

Canadian Healthcare Safety Symposium


ADR and NFC:
Ideas Whose Time Has Come?



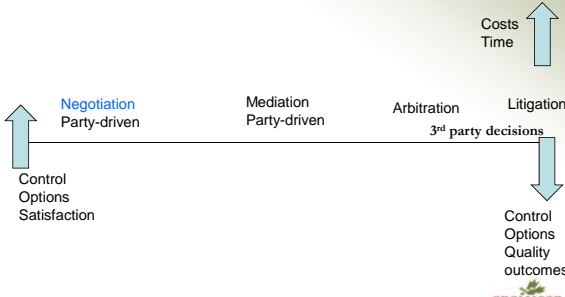
ADR and NFC: Two Ideas Looking for a home in PS?

Questions to consider:

1. What is Appropriate Dispute Resolution?
2. What is the alternative to ADR?
3. What does ADR offer to healthcare?
4. Where does ADR fit with patient safety?
5. What about NFC? (What is NFC?)
6. Will ADR and/or NFC advance the PS agenda in Canada?



ADR: Dispute Resolution Spectrum



The diagram shows a horizontal spectrum of dispute resolution methods from left to right: Negotiation (Party-driven), Mediation (Party-driven), Arbitration (3rd party decisions), and Litigation (3rd party decisions). An upward-pointing arrow on the right indicates that 'Costs' and 'Time' increase as the method moves from Negotiation to Litigation. A downward-pointing arrow on the right indicates that 'Control', 'Options', and 'Satisfaction' decrease as the method moves from Negotiation to Litigation.

What does ADR Offer?

- Voluntary confidential process
- Implicit recognition of “uneven table”
- Safe place for story-telling (context is key)
- Possible to explore emotional components




What does ADR Offer?

- Range of solutions (almost) unlimited
- Resolutions tend to be durable
- Satisfaction of parties is common
- Less costly and (usually) faster



Litigation: Alternative to ADR

- Not voluntary (potentially very public) process
- Parties treated as “equals”
- Focus on determination of “facts”
- No overt exploration of emotions



Litigation: Alternative to ADR

- Solutions limited to financial restitution
- Resolution less durable
- Dissatisfaction of parties (virtually) guaranteed
- Tends to be slow and expensive process



Litigation: Alternative to ADR

Proposals have been made to build a healthcare system that is: **safe, effective, timely, efficient, patient-centred, and equitable**

Sage: *“the existing medical malpractice system possesses none of these qualities...”*



What do the parties want/need?

Patient/family:

- Explanation/understanding of what happened
- Acknowledgement +/- apology
- Evidence of systemic learning
- “Justice”



What do the parties want/need?

Healthcare providers:

- Systemic "fixes"
- Respect
- Closure
- "Justice"



What do the parties want/need?

Legal System:

- Certainty
- Precedents (not available with ADR)
- "Justice"

Healthcare System:

- Understanding "what happened"
- Systemic "fixes"
- "Justice"



ADR and Patient Safety: Is there a fit?

Three C's:

1. Context
2. Causation
3. Confidentiality



ADR and Patient Safety: Is there a fit?

An idea whose time has come?

Yes, and we are about 40 years behind the times

Sage: dispute resolution skills should be an integral part of good clinical care



No Fault Compensation (NFC)

An important issue for public policy debate

Clearly introduces equity in terms of compensation

Questions remain about:

- Eligibility for compensation
- Adequacy of level of compensation
- Linkage to issues of competency



NFC and Patient Safety: Is there a fit?

Equitable solutions build trust – rebuilding trust is a key component of patient safety

Risk that the story will be lost in a focus on compensation

Would have to be coupled with a transparent investigation and education effort



References

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