Managing Litigation Through Dispute Resolution

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.”

- 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
It’s Not All About Mediation...

✓ Private Sector Dispute Resolution:
  - Facilitated Negotiations
  - Neutral evaluators
  - Facilitative to evaluative mediation
  - Med Arb
  - Arbitration

✓ Take Control
✓ Design Together
A Context For Conflict
Mediation Made Simple

Past

Present

Future

Our Unique Stories live in the past

Now the hard work gets done

Listen

Learn

Persuade

Our Goal is to co-create the future as possibility

Road Map

to develop a common/shared story and common meaning that removes barriers and roadblocks
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

Facilitation  

Evaluation

Where does your case need to be on the mediation spectrum?
DR Design with the Other Side(s)

Removing the Roadblocks and Barriers:

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- Other lawyers don’t agree with your proposed process
- Clients want to hear it from a judge
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- Clients don’t understand mediation & other forms of DR

- 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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