

ALBERTA LAW REFORM INSTITUTE

Alberta Rules of Court Focus Group Edmonton & Calgary Venues Final Report

March 3, 2003

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TABLE OF CONTENTS

1.0	STUDY BACKGROUND.....	1
1.1	PROJECT OVERVIEW	1
1.2	METHODOLOGY	1
2.0	SUMMARY OF FINDINGS.....	3
2.1	PROCEDURE IN THE COURT.....	3
2.1.1	<i>Nature of Experience with the Civil Court Process.....</i>	<i>3</i>
2.1.2	<i>Dissatisfaction with Various Features of Court Procedures.....</i>	<i>4</i>
2.1.3	<i>Difficulties Understanding the Process</i>	<i>5</i>
2.1.4	<i>Time Required to Complete Procedures.....</i>	<i>6</i>
2.1.5	<i>Cost of Procedures.....</i>	<i>6</i>
2.1.6	<i>Areas of Satisfaction</i>	<i>7</i>
2.2	ALTERNATIVE DISPUTE RESOLUTION	8
2.2.1	<i>Opinion of Alternative Dispute Resolution.....</i>	<i>9</i>
2.2.2	<i>Mandatory or Voluntary Nature of ADR</i>	<i>10</i>
2.3	SELF REPRESENTED PARTIES	10
2.4	THE RULES OF COURT	11
2.5	RESPONDENT INVOLVEMENT IN THE CIVIL COURTS	12
2.6	RIGHT TO APPEAL.....	13
2.7	ADDITIONAL COMMENTS.....	13

Appendix A – Recruitment Questionnaire

Appendix B – Moderator’s Guide

1.0 STUDY BACKGROUND

1.1 Project Overview

The Alberta Rules of Court (the Rules) govern practice and procedure in the Alberta Court of Queen's Bench and the Alberta Court of Appeal. The Rules also apply to the Provincial Court of Alberta when no other practice or procedure is applicable. While subject to an on-going process of amendment, the Rules have not been comprehensively revised since 1968. Consequently, some of the Rules are out of date, the language legalistic and the practice overly complex.

The Alberta Rules of Court Project is a 3-year project that will undertake a major review of the Rules with the purpose of recommending a new set of Rules which address the needs of the users of the civil courts. The objectives of the project are to:

1. Make the Rules clearer, more effective and user-friendly.
2. To promote fairness, accessibility, timeliness and cost effectiveness of practice and procedure in civil actions.

As part of this comprehensive review, it was important to gain input from both stakeholders and the broader public. Consequently, the Alberta Law Reform Institute (ALRI) commissioned Banister Research & Consulting Inc. to report on the findings of a public consultation paper and questionnaire distributed to the public. In addition, two focus group sessions were held (one in Edmonton and one in Calgary) with interested survey respondents to explore, in more depth, results from the Rules Project survey. This report summarizes the findings from the focus group session.

1.2 Methodology

One focus group session was held in Edmonton and another in Calgary. The Edmonton focus group discussion was held on November 26, 2002 while the Calgary session took place on February 1, 2003. Both sessions were held at a professional focus group facility in their respective cities. A total of twenty individuals participated in the focus group

discussions; eleven from the Edmonton session and nine from the Calgary session. A copy of the participant recruitment questionnaire is contained in Appendix A.

Discussions were based on a moderator's guide developed by Banister Research in consultation with the Alberta Law Reform Institute. A copy of the moderator's guide is contained in Appendix B. Each focus group session was audio taped (and video taped in Calgary) and representatives from the Alberta Law Reform Institute and the Canadian Forum on Civil Justice were in attendance seated in the observation room behind a one-way mirror.

Readers of this report should be **cautioned** as to the interpretation of results obtained from the focus group process. Focus group research provides qualitative data and while valuable insights were gained through this process, the results cannot be considered statistically representative.

2.0 SUMMARY OF FINDINGS

Seven major topic areas were discussed in the focus group session, as follows:

- Procedure in the Court
- Alternative Dispute Resolution
- Self Represented Parties
- The Rules of Court
- Respondents Involvement in the Civil Courts
- The Appeal Process
- Other Comments

The following section provides a summary of the key findings for each of the topic areas under investigation.

2.1 Procedure in the Court

As background information for the discussion, it was explained to participants that there are three stages to civil actions in the Court of Queen's Bench, as follows:

1. the filing and serving of the pleadings, which are the formal written claims and defenses used to start and defend a lawsuit;
2. the discovery process, where each side in a lawsuit must provide the other party with access to all documents relevant to the lawsuit; and
3. the trial process, which is a fundamental part of the civil justice system and must be available to appropriate cases.

A number of questions were then asked of participants regarding procedures in the court.

2.1.1 Nature of Experience with the Civil Court Process

Participants shared the nature of their experience with the civil court process. Of the twenty participants, fifteen had multiple experiences as a party in the civil court system,

three had one experience as a party and two had no personal experience, but rather had been observers.

2.1.2 Dissatisfaction with Various Features of Court Procedures

Participants were asked which features of the court procedures they were dissatisfied with. A long and varied list of responses was articulated. The most common responses were as follows:

The complexity of the language and process used in the courts.

The high costs associated with the court system (court filing fees, legal fees) that put legal recourse out of the reach of the average citizen.

The lack of direction and assistance provided to self-represented parties (in general, by the clerks of the court).

The formal and bureaucratic nature of the court system.

The lengthy and complicated filing procedures.

The adversarial nature of the Court of Queens Bench.

The disdain by judges and lawyers towards self-represented parties.

Judges in general (not listening, using their position of power to their own advantage).

Lawyers in general (using their professional status to their advantage over self-represented parties, lack of care and attention to individual cases).

The lack of accountability of lawyers and judges for the decisions that are made.

Not having any solid rules upon which decisions are made (common law, statutory law, case law all are used by judges to decide a case).

The filing process is overly complex and difficult to follow for the average citizen.

The length of time it takes to resolve cases.

Having children in family court - there should be another avenue for them, whether that be in-camera or private meetings with the judge and lawyers.

All the features of the court system.

"The court system is not intended for the layperson."



"There is no justice system for Joe Public."

"I am completely fed up with how cumbersome they have made the filing for the average person."

"It seems like it is all a game being played out in front of a judge."

"There is no equality or fairness, there is no equity or value in the court system."

"There is a lack of accountability in sentencing in the civil courts - it is adversarial rather than remedial."

"When people get into the courts, many feel that they have been treated like second class citizens."

"There are a ton of roadblocks in the civil courts."

"Lawyers and judges do not like lay people in the court."

"They have untrained staff that are unwilling to serve their primary client...the public."

"Compared to criminal court, civil court is more like a whim."

"As a layperson, you try to follow the rules, but you hit wall after wall after wall."

While there was much agreement between the Edmonton and Calgary regarding dissatisfaction with the court system, Calgary participants focused on the inadequacy of training and service provided by court clerks. Edmonton respondents were more focused on the disrespect judges and lawyers displayed towards self-representing parties.

2.1.3 Difficulties Understanding the Process

Participants were asked if they have had difficulties understanding the court process. The majority of respondents felt that the court process is not meant for laypersons and that it is too complex and legalistic. Several participants commented that there is a need for a consistent set of rules or guidelines for individuals not familiar with the court system. Participants mentioned that a kit or manual that interpreted the legalistic language used would be beneficial to all parties involved in the court system. One participant had very positive experiences with the court system, although he did not self-represent himself, but rather had a team of legal counsel. Other comments were that the court process is too slow and there is no respect by lawyers or judges for self-represented parties.

"There is no process - there needs to be some sort of logical order to be considered a process."

"Self-representation is our right - judges and lawyers do not respect that."



"The process is not meant for lay people."

"Our experiences have been very positive with the court system- we are fortunate to have a team of very fine legal counsel."

Both Calgary and Edmonton groups were in agreement regarding the complexity of the courts and the difficulty the average citizen has understanding the process. Participants from both groups mentioned the need for a consistent and simplified set of rules.

2.1.4 Time Required to Complete Procedures

The majority of participants felt that too much time was required to complete court procedures. In line with this, many felt that the amount of paperwork and the detail required was prohibitive; that self-represented cases often took more time than if a lawyer was involved and that court procedures have become overly complex. Participants also mentioned that court procedures were drawn out unnecessarily as a result of lawyer-induced delays. One respondent felt that the time required was reasonable, although he reiterated that he had an excellent team of legal counsel. Another respondent had positive comments about the time required to complete a case in small claims court.

"Procedures take a very long time and cost a lot of money - you could be bankrupt by the time your case is complete."

"By dragging my divorce out for three years, it has killed my family and forced me into bankruptcy."

"When you hire a lawyer you expect everything to be done in a timely manner, but this doesn't always happen."

Calgary participants also mentioned the amount of time wasted by not being able to check online or over the phone if a Statement of Defense had been properly filed. Edmonton participants mentioned the additional time required for self-represented cases.

2.1.5 Cost of Procedures

The majority of participants felt the cost of procedures is too high. They also agreed that lawyer's legal fees are too expensive. Comments centered around the cost of filing, the



need to defer all costs until the judgment is given, the fact that the longer a case takes, the more money it costs and the inequities of one side receiving lawyer-client costs when very little is given to self-represented parties. Participants also noted that legal recourse was often out of the hands of the average citizen as they are not eligible for Legal Aide nor do they have the wealth necessary to retain adequate legal counsel. One participant indicated that the cost of filing and retaining a lawyer was often greater than the award being sought.

"The cost is too high for the average citizen."

"Justice has become a rich person's game."

"The very poor can get legal coverage or representation easier than the average guy."

"There is a justice system only for those who can afford it."

"The cost is horrendous - just preposterous."

"The system should have a timeline for how much time a case should take. The longer it goes the more money it costs."

Generally, Edmonton and Calgary respondents were in agreement as both groups felt that the costs associated with the legal process were prohibitive for the average citizen. However, Calgary participants also commented on the increasing cost of filing fees and the costs that are associated with delays and setbacks as a result of the complexity of the court system.

2.1.6 Areas of Satisfaction

When asked which areas of the court procedures they were satisfied with, participants provided a number of responses. The most frequent comment was the informality of the pre-trial and mediation process, which allowed for a discussion of issues in a less structured environment rather than presenting one's case before a judge. Participants were also satisfied with the availability and reliability of transcripts, the usefulness of Alternative Dispute Resolution (ADR) and mediation, the availability of legal aid for family court matters and the efficiency of the provincial court over the Queen's Bench court. Two participants mentioned that they were satisfied with the entire process particularly because the judge assigned to their case was so professional and understanding. Another

participant, though satisfied with the process as a whole, felt that it could be further improved if the legal loopholes that tie up the system were addressed and corrected. One participant commented that judges were much more open to self-representation now than they had been twenty years ago, and another participant was satisfied with his experience once he stopped self-representing himself and hired a lawyer. The interlocutory process was also mentioned by a participant as being an effective and efficient process. Another participant was not satisfied with any aspect of the court system.

"Mediation is very positive."

"There is more satisfaction from having disputes resolved through a mediation process as opposed to going before a judge or through the strict courts."

"The availability of transcripts and their reliability is very good."

"I was really satisfied...extremely satisfied with the process of the trial and how the justice himself handled the whole case."

"Anytime you can avoid the system by doing things like that (ADR), you streamline the system itself...I think it's a great idea."

"A lot of these procedures are in place to create safeguards against difficult parties and people who are trying to get a result sometimes don't see the value in that."

"There is no satisfaction at the end of the day when you have been dragged through the court system."

Both Edmonton and Calgary participants strongly supported mediation as an alternative to a full court trial. Both groups agreed that the more informal, less adversarial nature of mediation was a positive option.

2.2 Alternative Dispute Resolution

As background information for the discussion, it was explained to participants that Alternative Dispute Resolution (ADR) refers to ways of resolving a dispute other than bringing it before a judge to make a binding decision. Also, that mediation and early neutral evaluation are among the ADR techniques that are commonly practiced in Alberta. Mediation was described as a process where a neutral third person, called a mediator, helps the opposing parties discuss and try to resolve the dispute. Early neutral evaluation was described as a process where a lawsuit is referred to a senior lawyer or a judge,

although not the trial judge, who assesses each side's strengths and weaknesses and provides an evaluation of the likely outcome at trial.

2.2.1 Opinion of Alternative Dispute Resolution

The majority of participants expressed positive opinions about ADR. Specifically, participants felt that it provided a less adversarial chance to resolve a case before going to trial, was a less costly alternative and provided a more flexible and less formal avenue for discussion. Participants felt that the option of mediation was not communicated very well to the public, and that many of them had not been offered the choice before going to trial. It was also felt that the current system does not have the capacity, nor the qualified staff, to provide mediation services to all parties and that there is a need to train additional mediators. Participants also mentioned a number of caveats to mediation that would further improve the process such as ensuring that decisions are binding and enforceable. Also suggested was leniency towards parties attempting to settle before court and stiffer penalties for those trying to tie up the court system. Completing a portion of a legal case through mediation and taking what cannot be resolved to trial was also considered a viable option. A negative observation was that if a reasonable solution is not reached through ADR, much valuable time would have been wasted in the process.

"There is no educational process out there for people to know what the mediation process is."

"It sounds like a real good common sense look at the problem with two people who are going to realize that they do or do not have a chance [at trial]."

"Mediation is a very attractive choice - people must be made aware of it."

"Courtrooms cost \$2000 per hour, mediation does not cost that much."

"There should be an evaluation of each side to see if mediation will work."

Edmonton participants had a greater focus on the reduced time and costs involved with ADR as well as the informal nature of the mediation process. Calgary participants focused more on the ability of ADR to filter out frivolous cases. Calgary participants also were satisfied that ADR provides guidance to parties regarding whether or not to pursue their case further.

2.2.2 Mandatory or Voluntary Nature of ADR

Nine out of twenty participants felt that ADR should be mandatory in all court cases. Reasons given included the opportunity for parties to settle before going to trial, the reduced time and cost and the flexibility and informality in the ADR process. Participants who did not feel it should be mandatory felt that all parties must agree voluntarily to the process for it to be effective. Also, many participants felt there should be a process in place to screen for the appropriateness of ADR prior to sending a case to trial.

"Mediation should be mandatory - if it does not work, then go to trial."

"Mediation should be mandated before each civil action."

"I don't want to go as strong as saying required, but I would strongly encourage it."

"(Mandatory ADR) is like putting two kids in a room and telling them to be best friends."

"There is a lot of abuse of the system and this might be one way of clearing it out."

Although the majority of Calgary participants did not feel that ADR should be mandatory, many felt that it should be strongly encouraged. Interestingly, the majority of Edmonton participants initially felt that the ADR process should be mandatory even though not everyone had taken part in it first-hand. As the discussion progressed, though, many changed their opinion of ADR being mandatory to ADR simply being a "logical first step" in the court process and there being certain exceptions where ADR should not be used at all.

2.3 Self Represented Parties

Participants felt the most significant challenge to self-representation, is understanding the Rules of Court and the process required to properly represent oneself. Suggestions to assist self-representing parties included the development of a citizens kit for civil and criminal law (a booklet that would summarize the Rules of Court), a website with all required information, a free help desk on the second

floor of the court house, and a telephone help line. Also mentioned was the disdain held by judges towards self-represented parties.

"We need someone to walk us through the process. The process should be simplified for the layperson."

"We need a booklet that will summarize the Rules of Court."

"When they give you information why can't they write it in plain English?"

"If a boundary exists where you always need a lawyer to interpret what is being thrown at you, and you can't afford that lawyer, then there is no justice."

The Calgary group discussed the possible use of lawyers or other skilled professionals to quickly review court-related documents and materials before a self-represented party goes to court. It was argued that the cost for one hour of the lawyer's time would be nominal compared to the costs to the court system incurred by individuals inadequately prepared for the trial process.

2.4 The Rules of Court

Participants offered several comments on the Rules of Court, as follows:

The Rules of Court are not user-friendly and should be written from a layperson's perspective.

The Rules of Court should reflect the updates to the Bill of Rights and the Constitution.

The Rules of Court need to be more consistent and more clearly communicated.

The Charter of Rights and the Rules of Evidence need to be reviewed.

The Rules of Court laypersons' handbook should be modeled after the University of Alberta Student Legal Services Lay Handbook.

There is a need for more clarification on how to present evidence.

It would be beneficial to have two types of courtrooms - one for self-representing parties and another for parties with legal counsel.

There is a need for stronger and more consistent definition of time frames involved in the court process.

"There are an awful lot of rules and for the average person half of them are extremely difficult to understand and the other half are hard to follow through on."

"The Rules of Court are not user-friendly and should be written for the common person."

"Make things simpler and in laypersons' terms and language."

"Have two courtrooms - if both parties are representing themselves it makes a fairer playing field."

"I would like to see law and justice go back to a more natural level and be more accessible."

"If you changed the wording of the rules, you may be in danger of making them too ambiguous."

Both the Edmonton and Calgary groups were in agreement about the complexity of the language used to define the Rules of Court and felt that there was a need for simplification. Calgary participants were interested in changes to the Rules of Court to provide more consistent timelines for various court procedures. Edmonton participants mentioned the need to review the rules involving evidence.

2.5 Respondent Involvement in the Civil Courts

Participants felt that experiences in civil court were different depending on the type of case, such as family cases versus criminal cases. Specifically, it was felt that civil court is very unstructured and there are biases which come into play (e.g. class, gender, religion). Differences were also experienced depending on the stage of the civil action, with most frustrations felt at judgment time. In terms of the level of court, participants felt that the higher the court (e.g. Court of Queen's Bench), the greater the disdain by lawyers and judges for self-represented parties.

"Civil court is totally unstructured - it can go in either direction - it does not matter what the case law is."

"Judgment is where the frustration lies."

"The lower the court the easier it is."



Both Edmonton and Calgary groups mentioned the contempt of judges towards self-represented parties. It is important to note that the Calgary group spent little time discussing this subject.

2.6 Right to Appeal

Participants were asked if there should be a right to appeal in every case. Participants were split on the notion of appeals. While many participants felt that there should not be a right to appeal in every case, others felt that it was the individual's right to seek an appeal. Participants that felt there should not be a right to appeal every case felt that the right should exist only if a mistake of law or fact has been made or if a set of criteria for appealing has been satisfied.

"It is a waste of time to appeal if there is no chance of winning."

"There must be some real basis, some valid reason for appealing."

"It is an element of natural justice."

"I think appeals should be held only on merit of law and if there is a true technical aspect of breach in the law and it requires an appeal."

"You should always have the right to appeal if your lawyer has made a mistake of law or fact."

Respondents from each city were divergent in their opinion of appeals. The majority of Edmonton participants felt there shouldn't be the right to appeal in every case, while the majority of Calgary participants felt there should be the right.

2.7 Additional Comments

Additional comments provided by participants included the need for careful thought on any technologies that are implemented in the courtroom. While some participants felt that technologies that facilitated filing procedures were of benefit, most were hesitant to endorse technologies that removed the human element from the trial process. It was also mentioned that costs awarded in a civil case should accurately reflect the costs that have been incurred (e.g. lost wages, postage, mileage).

"I believe that each and every individual should have the right and the privilege to stand there and face their accuser."

"If you put a computer between yourself and the law you have to be careful, as the computer cannot evaluate the human condition."

The Calgary group also noted the accountability of lawyers, particularly when billing their clients. Participants felt it was critical that the public be aware of the right to tax an account if there was a discrepancy in the bill.



Appendix A

Recruitment Questionnaire



Alberta Law Reform Focus Groups Screening Questionnaire

Hello, my name is _____. I am calling from Banister Research & Consulting Inc., a management consulting firm in Edmonton. I am calling on behalf of the Alberta Law Reform Institute to invite you to attend a focus group to discuss the procedures in civil actions in the Court of Queen's Bench.

Earlier in the year, you had filled out a self-completed survey regarding these issues and indicated in the survey that you would be willing to attend a focus group session. We have now picked a date for the session and would like to confirm your attendance.

Is this a convenient time for you?

IF NECESSARY, ARRANGE CALL BACK: DAY _____ TIME _____

The purpose of the discussion will be to obtain more insight into the questions asked in the survey. There will not be any sales or promotions of any kind associated with our research. As part of our appreciation for your input, we will provide you with a \$40 honorarium to cover your cost of attending the session.

The session will last about two hours and is scheduled for Tuesday, November 26 at 6:00 pm.

Would you be available to attend the discussion?

1. Yes
2. No → **THANK AND END INTERVIEW**

If yes, the discussion is being held at:

Criterion Research, #101,. 10155 - 114 Street Edmonton

11. I would like to get your mailing address and the Law Reform Institute will send you a letter confirming your attendance. We will also call you the night before the session to remind you of the time and place.

NAME: _____

MAILING ADDRESS: _____

POSTAL CODE: _____

HOME PHONE: _____

WORK PHONE: _____ FAX: _____

If for some reason your plans change and you are unable to attend, please call Linda Banister at 451-4444, so that we can find a suitable replacement.

Thank you very much. Your help is greatly appreciated.

Appendix B
Moderator's Guide

Alberta Law Reform Institute

Alberta Rules of Court Project

Final Moderator's Guide

November 20, 2002

1. INTRODUCTION (10 minutes)

Thanks for coming. Introduce Banister Research and myself.

State purpose of discussion: To talk about possible changes to the Alberta Rules of Court.

The Rules of Court govern practice and procedure in civil actions in the Court of Queen's Bench and the Court of Appeal (and the Provincial Court when no other practice or procedure is applicable). A civil action is any lawsuit that is not a criminal action (examples are claims for debt, damages arising from a motor vehicle accident, family law proceedings).

The Alberta Law Reform Institute is undertaking the Alberta Rules of Court Project. This 3 year project will undertake a major review of the rules. While subject to ongoing amendments, the Rules have not been comprehensively revised since 1968.

The overall purpose of the Rules Project is to provide recommendations for a new set of Rules by 2004. The objectives of the project are to:

Make the rules clearer, more effective and more user-friendly.

Promote fairness, accessibility, timeliness and cost effectiveness of practice and procedure in civil actions.

This focus group will explore, in more depth, the results from the Rules Project survey completed earlier this year.

Explain process:

- Informal discussion.
- No right or wrong answers.
- Consensus not required.
- Seeking your honest viewpoints.
- Explain audio recording and transcribing.
- Assure that information will be used in an aggregated form for internal purposes only.
- Explain that there are observers behind the glass and that they are there only to listen and observe.
- Explain that if there is insufficient time to discuss all topics, there will be another opportunity with a representative of the Canadian Forum on Civil Justice, who would be pleased to talk to do a follow-up interview. Contact information is included in the honorarium envelope.
- Ensure that all participants have received their honorariums.

Respondent introduction:

- First name.
- How long have you lived in the City of Edmonton or surrounding community?

1. DISCUSSION (105 minutes)

1. Procedure in the Court

Background:

There are three stages to civil actions in the Court of Queen's Bench, including the following:

4. the filing and serving of the pleadings, which are the formal written claims and defenses used to start and defend a lawsuit;
5. the discovery process, where each side in a lawsuit must provide the other party with access to all documents relevant to the lawsuit; and
6. the trial process, which is a fundamental part of the civil justice system and must be available to appropriate cases.

What is the nature of your experience with the civil court process? Have you been a party, witness or observer? How often?

What are the features of various court procedures that you are dissatisfied with?

(moderator notes - categories from survey)

- the overall process
- the pleadings stage
- the interlocutory hearings
- the discovery stage
- the trial
- alternatives to a full trial
- court forms
- the level of formality
- documentation required
- the time required to resolve matters
- the cost
- assistance available through the court
- information available through the court

Have you had difficulties understanding the process / what you need to do?

Have you been clear on why you need to complete various procedures?

What do you think about the time it takes to complete procedures / resolve matters?

What do you think about the cost of procedures?

Are there any other concerns?

From your experience, what civil court procedures are you satisfied with? What makes these experiences better?

2. Self Represented Parties

Is the experience different depending on whether someone is or is not represented by a lawyer? If so, how is it different?

What are the special challenges involved in self-representation?

How could/should self-represented parties be accommodated by the civil courts? Are accommodations fair to the other side? Are accommodations reasonable in view of the court's need to be neutral?

What changes should be made to the justice system to deal with self-represented parties?

3. Respondent Involvement in the Civil Courts

- Is the experience in civil court different depending on the type of case?
- Is the experience different depending on the stage of the civil action (from filing, through pre-trial procedures to trial and enforcement)? If so, why?
- Is the experience different in different courts? If so, why?

4. The Rules of Court

Overall, what do you think of the Rules of Court?

What are the main areas which need to be reviewed / updated?

5. Alternative Dispute Resolution

Alternative dispute resolution or ADR refers to ways of resolving a dispute other than bringing it before a judge to make a binding decision. Mediation and early neutral evaluation are among the ADR techniques that are commonly practiced in Alberta. Mediation is a process where a neutral third person, called a mediator, helps the opposing parties discuss and try to resolve the dispute. Early neutral evaluation is a process where a lawsuit is referred to a senior lawyer or a judge, although not the trial judge, who assesses each side's strengths and weaknesses and provides an evaluation of the likely outcome at trial.

What is your opinion of ADR?

Should people involved in a lawsuit be encouraged or required to use ADR?

What are the features of ADR that make it a more attractive choice to resolve a dispute?
(*moderator notes*: more cost effective, provided a quicker response)

6. Other possible areas of discussion (prioritize in case of time constraints)

- Appeals: do you feel a right to appeal is essential in every case? Why or why not?

- Legal fees:
 - What are your views on legal fees?
 - Is expense a main concern or is there also a concern about fairness and reasonableness in how they are imposed?
 - If the latter, are there things that could be done to protect clients?
- Technology:
 - Are new technologies appropriately used in civil courts?
 - Are there other uses you would like to see?
 - Why or why not?
 - Do you agree with using a 'virtual' court in some circumstances? What are these circumstances?

7. CLOSING DISCUSSION (5 minutes)

- Any last thoughts or comments that you would like to make?
- Thank you very much for your time!



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