COURTS PROPOSE MANDATORY
DISPUTE RESOLUTION BEFORE TRIAL

By Nabeel Peermohamed and Drew Wilson, Brownlee LLP

The Alberta Court of Queen's Bench is proposing to reintroduce the requirement that parties attempt Alternative Dispute Resolution before a trial is scheduled. This proposal is an attempt to promote resolution and reduce the wait for civil trials which currently take three to four years to schedule.

Under former Chief Justice Neil Wittmann's leadership, the requirement for ADR (either Mediation or Judicial Dispute Resolution) before proceeding to trial was suspended in 2013. This requirement was suspended in order to expedite access to justice and trial dates "until such time as the judicial complement of the Court and other resources permit reinstatement."

The suspension in 2013 was largely due to the unprecedented demand on the court system for JDRs which far exceeded available judicial resources. Many litigants could not obtain a timely JDR date and the litigation process was slowed down even further.

It appears now, in the aftermath of *R. v. Jordan* (the criminal case imposing time deadlines on when matters need to go to trial) the Courts are now restricting access to trial dates to those matters that truly require a trial to resolve the disputes between the parties. Those matters that can be resolved through ADR should be.

The Court's proposal may result in shorter wait times for civil trial dates. Most matters where liability is not in issue are generally resolved through ADR before the parties schedule a trial. Therefore, it appears the proposal is positive. We also note the proposal does not restrict Summary Judgment/Summary Dismissal Applications or Summary Trials. Those processes are still powerful mechanisms to resolve disputes where liability is at issue and we continue to use those mechanisms regularly.

However, if the requirement for ADR before trial is reintroduced, our defence strategy may change. First, the expense of private mediation will have to be incurred as a defence cost. Second, if the parties know they will be forced to proceed to mediation as part of the litigation process, there will likely be less effort spent on informal settlement discussions. Defendants will be cautioned not to make their best offer prior to mediation as the mere presence at mediation implies a willingness to continue settlement negotiations.

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