JUDICIAL DISPUTE RESOLUTION (JDR) IN CANADA: BACK TO THE FUTURE?

Archie Zariski
Professor, Athabasca University
archiez@athabascau.ca
Roots of JDR – “Dispute”

- Anthropology – cultural comparisons
- Conflict theory - peace studies, sociology
- “The Emergence and Transformation of Disputes: Naming, Blaming and Claiming” (Felstiner, Abel & Sarat, 1980)
- Psychology and neuroscience – cognitive biases, mentalizing, affect
Roots of JDR – “Resolution”

- Delegalization/deprofessionalization
- Informalization
- Community justice
- Principled negotiation – *Getting to Yes*
- Mediation
Roots of JDR – “Judicial”

- “Arm twister” or “head knocker”
- Wise advice giver
- Empathetic listener
- Settlement facilitator
- Experienced (trained?) mediator
JDR Today

• Alberta, Nova Scotia – facilitative and directive approaches and “binding JDR”
• Quebec – facilitative judicial mediation
• Ontario – *ad hoc* judicial settlement interventions
JDR – Back to the Future?

• Why?
  – The Rule of Law not only from the top down but also from the bottom up
  – Decreasing access to justice through the courts
  – Challenge of “crowdsourcing justice” – from “fund me” charity to “digilantism”
  – Consensual processes and power imbalances
JDR – Back to the Future?

• How?
  – Make dispute processing more accessible
  – Hybrid processes combining judicial facilitation plus summary determination if necessary (similar to “med-arb”)
  – See “Judicial Mediation in Canada: Towards Accessible Dispute Resolution” *Windsor Yearbook of Access to Justice*, forthcoming
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Thanks!

Questions?

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