Judicial Dispute Resolution: What are the Judges Doing?

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JDR in the Courts – an evolving dynamic

Steps along the way:
• “Hands off”
• Pre-trial conferences
• Optional settlement conferences
• Mandatory mediation or settlement conferences - institutionalization
JDR Research - IRC

- International collaborative research group with scholars from: UK, Hong Kong, Australia, Canada, United States, Netherlands, Romania, Korea
- Reporting in 2012 at an international conference in Hawaii
JDR Research Questions

1. Should judges personally facilitate settlement discussions between parties?
   If no: Why not?
   If yes: Why? How?

2. Has your role in settlement changed in the last five (ten?) years?
4.16(1) The responsibility of the parties to manage their dispute includes good faith participation in one or more of the following dispute resolution processes with respect to all or any part of the action:

(a) a dispute resolution process in the private or government sectors involving an impartial third person;

(b) a Court annexed dispute resolution process;

(c) a judicial dispute resolution process described in rules 4.17 to 4.21 [Judicial Dispute Resolution];

(d) any program or process designated by the Court for the purpose of this rule.
Canada (continued)

Example:

- Alberta Practice Direction
- JDR handbook for lawyers
Institutionalization: Malaysia

Chief Justice’s Practice Direction 2010

... all Judges of the High Court and its Deputy Registrars ... may, at the pre-trial case management stage ... give such directions that the parties facilitate the settlement of the matter before the court by way of mediation.

Mediation may be in the following modes:
(a) Judge-led mediation

If a Judge is able to identify issues arising between the parties that may be amicably resolved, he should highlight those issues to the parties and suggest how those issues may be resolved.
Malaysia (continued)

Example:

• High Court of Sarawak and Sabah mediation program
• Court initiative
• Voluntary
• Judges as mediators
Lessons Learned in Canada (1)

Welcome JDR requires:

• Agreed process
• Common expectations of the judge’s role
• Respectful treatment of parties and counsel
Lessons Learned in Canada (2)

**Effective JDR requires:**

- Assembly of key evidence and documents
- Diligent preparation by counsel and judge
- Meaningful participation by parties and counsel