### ***Faith-based Arbitration***

According to Ahmed (2005), Ontario’s Arbitration Act allows members of certain religious faiths to choose to have certain familial disputes and civil matters decided through arbitration by their religious institutions instead of the provincial courts. These arbitrations are binding as long as the decisions are in accordance with the relevant Canadian laws. Ontario’s Arbitration Act requires that both parties voluntarily enter such faith-based arbitration and the arbitrators treat all parties equally and fairly. Although such arbitrations are regarded as culturally specific and an alternative to the courts, there is much debate about fairness and equality, and equal access to Canadian Law, should Islamic religious groups establish similar arbitrary tribunals based on Sharia Law. There is also debate about whether it is fair not to allow binding arbitration based in Sharia Law, since members of other faiths have the option of entering faith-based arbitration.

### ***Ethnic Mediation Council***

In the United States, the Ethnic Mediation Council provides a noteworthy example of how members from various ethnocultural communities can come together and help resolve disputes

that transcend cultures. The Ethnic Mediation Council is one of the many immigration and settlement services provided by the International Institute of St. Louis. The Council is comprised of almost 100 volunteers who represent immigrant communities from Africa, Asia, Latin America, and Europe. The council members receive professional mediation training through a partnership between the International Institute and the Washington University Law School's Alternative Dispute Resolution Program (Homepage of the International Institute of St. Louis, 2009).

The Ethnic Mediation Council arranges and facilitates mediation sessions between two or more disputants. The mediation services offered by the Ethnic Mediation Council are not restricted to immigrants and refugees; anyone living in the greater St. Louis area can request to have their dispute mediated by this council. The diversity of members of the Ethnic Mediation Council allows mediation to be facilitated in a number of languages. Additional interpretation services are provided as necessary. Moreover, the diversity of the council members facilitates understanding and acceptance of the varied cultural characteristics and perspectives of the disputants, and this helps to ensure that the mediation process is culturally appropriate and suits the disputants' needs (Homepage of the International Institute of St. Louis, 2009).

The Ethnic Mediation Council's services are funded through an assortment of public and private sources and supported by volunteers. Consequently, the Council's mediation services are provided free of charge (Homepage of the International Institute of St. Louis, 2009).

There is support in the literature for the effectiveness of a multicultural dispute resolution body, such as the Ethnic Mediation Council. Research by Claassen and Shands Stoltzfus (1994) indicates that disputes that transcend multiple cultures and involve members of different ethnocultural communities can be addressed and effectively resolved by a committee or council made up of members who reflect the cultural differences of the disputants. Such a committee can assist in developing and implementing a conflict resolution strategy that meets the disputants' needs with regard to language and cultural traditions. Moreover, such a dispute resolution committee would be more efficient and effective if all the committee members underwent the same or similar dispute resolution training.

### ***Conciliation and Arbitration Boards***

Ismaili Muslims have established Conciliation and Arbitration Boards (CABs) to provide a culturally appropriate means to settle disputes among members of the Ismaili community. The establishment of CABs is based in a Constitution that was promulgated in 1986 by the current Imam, His Highness Shah Karim al Hussayni Aga Khan. Arising from consultations with Ismaili Communities across the world, the Ismaili Constitution provides the foundation for the social governance of the worldwide Ismaili Community, with built-in flexibility to account for diverse circumstances of different regions, such as the requirement to operate within the public laws of the various countries where the Ismailis are settled. In some of the countries where the Ismaili Constitution applies, there are provisions for, "encouraging amicable settlement of disputes, through impartial conciliation, mediation, and arbitration" (Keshavjee, 2007).

Members of the Ismaili Community who have received training in ADR operate CABs. These CAB members balance the contemporary principles of ADR with the culture, values, ethics and traditions of the Ismaili Community all within the public laws of the jurisdiction in which each

CAB presides to serve the diverse needs of the people accessing the CAB system (Keshavjee, 2007).

The presence of CABs depends on the level of social governance and the nature of the Ismaili Community's dispersal within a country. For example, in Canada, CABs are available at a regional level, whereas in India and Pakistan, there are local CABs. The mediation and arbitration services provided by the CABs are accessible on a voluntary basis. Although individual CABs are independent of each other, decisions made by a regional or local CAB can be appealed before a higher jurisdiction, such as the National Conciliation and Arbitration Board, or the International Conciliation and Arbitration Board (Keshavjee, 2007).

The International CAB presides over disputes involving commercial, business and other civil liability matters, as well as domestic and family matters that are international in scope (Keshavjee, 2007).

Ismaili Conciliation and Arbitration Boards can be found in East, South and Central Asia, the Gulf Coordinating Countries, Syria, Iran, Afghanistan, United States, Canada, and several Western European countries. In British Columbia, a CAB can be accessed through the Ismaili Centre in Burnaby.

### ***Formal Dispute Resolution Summary***

Overall, there is no clear consensus regarding how newcomers prefer to resolve disputes. Furthermore, there is no suggestion in the available literature that newcomers in general prefer a particular style of ADR. A study by Peters and Voert (2006) indicates that not only the context and specifics of the dispute, but also the situation and characteristics of the newcomer involved in the dispute will determine what type of resolution process is chosen. The newcomer's fluency in the dominant language, his/her financial resources, and the extent of his/her social network and that network's social capital inform what decisions are made about how to resolve a dispute. In summary, research indicates that a newcomer will choose a dispute resolution option according to his/her ability to overcome the traditional barriers to that option.

### **4.2.3 Barriers to Appropriate Dispute Resolution**

There are a number of barriers that inhibit newcomers from accessing ADR services provided by dispute resolution professionals. Below is a discussion of some of the most common of these barriers.

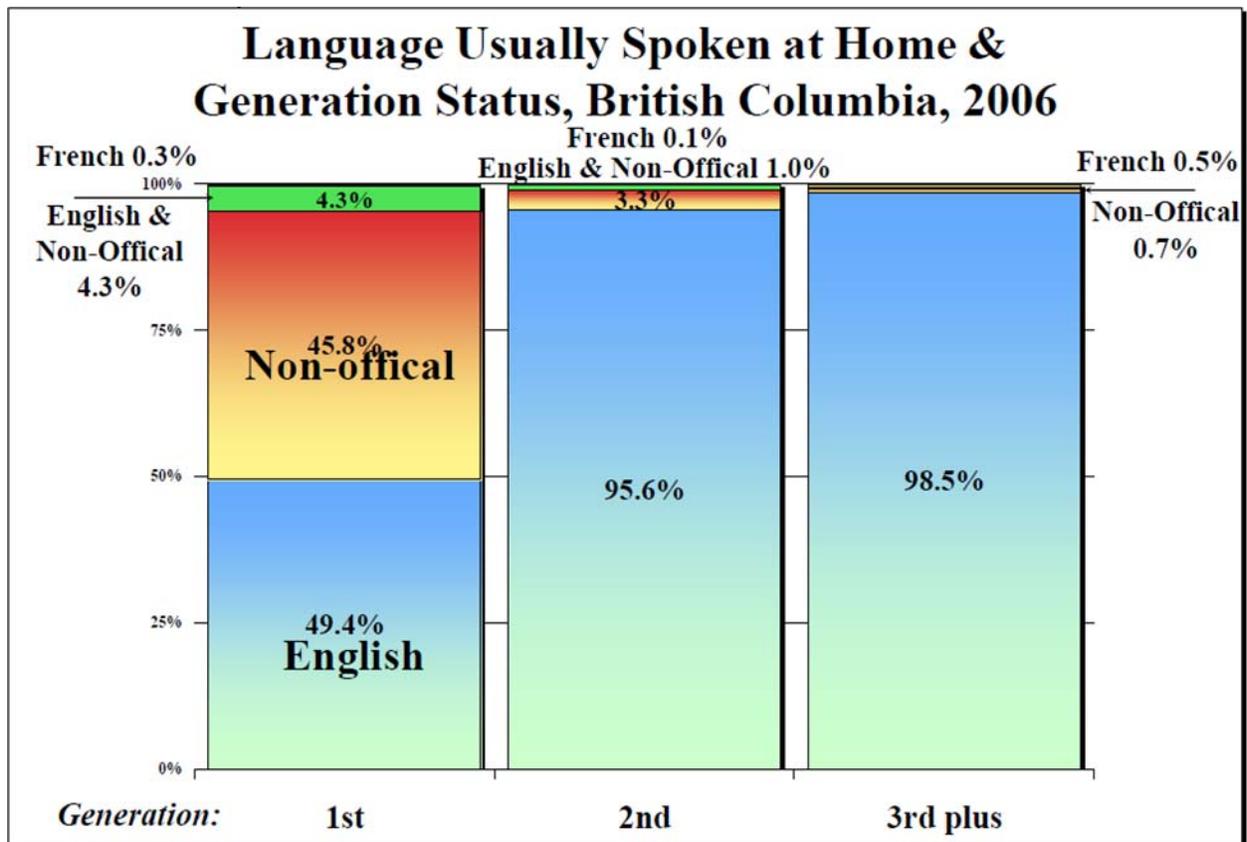
#### ***Language***

Language is cited as the most common barrier to accessing any service, including ADR services, for all newcomers to Canada. Dialogue is critical to any form of dispute resolution. If the disputing parties lack English language skills and cannot effectively communicate their side of the conflict to the professional who is helping them resolve the conflict, then it is difficult to foster an understanding of the issue(s). However, due to the resistance to outside intervention in familial matters, newcomers may still be reluctant to access professional ADR services, even if these services are offered in their first language (Tulandi, 2003; LeBaron Duryea and Grundison, 1993).

Language is not only a barrier to accessing ADR services, but also to understanding the complex legal information and terminology that can be involved in certain dispute resolution approaches. In B.C., there are a wide variety of public legal education and information (PLEI) sources available to the public; however, much of this PLEI is only available in English. Furthermore, PLEI materials that have been translated into other languages are only available in Chinese and Punjabi (the most common first languages of newcomers to B.C. Therefore, many newcomers require assistance to retrieve and understand available PLEI materials (CS/RESORS Consulting Ltd., 2005).

A considerable proportion of B.C.'s population does not practise speaking English when they are at home. According to data from the 2006 census, almost 46% of first-generation immigrants to Canada living in B.C., (just under one third of B.C.'s overall population) exclusively speak a non-official language (a language other than English or French) at home (see Figure 2, below).

Figure 2: Language Spoken at Home & Immigration Status in B.C.



From: The Urban Futures Institute (2006)

An additional 4.3% of first-generation immigrants speak a mix of English and another language (that is not French) at home. The incidence of speaking English at home increases significantly over the generations. More than 95% of second-generation immigrants (children who are born in Canada to at least one first generation immigrant) speak only English at home. Almost 99% of third-generation immigrants speak English exclusively at home (The Urban Futures Institute, 2006).

### ***Cross-cultural Competence***

Another major barrier to newcomers accessing professional ADR services is concern over the professional's ability to have cross-cultural competence when providing the service. LeBaron Duryea and Grundison (1993) found that newcomers would be reluctant to seek outside intervention in their conflict from ADR service providers who were not cognizant of the traditional family, religious, class, or economic values of the disputants (Tulandi, 2003; LeBaron Duryea and Grundison, 1993).

Tulandi (2003) notes that newcomers who have experienced political oppression and/or perceive public institutions and bureaucracies as corrupt because of their experiences in their country of origin can be reluctant to participate in court-annexed mediation. Newcomers who fear and distrust officials will typically consider court-annexed professional ADR services as an extension of a system that they distrust.

The delivery of culturally competent, community-based ADR services can create a paradox. Most ADR options are voluntary in nature, and it is possible that newcomer disputants may opt not to participate in community-based ADR options specific to the culture of their country of origin, in an effort to "be more Canadian." In order to facilitate their integration into Canadian culture, some immigrants and refugees may prefer to use mainstream ADR options that are **not** established for a particular ethnocultural community; they may also prefer to use the courts. In addition, newcomers may choose mainstream ADR options if they feel that conventional Canadian value-orientations are more amenable to their position in the dispute than the value-orientations of their traditional culture. Indeed, the degree to which a newcomer feels that he or she is integrated into Canadian society can influence which formal dispute resolution option he or she considers most appropriate for resolving the current conflict (LeBaron, 2003; Currie and Kiefl, 1994).

### ***Personal Perceptions***

If newcomers are to access a service, they need to be aware that such a service exists. When facing a conflict, newcomers may rely on advice and guidance from friends, family, media, or community information providers, such as settlement workers, on how best to resolve it. If newcomers have negative, albeit incorrect, perceptions of the available ADR options within the community, then they may choose not to access these services. Negative perceptions of ADR services may include, but will not be limited to (LeBaron Duryea and Grundison, 1993):

- The services are too rigid or formal for the dispute in question;
- The ADR practitioners cannot be trusted to maintain the confidentiality of the disputants;
- The ADR practitioners are biased and not neutral; and/or
- The ADR practitioners are not experts on the subject matter of the dispute.

### ***Cost***

Newcomers may face financial hardships due, for example, to underemployment. If ADR services are to be widely accessible to all newcomers, they must be very reasonably priced, or,

wherever possible free of charge. This is problematic, since ADR professionals want and deserve appropriate compensation for their services (LeBaron Duryea and Grundison, 1993).

## **4.2.4 Overcoming Barriers to ADR**

Overcoming the barriers that inhibit the use of ADR services by newcomers to Canada can be a challenge, but it is not impossible. There is no all-encompassing approach to resolving conflict since cultural factors, such as language, ethnic traditions, and religious values are always present. Cultural fluency needs to be a core competency for anyone who intervenes in conflicts, including ADR professionals. Being culturally fluent “involves recognizing and acting respectfully from the knowledge that communication, ways of naming, framing, and taming conflict, approaches to meaning-making, and identities and roles vary across cultures,” (LeBaron, 2003).

### ***Language and Cultural Awareness***

Research by LeBaron Duryea and Grundison (1993) indicates that ADR approaches to cultural and multicultural-based conflicts are feasible if such dispute resolution processes are able to adapt to the disputants’ varying needs, and thereby alleviate some of the aforementioned barriers.

Provision of a range of ADR services in the most common first languages of newcomers can help to remove the language barrier. Given recent trends in the immigrant populations in B.C., with China, South Asia and the Philippines being the most prevalent source countries, professional ADR practitioners would be well advised to provide their service(s) in the languages spoken in those countries (i.e. Chinese, Punjabi, Hindi, and Filipino). Ideally, professional ADR service providers would be members of a particular ethnocultural community and speak the first language fluently. Such ADR practitioners would be able to draw on their personal experience in the source culture to provide a more culturally appropriate service (Tulandi, 2003; Stringer and Lusardo, 2001; LeBaron Duryea and Grundison, 1993).

Unlike intra-cultural disputes, resolving intercultural disputes and/or institutional disputes can become complicated when the disputants have different language preferences or competencies. Using translators or interpreters is a common solution to this; however, important messages may get lost in translation. Furthermore, having an additional party involved in the dispute resolution process may escalate fears around lack of confidentiality (Tulandi, 2003).

When accessing ADR services, newcomers may have concerns about the confidentiality of the dispute resolution process. The newcomer may be worried that the ADR practitioner and/or the other disputant will gossip within the community and disclose sensitive information that is meant to remain confidential. Newcomers from ethnocultural communities that are well established, close-knit, and prone to gossip, might prefer to use an outside ADR practitioner to help resolve particularly sensitive issues to which social stigma is attached (for example, marital disputes such as divorce). Balancing the need for confidentiality with the desire to deal with an ADR practitioner who can speak the language and who is culturally fluent can be a challenge. A possible solution would be to use a mediator of the same ethnicity and with similar values who lives in a different geographic community and is not related to or directly affiliated with members of the disputants’ geographic community (Tulandi, 2003).

According to Tulandi (2003), applying the concepts of co-mediation may be effective in overcoming language and cultural-sensitivity barriers in conflicts where the cultural differences between the disputants are a matter of concern (for example, in intercultural or institutional disputes). Co-mediation requires a team of two or more mediators to facilitate the mediation as a team. To alleviate disputants' concerns over the fairness or bias of the mediators, the co-mediation team should reflect the cultural diversity of the disputants. However, since co-mediation requires more than one mediator, it is more expensive, and this exacerbates the barrier created by the cost of services.

Having access to a team of ADR practitioners whose own diversity reflects that of the disputants can offer the following advantages (Stringer and Lusardo, 2001):

- The disputants have an increased perception of similarity with and trust towards the mediators;
- The co-mediators can help each other develop a better understanding of the hidden issues; and
- The co-mediators' varied language skills and/or cultural knowledge can reduce potential communication issues.

Sidhu (2003) argues that North American ADR methods and styles, especially mediation theory and practices that reflect an individualistic orientation and focus on autonomy, neutrality, and individualism, are not relevant to members of collectivistic cultures. The author argues that cultures that favour family unity and collectivism would be best served by professional ADR services developed and delivered by the appropriate ethnocultural communities, particularly for resolving sensitive intra-cultural and familial disputes. Instead of trying to adapt existing methods of mediation and arbitration to the needs of ethnocultural communities, Sidhu (2003) recommends equipping those communities with the tools and resources to establish their own formal dispute resolution options.

To address the specific dispute resolution needs of diverse ethnocultural communities, community leaders need to be involved in the design of ethnocultural community-specific dispute resolution options as well as the recruitment of appropriate staff for those services (British Columbia Dispute Resolution Practicum Society, Braun, and Adams, 2008).

Establishing formal dispute resolution options within an ethnocultural community is not a novel concept in B.C. As part of the *Diversity Project*, the BC Dispute Resolution Practicum Society (BCDRPS) received funding to provide family mediation training to willing applicants in order to increase the pool of qualified family mediators who are representative of the currently under-represented diverse ethnocultural communities in the lower mainland of B.C. The criteria developed as part of this project for selecting ethnocultural mediators are as follows (British Columbia Dispute Resolution Practicum Society, Braun, and Adams, 2008):

- **Be bilingual** – the mediators can speak English and the language of the ethnocultural community they intend to serve;

- **Have cultural knowledge** – the mediators are competent professionals who also have a thorough knowledge and understanding of the cultural practices and values of the ethnocultural community they intend to serve;
- **Have established relationships** – the mediators should have established relationships with other members and institutions in the ethnocultural community they intend to serve. This will give mediators increased credibility as well as an enhanced ability to liaison with the recognized institutions within the community.

### ***Adapting Mainstream ADR Services***

Ethnocultural communities may not have established culturally appropriate dispute resolution options in the first languages of the community. In such instances, mainstream ADR services may be the only option, apart from accessing the court system or simply doing nothing. Lennox (2010) provides a list of recommendations and considerations for making the stages of the mainstream family mediation model more adaptable to different cultures. Although intended for mainstream family mediation, these recommendations and considerations could be applicable to and help to increase the cultural adaptability of other forms of dispute resolution.

When marketing family mediation services, the usefulness of mediation for both intact and separated families should be stressed. During the intake stage, family mediators should seek out information about a couple's language preferences, immigration status, length of time residing in Canada, involvement with extended family, and desire to have another person support their mediation. To avoid inadvertently offending people from other cultures, it is also recommended that mediators assume a couple is married when they are seeking information about relationship status (Lennox, 2010).

When providing mediation services to a couple that are newcomers to Canada, mediators should consider scheduling more time during the pre-mediation stage not only to build rapport, but also to facilitate a deeper understanding of the mediation process and provide information about the Canadian family justice system. Family mediators should avoid setting ground rules for the mediation session (for example, keeping voices low or requiring eye contact) as such rules may be at odds with culturally specific communication styles. Family mediators should also be attentive to a couple's gender balance and they should screen for familial violence. Newcomers may be more hesitant to disclose violence or may be unclear what constitutes familial violence in the Canadian context. Finally, in the premediation stage, the familial mediator should continue to probe for details regarding the involvement of extended family (Lennox, 2010).

During family mediation session(s) with newcomers, Lennox (2010) recommends that mediators consider modifying their usual format to allow more participants to be present at sessions and/or sessions with different sets of relatives. Furthermore, the mediator should schedule additional time to allow for the possibility that the newcomers' communication styles (e.g. use of indirect speech) may require such additional time. When using co-mediation, mediators should be attentive to gender balance. When adapting parenting plans, a mediator should help to establish parenting plans that reflect special cultural holidays or religious rituals that involve a particular parent and child. In addition, mediators should be mindful of framing options in accordance with the culture of the couple. When the disputants come from a collectivistic culture, an option's potential to restore peace to the extended family may have more appeal than an option that

allows the opportunity for the individual to move on with his or her personal life. To avoid inadvertently offending the mediation participants, mediators should consciously limit their use of hand gestures and eye contact, as these may be offensive in the context of the newcomers' culture.

When in the settlement stage of the family mediation, mediators should stress the confidential and non-binding nature of any memorandum of understanding (MOU) developed as an outcome of the mediation. In addition, the mediator should, where appropriate, refer to extended family members in the MOU and explain the MOU in sufficient detail (Lennox, 2010).

Overall, the recommendations and considerations detailed by Lennox (2010) to make mainstream family mediation more adaptable to the varied cultures of newcomers to B.C. could also be applied to other forms or methods of ADR.

### ***Personal Perceptions***

Disseminating public legal information and education about available ADR options, through awareness campaigns that use the first languages of newcomers can help to overcome barriers to accessing services that are rooted in negative personal perceptions of the services. Being aware that a service exists and discovering positive opinions about that service are the two strongest factors (respectively) for predicting whether a newcomer will use that service (Ma and Chi, 2005). Providing comprehensive information in a first language helps newcomers to make their own determinations about a service and can diminish their reliance on the opinion of others. For further discussion on increasing newcomers' awareness of available services, please refer to section 4.3 (below).

### ***Cost***

There is no discussion in the relevant literature about how to overcome barriers associated with the cost of an ADR service. For the most part, people seeking resolution of a dispute will engage with ADR services voluntarily. If a newcomer cannot afford a particular ADR option, they may choose one that is less expensive or free.

Overcoming the many potential barriers that can inhibit newcomers from accessing ADR services presents challenges. In general, however, ADR practitioners who can be flexible and responsive to disputants' needs and concerns with regard to matters such as language, confidentiality, trust, bias and cultural sensitivity, will be able provide services that are accessible to members of B.C.'s varied ethnocultural communities.

## **4.3 INCREASING NEWCOMERS' AWARENESS OF AVAILABLE SERVICES**

To facilitate settlement and subsequent integration into Canadian society, newcomers to Canada need to be made aware of and have access to a multitude of services. This helps prevent newcomers becoming socially excluded. Such services include, but are not limited to (Pappillion, 2002):

- Public education;

- Language training;
- Affordable housing;
- Job training;
- Legal services; and
- Healthcare.

If ADR service providers are to increase newcomers' access to the variety of ADR options available in B.C., it is crucial that they engage the newcomers and disseminate information about the available options. Research by Ma and Chi (2005) concluded that awareness of a social service is the most important predictor of a newcomer using that service. Hearing positive opinions about a service is the second most influential factor in newcomers deciding to access the service.

Caidi and Allard (2005) explain that insufficient access to information can be a form of social exclusion for newcomers to Canada. Access to all kinds of information can empower newcomers to make decisions. Information service providers, in particular libraries and settlement agencies, play an integral role in disseminating information and can be effective in making information available to newcomers in a way that is both usable (in the newcomers' first languages) and understandable (culturally meaningful).

The language barriers faced by many newcomers and the complexity of legal language means that many newcomers must rely on knowledgeable helpers, such as settlement workers, for assistance in retrieving and understanding available PLEI materials and services. With B.C.'s extremely diverse and growing newcomer population, there is an increasing need for PLEI products and services related to immigration, family, and employment law to be published in a greater variety of languages. There is also a need for complex legal terminology to be simplified (CS/RESORS Consulting Ltd., 2005).

As discussed in the Scoping Review titled *Internet as Effective Medium for the Distribution of Integral Information*, newcomers have high levels of home computer and Internet use, especially for communicating and staying in touch with friends and family. However, while computers and the Internet have an important role to play in making PLEI accessible to individuals and service providers throughout the province, it is important to note that a significant number of newcomers do not have consistent access to computers and the Internet, and/or the literacy skills to adequately understand PLEI materials. Local, community-based media channels, such as first-language radio or newspapers, continue to be effective forms of information dissemination to newcomers (CS/RESORS Consulting Ltd., 2005).

Newcomers to Canada residing in Greater Vancouver consume a considerable amount of the first-language community-based media that is available for the more established ethnocultural communities. First-language radio stations, newspapers, and television broadcasts are considered effective methods of engaging newcomers and of disseminating information about and thereby

fostering awareness of culturally specific programs and services (LeBaron Duryea and Grundison, 1993).

(For further information and discussion about using various communication channels to disseminate integral information, such as PLEI, to recent immigrants, please refer to the Scoping Reviews titled *Best Practices in the Dissemination of Integral Information to New Immigrants* and *The Internet as Effective Medium for Distribution of Integral Information to New Immigrants*.)

Providing information resources to build awareness of available services in non-official languages (not English or French) is a common practice in B.C.'s health sector. In addition to English and French, information on the *HealthLink BC* website is available in Chinese, Punjabi and Farsi. The *BC HealthGuide Handbook*, which discusses a variety of relevant health topics, is published in English, French, Chinese, and Punjabi, and is available from many community and multicultural organizations, places of worship, and English Language Services for Adults (ELSA) providers. The 24/7, toll-free 8-1-1 telephone service, that allows callers to speak to and direct questions to a registered nurse, pharmacist, and/or a dietician, can be accessed in 130 different languages with the assistance of interpreters who are available by request. Additionally, a number of online informational videos on various health related topics are available in Farsi on the *HealthLink* website (Homepage of *HealthLink BC*, 2010).

Many newcomers to Canada have limited skills in the country's official languages. Language classes, such as the ELSA classes that are available throughout B.C., can with time help newcomers overcome language barriers. Nevertheless, providing information about programs and services that are culturally specific and/or in a newcomer's first language can be instrumental in helping that newcomer to establish him or herself successfully in Canada.

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## 5 FOCUS GROUP DISCUSSIONS

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This section provides a summary of focus group discussions that occurred in early spring in 2010 with settlement workers from the following three immigrant settlement agencies in British Columbia:

- MOSAIC (Vancouver);
- Progressive Intercultural Community Services Society (PICS) (Surrey); and
- The Inter-Cultural Association of Greater Victoria (Victoria).

Workers at immigrant settlement agencies served as key informants for this paper.

In order to assist close analysis of the information gathered through the focus group process, the discussions were recorded and transcribed. All references to names and specific persons were removed in order to ensure confidentiality and the anonymity of the participants.

### 5.1 NEWCOMERS' DISPUTES

#### 5.1.1 Types of Disputes

Newcomers to Canada are diverse and the nature of their disputes can be equally as diverse. The focus-group participants noted the following as the most common disputes experienced by those of their clients who are newcomers to Canada:

- **Familial disputes**, such as divorce and child custody disputes, family violence, and ongoing arguments between immigrant parents and youth;
- **Institutional disputes**, such as residential tenancy conflicts, unfair or unethical employment practices, discrimination by a service provider, denial of public services, and ICBC claims; and
- Disputes among neighbours, which can be **inter-** or **intra-cultural** in nature.

Other conflicts faced by newcomers that were identified as being especially difficult to provide assistance for due to the limited resources and/or services include:

- Extra-jurisdictional disputes, such as child custody disputes and related child abductions that transcend borders;
- Abandoning, where one spouse leaves the other upon arrival in Canada and the granting of permanent resident status, thereby leaving the abandoned spouse without the support network he/she was expecting; and

- Newcomers experiencing underemployment or facing limited employment options because their professional credentials or special training obtained in their source country are not recognized by the organizations that grant and recognize such credentials in Canada.

## **5.1.2 Resolving Disputes**

The focus-group participants confirmed the findings of the research literature with regard to newcomers, and especially very recent immigrants, being focused on settling into their new homes and lives in Canada. Newcomers do not want to cause problems or escalate issues, and many rely on avoiding apparent conflicts. In the experience of the participants, newcomers tend only to seek help from outside interveners once a conflict has escalated to the point that it is causing significant grief, stress and/or hardship. The focus-group participants acknowledged that given the inclination of many newcomers to avoid dealing with conflicts in an effort to save face or not “stir the pot,” there are undoubtedly more disputes/conflicts experienced by newcomers than ever come to the attention of the settlement workers or other outside interveners.

Despite the newcomers’ tendency to ignore or to dismiss conflicts, many of the settlement workers explained that they help newcomers try to resolve disputes on a weekly basis. Some settlement workers stated that they spend more time helping newcomers to access legal aid and the services of a lawyer for court-based litigation than helping newcomers access other ADR options such as mediation, arbitration, or negotiation. When asked to speculate why clients are predominantly referred to lawyers instead of other ADR service providers, respondents claimed that the nature of the disputes their clients need help with are generally very complex and often require professional legal advice.

Focus-group participants made no clear assertions regarding the demographical characteristics of newcomers who are more likely to seek assistance from settlement workers to help resolve disputes. However, one participant mentioned, and others agreed, that female newcomers appeared to be slightly more likely to seek help than their male counterparts in resolving disputes. In addition, newcomers who are feeling reasonably well settled in Canada and are now focusing on integrating further into Canadian society tend to be less reluctant to access services to help with resolving disputes.

## **5.1.3 Accessing ADR Services (Process)**

According to the focus-group participants, the process by which newcomers access ADR services is similar to how they access any other service. If a dispute has escalated and ignoring the problem is no longer a feasible option, the newcomer will typically consult his/her family for advice and guidance on the matter. If there is no family to consult or if the family’s advice is inadequate, the newcomer will typically reach out to trusted friends and/or members of his/her ethnocultural community for advice and guidance. A settlement worker who is familiar to the newcomer may be consulted as part of this process. If the newcomer wishes to use a community-based informal ADR process, he or she may do so without first consulting a settlement worker.

The settlement worker will try to be exhaustive in informing the newcomer of all the available options for dispute resolution. Empowered with this information, the newcomer will consider the context of the dispute and any barriers to accessing a service and then will make a decision. If

the newcomer decides to access a formal ADR process to help resolve the dispute, the settlement worker will assist by making a referral to the ADR practitioner and helping with acquiring an interpreter and/or translating relevant materials as needed.

Newcomers need to have some reason to trust a service before engaging with it. Many newcomers become aware of available services through word of mouth within their ethnocultural community. When immigrants have a positive experience with and feel that they can trust a particular service, they will share that information with their friends and family throughout their community. When someone has a negative experience with a service, he/she will share that information as well. A newcomer who requires assistance from a service will likely solicit advice from fellow immigrants on which service is trustworthy. Similarly, when making a referral, settlement workers prefer to refer their clients to trusted service providers who have a history of being helpful and amenable to newcomers.

Although the role of settlement workers is to provide referrals to services, a number of focus-group participants reported that some newcomers have wanted the settlement worker to go beyond his/her mandate and act as a mediator or arbitrator of a dispute. The desire to have a settlement worker serve as an intervener in disputes is based on a number of factors including, a wish not to be referred to another service, resistance to outside intervention, the cost of ADR services, and the desire to have disputes resolved quickly.

Some settlement workers reported that they are reluctant to become closely involved in disputes amongst members of the ethnocultural community that they serve because they wish to maintain their reputation as trusted, fair, and unbiased helpers.

Disputes between a property owner and a newcomer are typically referred to the Residential Tenancy Branch's formal dispute resolution process. Similarly, in disputes where an employer is treating a newcomer unfairly or withholding his/her wages, the settlement workers typically refer the newcomer to the Employment Standards Branch's dispute resolution process, which can include mediation. Both of these branches provide the option of conducting dispute resolution over the phone. However, it is the experience of some of the settlement workers that conducting mediation over the phone is not very conducive to overcoming newcomers' barriers concerning language and cultural differences.

## **5.2 BARRIERS TO ADR SERVICES**

According to the settlement workers who participated in the focus-group discussions, the barriers that inhibit newcomers' access to ADR services are the same as those for any other service. The main barriers to accessing services include:

- **Language and Literacy** – Language was mentioned almost unanimously as the most significant barrier for newcomers to accessing services, including ADR options. Language barriers encompass more than just verbal communication. They also involve the newcomers' literacy skills and their ability to fully comprehend what is being communicated to them.
- **Cultural differences** – Cultural differences and personal experiences can make some newcomers wary of formalized, bureaucratic processes and cause them to distrust public

officials and/or people in positions of authority. Cultural differences can also make newcomers reluctant to accept certain styles of mediation, negotiation, and arbitration.

- **Awareness** – A limited range of easy to comprehend PLEI materials published in a wide variety of first languages serves as a barrier to resolving conflicts based in legalities. Not knowing and fully understanding their legal rights and obligations, in addition to fears of possible legal repercussions, can make newcomers reluctant to access formal ADR services.
- **Finances** – Formal ADR services cost money, albeit typically less than court proceedings, and many newcomers face financial hardships. Serious legal matters can require the advice and assistance of lawyers, who also charge considerable fees.
- **Transportation** – Many recent newcomers cannot afford to own a car and must rely on public transit to access various services. Lack of familiarity with the public transit system or insufficient public transit in suburban areas can make accessing services very difficult.
- **Competing life priorities** – Depending on the perceived severity of a dispute, newcomers may feel that going to work, going to school, and/or caring for their children and/or elders is more important than resolving the dispute.
- **Immigrant relations** – Many newcomers have a tendency to avoid trying to resolve a conflict in order to save face and not escalate a problem. This behaviour is especially common in disputes among members of the same ethnocultural community. Newcomers are particularly disinclined to seek help in resolving disputes with employers, property owners, or anyone else in a position of authority that is of the same ethnocultural group as themselves.
- **Bureaucratic processes** – Many public service agencies lack a holistic understanding of the complexities of immigrant life. Rigid, bureaucratic processes to access a service can serve as a barrier to the service in itself.

## 5.2.1 Overcoming Barriers to Service

Despite the many barriers faced by newcomers to accessing services, including ADR services, the focus-group participants acknowledged some strategies that are effective in overcoming such barriers.

To overcome language barriers and to facilitate navigating complicated, bureaucratic processes, settlement workers provide assistance with translating materials and interpreting oral speech, as well as help with accessing court interpreters to help facilitate court processes. A number of settlement workers mentioned that in particularly exigent circumstances, they have gone beyond their mandate and have translated documents used in formal court proceedings and attended court in order to provide non-legal support to their clients.

The settlement workers strive to build trusting relationships with their clients and try to be exhaustive in informing their clients of all the options that are available to a newcomer to help resolve a particular issue. By fostering a strong knowledge base in the newcomers they serve, the

settlement workers seek to empower the newcomer to make the best decision(s) for resolving conflicts. This empowerment can help newcomers overcome barriers associated with cultural differences, lack of awareness, immigrant relations, and bureaucratic processes.

To help mitigate barriers regarding childcare, some settlement agencies offer free child minding services while the parents interact with the settlement workers.

Two focus group participants reported that outreach work, where settlement workers travel to the newcomer's home to facilitate settlement services, can help overcome barriers associated with newcomers' unwillingness to address disputes. Noticeable negative changes in the home environment of a newcomer can be indicative of underlying problems, such as unresolved disputes.

Settlement workers from the PICS focus group highlighted a program in which Service Canada representatives come to the PICS office once a week to provide information on and facilitate access to the full range of federal government services available through Service Canada. These representatives are fluent in a variety of South Asian first languages and have remote access to Government of Canada databases. Although this example is not especially pertinent to this discussion of ADR services, it does highlight the fact that official services delivered in first languages through a community-based agency are well received. Moreover, this method of first-language service delivery removes language barriers, and since many newcomers are familiar with and know how to get to their relevant settlement agencies, transportation barriers are removed as well.

## **5.2.2 Awareness of Available ADR Services**

According to the focus-group participants, most settlement workers have at least some awareness of the formal mediation, negotiation, advocacy, and arbitration services that are available within B.C. In addition, many settlement workers are aware of some informal or faith-based ADR services available within the ethnocultural communities they serve.

One focus-group participant reported a disinclination to refer clients to informal, cultural community-based ADR services. This was because one of the immigrant clients the settlement worker referred to such a service felt that the process was not sufficiently unbiased and fair.

The settlement workers who participated in the focus group discussions had varying degrees of knowledge about the range of ADR options available in B.C. Some settlement workers had had little or no formal education about available ADR options, whereas other settlement workers had taken formal courses on conflict resolution at the Justice Institute and were very aware of the various ADR styles and options.

Most focus-group participants indicated an appetite for additional training/education from subject-matter experts on a variety of topics, including appropriate dispute resolution options. Some of the participants noted that such education should be offered in person, as they did not feel engaged by online learning courses.

A number of the settlement workers noted that prior to the focus-group discussions they had attended brief training sessions designed to help settlement workers have a better understanding

of relevant legal topics, such as employment standards, tenancy law, family law, and domestic violence.

Such training sessions are currently being provided by the Collaborative Consortium, a pilot project supported by the Ministry of Attorney General and the Ministry of Advanced Education and Labour Market Development with funding from Citizenship and Immigration Canada. The Consortium brings together 12 PLEI organizations and immigrant-serving agencies to design and test a coordinated, innovative model for more effective delivery of PLEI to immigrants in Metro Vancouver (Kathryn Platt, personal communication, March 18, 2010).

Some of the settlement workers who attended the training sessions thought they were informative, useful, and relevant to their work, but that they could have been longer and more in-depth. One settlement worker noted that such training would be an ideal vehicle to not only inform settlement workers about ADR options, but also discuss how ADR options can be used by newcomers to resolve disputes about family matters, employment standards, and tenancy law.

With regard to building awareness of services among members of immigrant communities, the views of the focus-group participants are in line with research findings. One respondent noted that the Internet is not the one and only medium for reaching immigrants. Many newcomers do not have ready access to a computer with a high-speed Internet connection. A number of participants recommended the use of community-based media outlets, such as first-language radio, newspapers and television broadcasts in addition to the Internet to disseminate information, as these are widely consumed by the various ethnocultural communities in Metro Vancouver. Two other Scoping Reviews, titled *Best Practices in the Dissemination of Integral Information to New Immigrants* and *The Internet as Effective Medium for Distribution of Integral Information to New Immigrants*, provide a detailed discussion of disseminating essential information to newcomers through various communication channels.

Participants also reported that ELSA classes are popular with newcomers to B.C. The ELSA classes that discuss Canadian law and the justice system were considered a good way to disseminate information about the different styles of dispute resolution and the various professional ADR options that are available.

Participants also regarded advertisements on public transportation as an effective means of disseminating information to newcomers. However, pamphlets, even when written in an immigrant's first language, were not held in high regard by participants as valuable tools for information dissemination and awareness building.

One focus-group participant commented that adding discussion of basic legal matters, including ADR and different approaches to conflict resolution, to the public school curriculum could also help to build awareness of appropriate dispute resolution options among immigrants. Many immigrant children tend to pass what they learn at school on to their parents.

## **5.3 IMPORTANCE OF ADR SERVICES**

There was broad consensus among, the focus-group participants that professional ADR services that are accessible to newcomers are invaluable alternatives to the court-based dispute resolution process. Going to court can be an extremely daunting and expensive experience. If given the option to avoid court by accessing mediation, negotiation, or arbitration services, the settlement workers participating in the focus-group discussions felt that newcomers would prefer the ADR option.

The key advantages of ADR options relative to litigation in court highlighted by the focus group participants include the following:

- Saving time and money;
- Having a less structured process;
- Attaining more desirable outcomes; and
- Receiving less severe consequences when found to be at fault.

When prompted, focus-group participants reported that certain newcomers would consider using formal ADR processes, such as choosing a mediator from the Mediator Roster Society roster, to help resolve sensitive and serious family matters. An example was provided of a newcomer, who is aware of her rights as a resident of Canada and feels that she would not be treated fairly in an informal dispute resolution process within her community, and so would choose to seek help from a mainstream ADR practitioner.

Some focus-group participants reported anecdotally that they are witnessing an increase in the prevalence of emotional and psychological abuse in the immigrant communities they serve. This psychological abuse is suffered by both males and females at the hands of their spouse and can be the cause of a separation or divorce. If counselling is not effective at bringing about reconciliation, the focus-group participants considered culturally appropriate, formal, professional mediation as a valid alternative to traditional court-based divorce proceedings to finalize a formal separation and divorce.

## **CONCLUSION**

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Overall, the experiences shared by the settlement workers during the focus-group discussions are consistent with the issues discussed in the literature pertaining to the delivery of dispute resolution services to first-generation immigrants. Newcomers to B.C. are extremely diverse. The conflicts and disputes that the newcomers may become involved in are equally diverse. These conflicts are categorized into four distinct typologies developed by LeBaron Duryea and Grundison (1993): familial disputes, institutional disputes, intercultural disputes, and intra-cultural disputes.

Both the research literature and the focus-group discussions indicate that institutional disputes (where a newcomer is in conflict with an organization, employer, or property owner) and familial disputes are most common among recent immigrants to Canada.

When newcomers find themselves in conflict, they commonly tend to ignore the existence of the conflict and hope that it will simply go away. Many newcomers make this choice in an effort to save face, circumvent trouble, or avoid bringing shame to their family. However, if disputes are not addressed, they can escalate and may require outside intervention.

Before a recent immigrant can effectively access an appropriate dispute resolution service, a number of barriers hindering access to such a service may need to be addressed. Common barriers faced by newcomers to Canada in accessing services include, but are not limited to language difficulties (speaking, reading, and writing), cultural differences and perceptions, overly bureaucratic processes, competing life priorities, and financial stresses.

Such barriers can be mitigated by providing ADR services that are delivered by culturally-competent, professional ADR practitioners who can speak the first language(s) of the ethnocultural community they aim to serve. Such ADR services are best equipped to address intra-cultural and familial disputes (i.e. those where disputants speak the same language and have similar cultural values when it comes to reconciliation and resolving disputes). However, institutional disputes, intercultural disputes, and familial disputes that involve strict legal principles may be better resolved by formal, mainstream ADR services or by the courts.

Many newcomers to Canada may wish to access formal ADR services that specialize in serving their ethnocultural community. Some newcomers, however, may feel that using a mainstream service will help to promote their integration into Canadian society.

Professional, formal ADR options, such as mediation or arbitration, are generally preferred by immigrants as an alternative to using the courts. Formal ADR options typically produce resolutions more quickly than the court litigation, and these resolutions are often more acceptable to the disputants. Furthermore, ADR options are less expensive, and more flexible than traditional litigation in court. Nevertheless, since many newcomers are reluctant to allow outside interference in their disputes, using either the courts or formal ADR services are in large part regarded as a last resort.

Newcomers typically become aware of an available service and access the service based on advice and guidance from a trusted relative, friend, or acquaintance within their ethnocultural community. Providers of information to immigrants, such as settlement workers and librarians, are also often trusted acquaintances within the ethnocultural community. Such individuals can help to raise awareness of available programs among community members.

Many settlement workers who participated in the focus-group discussions that have informed this paper reported that they would like to have more access to in-depth training that would allow them to develop their understanding and awareness of available ADR options. Such training programs could cover legal topics (for example, immigration law, tenancy law, employment law, and family law) that are especially relevant to newcomers. Focus-group participants also noted the value of ELSA classes in building newcomers' awareness and understanding of the available ADR options in B.C.

There is a consensus that the range of Internet-based PLEI materials available in the various first languages of immigrants should be increased. However, many newcomers do not have consistent access to a computer with a high-speed Internet connection. Consequently, community-based, culturally specific media channels, such as first-language radio stations, newspapers, and television broadcasts are particularly relevant methods of building immigrants' awareness of culturally specific services. Such media are widely consumed by immigrant communities in Metro Vancouver. (For further information on the dissemination of PLEI using various communication mediums, please refer to the Scoping Review titles *Best Practices in the Dissemination of Integral Information to New Immigrants* and the Scoping Review on *The Internet as Effective Medium for Distribution of Integral Information to New Immigrants*.)

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## WORKS CONSULTED

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- Ahmed, E. (2005). *Promoting inclusivity: Protecting (whose) choice?* Retrieved March 22, 2010, from <http://www.awid.org/eng/Issues-and-Analysis/Library/Promoting-Inclusivity-Protecting-whose-Choice>
- Alberani V., Pietrangeli P. D. C., & Mazza, A. M. R. (1990). The use of grey literature in health sciences: A preliminary survey. *Bulletin of the Medical Library Association* 78(4), 358-363.
- British Columbia Dispute Resolution Practicum Society, Braun, J., & Adams, M. (2008, February). *Family Mediation Practicum Project, Diversity Bursary Project: Needs assessment.*
- British Columbia. Ministry of Advanced Education and Labour Market Development. Labour Market and Immigration Division. (2009). *B.C. immigration trends 2008 highlights: Fact sheet.* Retrieved March 15, 2010, from <http://www.welcomebc.ca/shared/docs/communities/immigrationtrends2008.pdf>
- British Columbia. Ministry of Attorney General. Dispute Resolution Office. (2004, December). *Dispute resolution terminology.* Retrieved March 10, 2010, from <http://www.ag.gov.bc.ca/dro/publications/bulletins/terminology.htm>
- British Columbia. Ministry of Attorney General. Justice Services Branch. (2003, June). *Reaching resolution: A guide to designing public sector dispute resolution systems.* Retrieved March 10, 2010, from <http://www.ag.gov.bc.ca/dro/publications/guides/design.pdf>
- Caidi, N., & Allard, D. (2005, December). Social inclusion of newcomers to Canada: An information problem? *Policy Matters*, (23). Retrieved March 19, 2010, from <http://ceris.metropolis.net/PolicyMatter/2005/PolicyMatters23.pdf>
- Citizenship and Immigration Canada. (2009). *Facts and figures 2008 – immigration overview: Permanent and temporary residents: glossary of terms and concepts.* Retrieved March 11, 2010, from <http://www.cic.gc.ca/english/resources/statistics/facts2008/glossary.asp>
- Claassen, R., & Shands Stoltzfus, R. (1994). Conflict across cultures: Research & training. *Conciliation Quarterly*, 13(3), 9-11. Retrieved March 30, 2010, from <http://us.mcc.org/system/files/3%20Culture%20R'%20Us%20-%20Summer%201994%20.pdf>
- CS/RESORS Consulting Ltd. (2005, February 15). Public Legal Education and Information (PLEI) in British Columbia: Community profile and needs assessment: final report. Retrieved March 24, 2020, from <http://lss.bc.ca/assets/aboutUs/reports/PLEI/pleiReportProfile&Assessment.pdf>

- Currie, A. & Kielf, G. (1994). *Ethnocultural groups & the justice system in Canada: A review of the issues - alternate dispute resolution in a multicultural setting*. Retrieved March 16, 2010, from <http://www.nizkor.org/hweb/orgs/canadian/canada/justice/ethnocultural-groups/ecg-008-00.html>
- Homepage of HealthLink BC. (2010). Retrieved March 25, 2010, from <http://www.healthlinkbc.ca/kbaltindex.asp>
- Homepage of the International Institute of St. Louis. (2009). Retrieved March 28, 2010, from [http://www.iistl.org/community\\_connections.php?idcat=30#mediation](http://www.iistl.org/community_connections.php?idcat=30#mediation)
- Ma, A. & Chi, I. (2005). Utilization and accessibility of social services for Chinese Canadians. *International Social Work*, 48(2), 148-160. Retrieved March 23, 2010, from Sage Publications database.
- Keshavjee, M. M. (2007). *The Ismaili alternative dispute resolution training programmes and the potential for new directions in mediation*. Retrieved July 19, 2010, from [http://www.iis.ac.uk/SiteAssets/pdf/Ismaili%20ADR%20training%20programme\\_logo.pdf](http://www.iis.ac.uk/SiteAssets/pdf/Ismaili%20ADR%20training%20programme_logo.pdf)
- Lebaron, M. (2003, July). Culture and conflict. *Beyond Intractability*. Retrieved March 16, 2010, from [http://www.beyondintractability.org/essay/culture\\_conflict/](http://www.beyondintractability.org/essay/culture_conflict/)
- Lebaron Duryea, M. & Grundison, J. B. (1993). *Conflict and culture: Research in five communities in Vancouver, British Columbia* [Electronic version]. Victoria, B.C: UVic Institute for Dispute Resolution.
- Lennox, J. (2010, March). *Diversity Bursary Project final report*.
- Pappillon, M. (2002, December). Immigration, diversity and social inclusion in Canada's cities. *Canadian Policy Research Networks*. Retrieved March 30, 2010, from <http://www.urbancenter.utoronto.ca/pdfs/home/debates/CPRNImmigration.pdf>
- Peters, S. L. & Voert, M. (2006). Dispute resolution: A comparison between non-western immigrants and native Dutch people; a theoretical-empirical study. *Netherlands Ministry of Justice, research and Documentation Centre*. Retrieved March 31, 2010, from <http://english.wodc.nl/onderzoeksdatabase/voorstudie-geschildelta-allochtonen.aspx>
- Preston, V., Murdie, R., Wedlock, J., Agrawal, S., Anucha, U., D'Addario, S., Logan, J., & Murnaghan, A. M. (2008). *Immigrants and homelessness – At risk in Canada's outer suburbs*. Retrieved March 29, 2010, from <http://ceris.metropolis.net/research-policy/Homelessness/Prestoncangeog08.pdf>
- Sidhu, S.K. (2003). Perspectives on conflict resolutions in South Asian families: Examining the role of family mediation. *Canadian Forum on Civil Justice Clearinghouse*. Retrieved March 17, 2010, from <http://cfcj-fcjc.org/clearinghouse/drpapers/2003-dra/sidhu.pdf>
- Statistics Canada. (2009, March 27). *Population by immigrant status and period of immigration, 2006 counts, for Canada, provinces and territories, and census metropolitan areas and*

*census agglomerations – 20% sample data*. Retrieved March 12, 2010, from <http://www12.statcan.ca/census-recensement/2006/dp-pd/hlt/97-557/T403-eng.cfm?Lang=E&T=403&GH=6&GF=59&G5=0&SC=1&S=0&O=A>

Stringer, D. M. & Lusardo, L. (2001, October). Bridging cultural gaps in mediation. *Dispute Resolution Journal*. Retrieved March 22, 2010, from [http://findarticles.com/p/articles/mi\\_qa3923/is\\_200108/ai\\_n8956646/](http://findarticles.com/p/articles/mi_qa3923/is_200108/ai_n8956646/)

The Urban Futures Institute. (2006). *Diversity in language: Generation status and language spoken at home*. Retrieved March 12, 2010, from <http://www.urbanfutures.com/bythenumbers/2006%20Census-Generations%20Language.pdf>

The Urban Futures Institute, Ramlo, A., Berlin, R., & Baxter, D. (2009, November). *Canada to 2058: Projections of demographic growth & change for Canada and its regions*. Retrieved March 12, 2010, from <http://www.urbanfutures.com/reports/Report%2074.pdf>

Tulandi, M. (2003). Mediator interactions within ethnically diverse westernized cultures. *Canadian Forum on Civil Justice Clearinghouse*. Retrieved March 18, 2010, from <http://cfcj-fcjc.org/clearinghouse/drpapers/2003-dra/tulandi.pdf>

University of British Columbia Library. (2010). *Subject resources: What is grey literature?* Retrieved April 1, 2010, from <http://toby.library.ubc.ca/subjects/subjpage2.cfm?id=878>

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## **APPENDIX – LIST OF ACRONYMS**

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ADR – appropriate dispute resolution

B.C. – British Columbia

BCDRPS – British Columbia Dispute Resolution Practicum Society

CAB – Conciliation and Arbitration Board

ELSA – English language services for adults

MOU – memorandum of understanding

PICS – Progressive Intercultural Community Services Society

PLEI – public legal education and information

U.S. – United States

U.K. – United Kingdom