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# JUDGES AS DISPUTE RESOLVERS – LESSONS FROM CANADA

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# Roots of the “Judicial” in Judicial Dispute Resolution (JDR)

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

# JDR in the Common Law World

- United States – Federal judges and magistrates and State judges
- Singapore – designated judge mediators
- Canada – Federal and Provincial judges

# JDR in Canada Today

- **Quebec** – facilitative judicial mediation based on the principle of “participatory justice” at trial and appeal levels

See: Roberge, [The Sense of Access to Justice Following a Settlement Conference](#) (research report)

# JDR in Canada Today

- **Ontario** – *ad hoc* judicial settlement interventions; judicial settlement conferencing as part of pre-trial procedures

See: Ontario Bar Assoc., [A Different 'Day in Court': The Role of the Judiciary in Facilitating Settlements](#)

(task force report)

# JDR in Canada Today

- **Alberta, Nova Scotia** – facilitative and directive approaches as chosen by individual judges and optional “binding JDR”

See: Rooke ACJ, *Improving Excellence: Evaluation of the Judicial Dispute Resolution Program in the Court of Queen’s Bench of Alberta* (thesis)

# Canadian JDR – Lessons Learned

- Expect high **demand**
- **Institutionalize** for quality and consistency
- Provide **administration** and **education**

# Demand for JDR

- JDR must be seen as integral to judicial duties
- Rostering of sufficient judges necessary to accommodate both trials and JDR
- Careful consideration of “rationing” and selection criteria (unrepresented? family law?)



# Institutionalisation

- Judicial support and participation at the highest levels is required
- Provide a well defined procedure with flexibility
- Accommodate represented and unrepresented disputants

# Training and Administration

- Education and training of judges
- Training of support and administrative staff
- Provision of tailored facilities and services (eg. meeting rooms, secure storage of JDR information)
- Outreach to litigants

# Value Added by JDR

- Substantive justice – recourse for the disempowered
  - preventing unfair, unconscionable or anti-social resolutions
- Procedural justice – *Injury* becomes *injustice* when a claimant is ignored or treated with disdain or contempt
  - reaffirming the dignity and worth of disputants
- Transparency – public reliance on outcomes - see [Welsh 2019](#)

# Value Subtracted by JDR

- Privacy
- Confidentiality
- Creativity

## Future of JDR?

- JDR plus determination if necessary: see Zariski, “[Judicial Mediation in Canada: Towards Accessible Dispute Resolution](#)” *Windsor Yearbook of Access to Justice*, 2018

# JDR – Back to the Future?

- **Why?**

- Ensure the Rule of Law not only from the “top down” but also from the “bottom up”
- Counter decreasing access to justice through the courts
- Meet the challenge of “crowdsourcing” justice – from charity to “digilantism”
- Avoid the weakness of fully consensual processes in dealing with power imbalances

# JDR – Back to the Future?

- **How?**
  - Make dispute processing more accessible through the courts
  - Provide hybrid processes combining judicial facilitation plus summary determination if necessary (similar to “med-arb”)
  - Encourage judges to bring “justice to the dispute resolution table”



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**Thanks!**

**Questions?**

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