Judicial Dispute Resolution and its Alternatives in Alberta

Presentation to the Civil Litigation Section North Canadian Bar Association, Alberta Branch
June 21, 2011

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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 – International Research

• International collaborative research group with scholars from: UK, Hong Kong, Australia, Canada, United States, Netherlands, Romania, Korea and Japan

• Reporting in 2012 at an international conference in Hawaii
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.
JDR Resources

• Notice to the Profession (1996)
• Agrios and Agrios, *J DR Handbook for Lawyers* (CBA Alberta website)
J DR Advantages

• Expected
• Economical
• Effective
• Others?
Lessons learned about JDR

**Effective JDR requires:**

- Meaningful participation by parties and counsel
- Diligent preparation by counsel and judge
- Assembly of key evidence and documents?
- Canvassing legal argument?
J DR Variations

- Early J DR
- Interest based J DR – motivations to settle
- Limited issue J DR
- Phased J DR (damages ↔ liability)
- J DR/Arb - binding J DR
- Others?
JDR Alternatives

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

• Private providers – retired judges; non lawyer mediators (AAMS)

• Neutral evaluation – retired judges; senior practitioners

• Others?
JDR Alternatives continued

(b) a Court annexed dispute resolution process;

- Examinations for Discovery + Settlement conferencing
- Discovery + Neutral evaluation
- Others?
JDR Alternatives continued

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

- Settlement Protocol – Edmonton Bar
- “Problem Solving Lawyers Association” – principles & practice
- Neutral evaluation program
- Others?
Other JDR Alternatives

• “Old fashioned” negotiation
• Problem solving negotiation (see Julie Macfarlane *The New Lawyer*)
• Interest based negotiation with parties present
• Trial (Rule 4.16(2)(e) – “a decision by the Court is necessary or desirable”)
• Discontinue or resign
• Summary judgment
• Others?
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