Judicial Dispute Resolution in Canada

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History

• “Hands off”
• Pre-trial conferences
• Settlement conferences
• Mandatory conferences - institutionalization
Institutionalization (1)

Example: Alberta Rules of Court 2010

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.
Institutionalization (2)

Examples:

• Rules 4.17 to 4.21
• Alberta Practice Direction
JDR Practice

Handbook by Agrios J.
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
A Judge’s Perspective

Justice Robert A. Graesser
Court of Queen’s Bench of Alberta
Chair, National Judicial Institute
Judicial Settlement Committee
(video)
JDR Training in Canada (1)

National Judicial Institute course:
- 3 days
- academic, practitioner, and judicial faculty
- lectures, discussion, role plays
JDR Training in Canada (2)

National Judicial Institute course-
learning objectives:
• appreciation of the history of settlement conferencing;
• understanding of negotiation and conflict theory and of our attitudes to conflict;
• appreciation of the role of the judge in judicial settlement conferencing;
• ability to create an adaptable framework and techniques for judicial settlement conferencing;
• enhanced skills in negotiation and communication.
JDR Training in Canada (3)

National Judicial Institute course-topics:

• understanding conflict and negotiation
• what is “success” in settlement conferencing?
• issues in conferencing – role of the judge, judicial ethics, process constraints
• suggested process – 5 steps
• communication skills – listening, reformulating, articulating
• ethical limits
JDR Research

• 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 Hawai‘i
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?
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Thank you!

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