

Managing Litigation Through Dispute Resolution



David G. Gould, LL.B., Q.C., C.Med.

Alberta's Rules

4.1 The parties are responsible for managing their dispute and for planning its resolution in a timely and cost effective way

Division 3 Dispute Resolution by Agreement

Prerequisite is “good faith participation”



What Do Judges Expect?

“The legal literature states that the implicit mandate of JDR’s is to resolve the 5-10% of cases that will not resolve without a trial.

Private Mediation should be the process of choice of the 90-95% of the cases that historically resolve without trial.”

The Honourable Associate Chief Justice John D. Rooke and
Sandra L. Schulz Q.C. Case Management Counsel
Court of Queens’ Bench

- *In 2010 approximately 45,000 claims were filed in the Court of Queen’s Bench*
- *JDR is a “rights based resolution” inside the court process*
- *Private mediation is “interest based” resolution outside the court process*
- *The bar has been set and it will be difficult to avoid Rule 4.16*

Opportunities

- ✓ Take more control by designing the best DR fit for your unique case and clients
- ✓ Design the DR options with input from all parties
- ✓ Shift the process from something that is done to you and your client to something that is done **with you and your client**



Dispute Resolution
Design


DILLON
CONSULTING

It's Not All About Mediation...

✓ Private Sector Dispute Resolution:



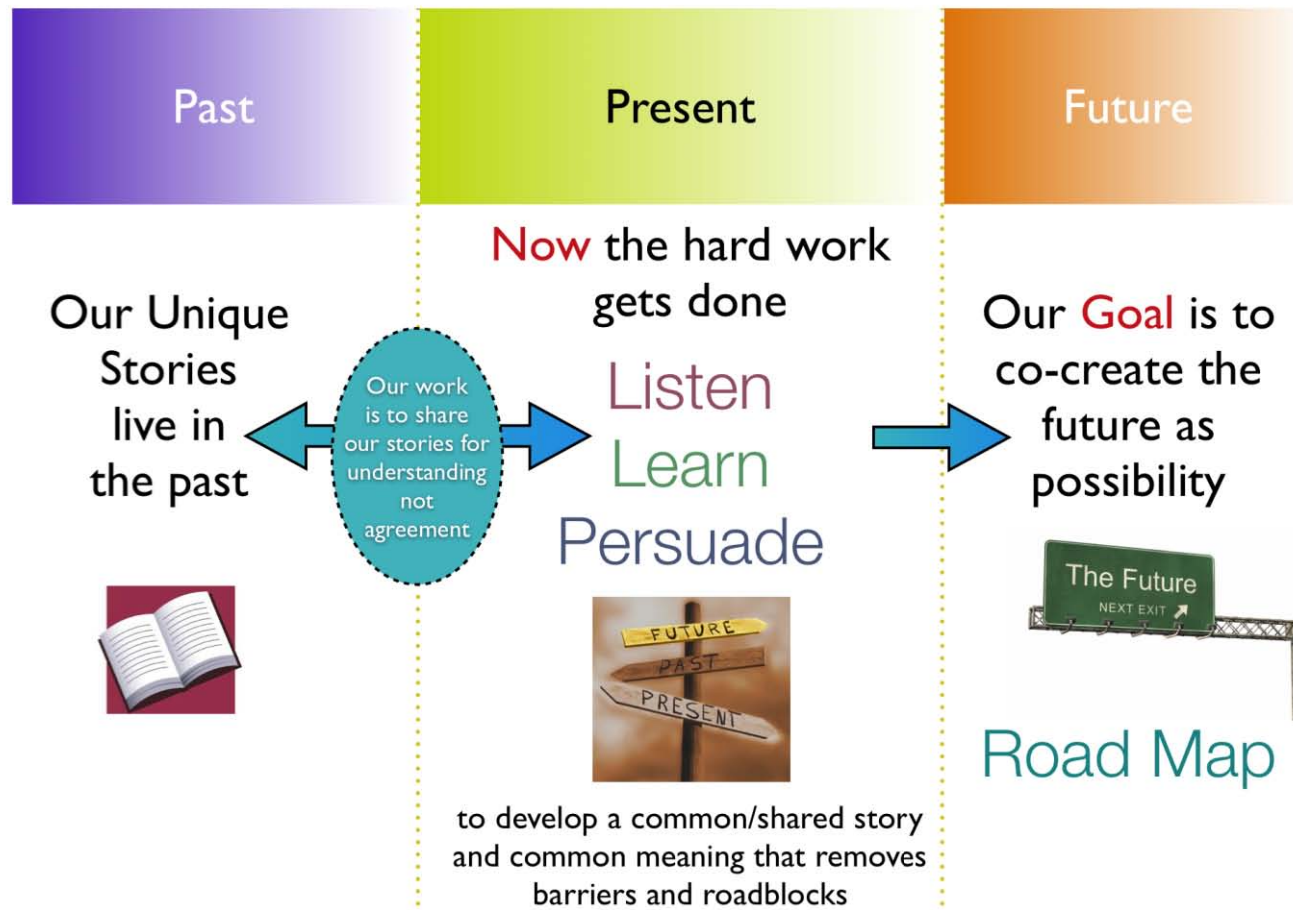
✓ Take Control

✓ Design Together



A Context For Conflict

Mediation Made Simple



Mediation Made Simple

Past

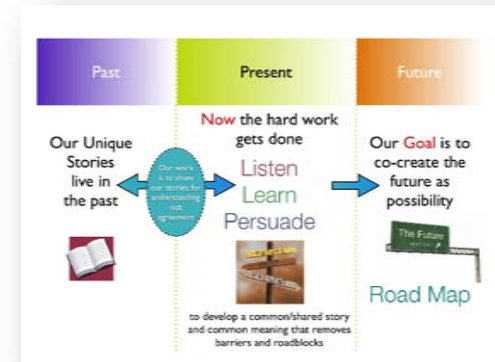
- Conflict exists in our unique stories and they include what we think we know about the other party's story
- We are all "right" about our stories

Present

- We need to have the right people in the room with the right information, willing and prepared to go to work
- We have to have the parties buy-in and commit to the Mediation process
- We have to have the right balance between the facilitation of good communication (sharing stories) and appropriate evaluation to move the process along

Future

- Dispute Resolution is successful when the parties are able to generate options for a new future as possibility that are real and compelling enough that the parties let go of their stories of the past and engage in a new future



What Are the Roadblocks and Barriers to the Use of Private Dispute Resolution?

Clients want to hear it from a judge

Other lawyers express: too soon, not ready, more litigation needed

Clients don't understand mediation & other forms of DR

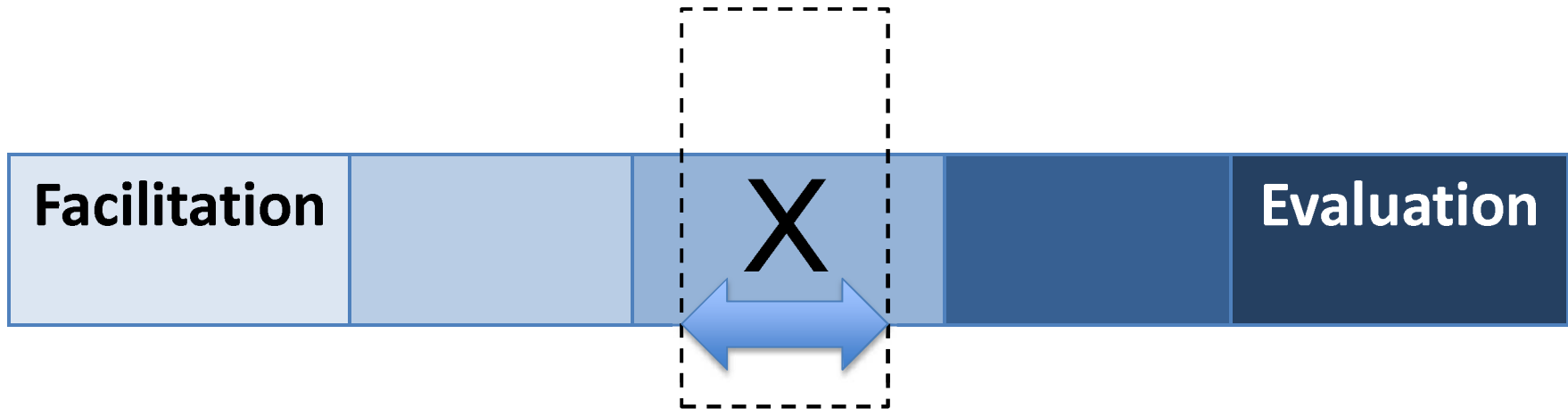
Other lawyers don't agree with your proposed process

Clients don't know how to participate

Other lawyers: Perceive a need for a judge

Mediator Selection
"If you like Mediator X, I won't"

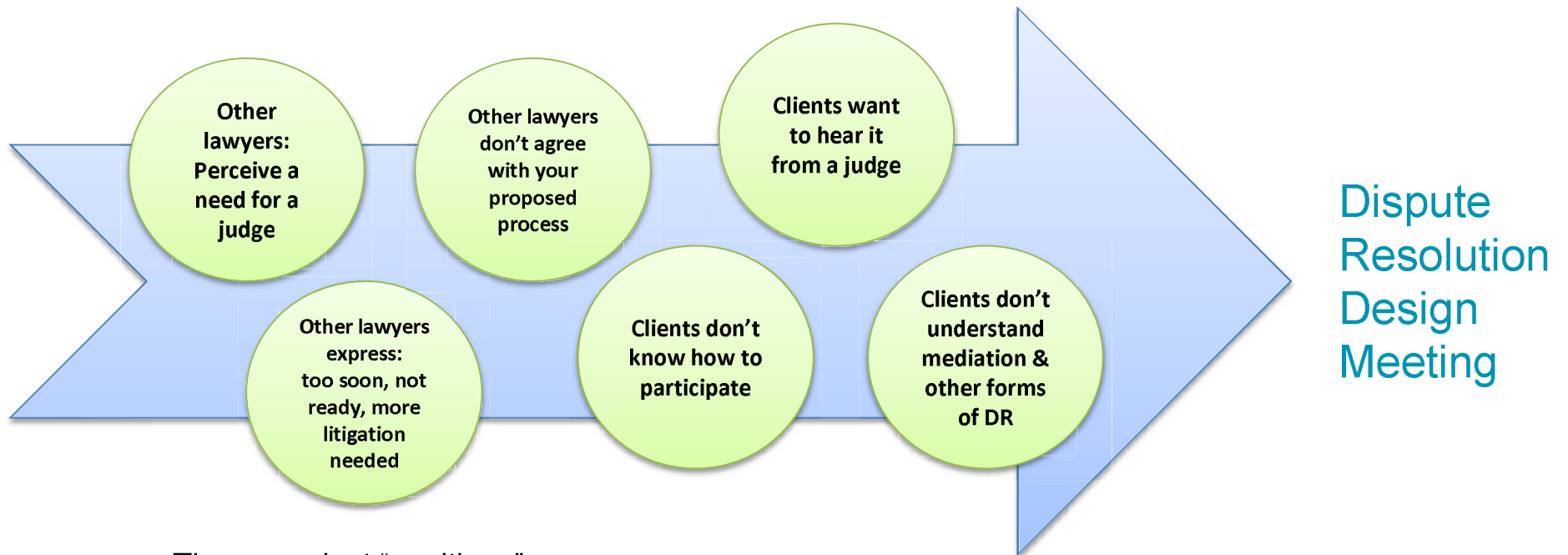
Selecting Your Mediation



Where does your case need to be on the mediation spectrum?

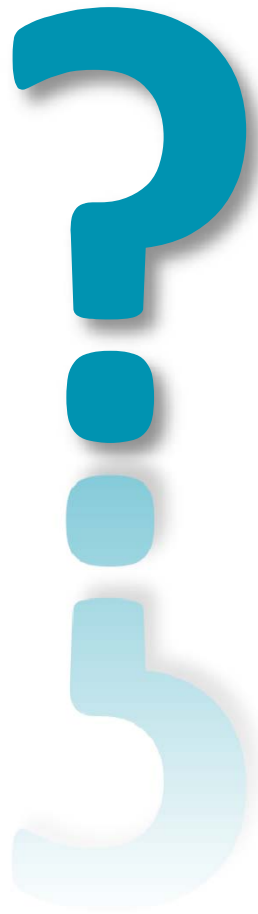
DR Design with the Other Side(s)

Removing the Roadblocks and Barriers:



- These are just “positions”
- Solutions can be negotiated
- You can co-create the “right” DR process for your unique case

Questions



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