ALTERNATIVE DISPUTE RESOLUTION AND ENVIRONMENTAL CONFLICT: THE CASE FOR LAW REFORM

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The author examines the growing trend towards the use of alternative dispute resolution in environmental conflicts. She surveys the state of ADR-related legislation in Canada and makes a proposal for law reform in this field. Her first objective is to define commonly-used ADR terminology. She considers the question, "how does ADR fit into the law and environmental disputes?" The author then looks at the alternatives for ADR and environmental law reform. There are two conflicting sets of values here. The first is that institutionalization of ADR (through legislation) would provide a clear and concrete mechanism for enforcing agreements, and thereby level the playing field for all parties. The other viewpoint is that workable legislation may be impossible to draft and that the strength of ADR is its ad hoc *nature. The author favours the "institutional," or legislative approach to ADR reform and development. She then surveys existing legislation, which is of two types: "ADR-specific" and "ADR-inclusive." Following this critical review, the author makes specific recommendations for future ADR/environmental law reform initiatives.*

L'auteure examine la tendance croissante à recourir à des solutions de rechange au règlement des conflits environnementaux. Elle étudie le statut de la législation liée à l'ADR au Canada et propose une réforme du droit dans le domaine. Son premier objectif est de définir la terminologie couramment utilisée en ADR. Elle s'interroge sur la place de l'ADR en droit et dans les conflits environnementaux. L'auteure évalue ensuite des solutions de rechange en ADR et des réformes du droit de l'environnement, opposant ainsi deux ensembles de valeurs conflictuelles. Selon le premier, l'institutionnalisation de l'ADR (par le biais de la législation) fournirait un mécanisme clair et concret d'application des accords, uniformisant ainsi les règles du jeu pour toutes les parties. D'après le second, toute législation fonctionnelle pourrait être impossible à élaborer, puisque la force de l'ADR réside précisément dans sa nature ad hoc. L'auteure favorise l'approche institutionnelle ou législative à la réforme et à l'élaboration de l'ADR. Elle survole ensuite les lois en vigueur et les classe en deux types : celles qui sont particulières à l'ADR et celles qui l'inclut. Après cet examen critique, l'auteure propose des recommandations précises concernant les futures initiatives de réforme du droit de l'environnement et l'ADR.

TABLE OF CONTENTS

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I. INTRODUCTION

Given the diversity of values, interests and players involved, it is not surprising that conflict is a characteristic part of environmental decision making. Although traditional legal and political processes have succeeded in settling many disputes in the environmental arena, there is a trend towards the use of alternative dispute resolution ("ADR") techniques. By and large this has been an informal development; the result of governmental or private initiative rather than carefully structured law or policy. In some ways, the very informality and flexibility of *ad hoc* arrangements may enhance the success of ADR. However, in my view, the significance of such processes for the law and legal rights or interests calls for selective institutionalization through legislative reform.[1]

This article critically examines the case for law reform, describes the state of ADR-related legislation in effect or proposed in Canada and makes recommendations for further law reform required to promote the effective and fair use of ADR to resolve environmental conflicts. Before turning to these topics, some words about terminology.

A. COMING TO TERMS WITH ADR

The recent growth of the ADR industry, with its attendant scribes and scholars, has resulted in a virtual explosion of jargon. *Consensus*, *consensus building*, *mediation*, *negotiation*, *principled negotiation*, and *regulatory negotiation* are just a sample of terms encountered in the literature. Yet, as Gail Bingham notes:

> Although several attempts have been made to develop a conceptual framework that clearly distinguishes different environmental dispute resolution processes, no generally acceptable framework has yet been devised. As a result, individuals and organizations involved in this field use different terms for similar approaches and similar terms for different approaches.[2]

Writers in pursuit of meaningful terminology are thus left to pick and choose amongst alternatives or to devise their own. In this article, I have chosen to use established terms, assigning to each a discrete and limited meaning.

1. "Traditional" v. "Alternative" Dispute Resolution Techniques

To begin with, a distinction is made between *traditional* and *alternative* dispute resolution processes: *traditional* processes include negotiation, arbitration, litigation, decision making, law and policy making, consultation and lobbying while *alternative* processes encompass consensus building and negotiation, with or without the assistance of a neutral third party or *mediator*. This distinction is admittedly somewhat arbitrary and the two categories do overlap. The basis for the distinction is as follows: dispute

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1 For an overview of the legal issues relevant to the use of ADR, see E.Swanson, "Alternative Dispute Resolution Processes: The Legal Issues" (1995) 10:2 News Brief 1.

2 G. Bingham, *Resolving Environmental Disputes: A Decade of Experience* (Washington, D.C.: The Conservation Foundation, 1986) at 4-5.

resolution processes which have been so commonly employed that they are recognized as established techniques by law, policy or political and legal theory are classified as *traditional* processes; those of more recent practice and of different theoretical origins are classified as *alternative* processes. Using these criteria, arbitration, quite often thought of as a form of ADR, is considered to be a traditional process because: (a) it has a long history of use, particularly in relation to labour disputes; (b) it typically has a legislative basis; and (c) resolution results from third party adjudication rather than from direct negotiation between the disputants. A further distinction is made between various ADR methods on the basis of the intended outcome and the involvement of a neutral third party (mediator), and then only to the extent that such distinction is useful within the context of this article.

2. "Consensus Building"

Consensus building is a problem solving approach which emphasizes the common interest of the participants in jointly defining and solving problems. The primary outcome of consensus building need not be decision-making nor the development of recommendations. Instead, the objective might be the improvement of communications and relationships between groups that are normally opposed to one another, or to improve the quality and legitimacy of decision making by one or more of the participants.[3]

Consensus building differs from consultation in that it seeks to encourage agreement or foster understanding between participants, while consultation merely affords an opportunity for parties to express their individual positions in an attempt to influence or inform a decision maker.

3. "Negotiation"

Negotiation refers to a process of bargaining between parties adverse in interest in order to make a decision or provide recommendations based upon their consensus. Unlike consensus building, negotiation is directed towards decision-making. The parties to a negotiation either have the authority (power) to make the decision themselves or are confident that their consensus-based recommendations will influence decision-making by another.

4. "Mediation"

As used here, "mediation" simply refers to the use of a neutral third party to support consensus building or negotiation. Mediation is thus treated as a way of proceeding, rather than as a unique process, making it possible to speak of "mediated consensus building" or "mediated negotiation."

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[3] This definition is based on G.W. Cormick's definition of "consensus building" and "policy dialogues" as given in "The Myth, The Reality, and The Future of Environmental Mediation" (1982) 24:7 Environment 14 at 16.

5. "Institutionalization"

The phrase, "institutionalization of ADR" means bringing the practice of ADR within existing judicial and legislative systems by providing a legal mandate and establishing formal rules and standards.

6. "Environmental Dispute"

In the context of this article, an environmental dispute refers to disagreements between parties which are about or are directly relevant to the natural environment. The same meaning applies to the phrase "environmental conflict." The word "dispute" is used in its broader sense of conflict or controversy and not as a legal term of art.[4] Types or categories of environmental disputes include: (1) party-to-party disputes; (2) disputes about the issuance of permits or licences; (3) disputes about preliminary or "in principle" approvals; (4) disputes about the content of law and policy; and (5) disputes regarding compliance and enforcement. Each of these will be discussed briefly in the next section.

B. TYPES OF ENVIRONMENTAL DISPUTES

Identification of kinds or types of environmental disputes is, to some extent, an arbitrary exercise premised on the hypotheses that: (a) environmental disputes are distinguishable from other sorts of conflict; and (b) it is possible to meaningfully distinguish between disputes within that smaller universe. Still, such distinction is attempted here in order to provide a framework for discussion and analysis.

As defined above, a dispute becomes "environmental" when it is about or directly relates to the natural environment. The basis for this first distinction is thus the subject matter or content of the controversy. Subsequent distinctions are based upon the legal activity which gives rise to, or is the context for, an environmental dispute.[5]

"Party-to-party disputes" is a phrase used to describe conflict between private individuals; what legal theory terms a dispute *inter pares*. Generally speaking, disputes of this sort involve a conflict of interest as opposed to a conflict of values.[6] This is

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4 As defined by J.R. Nolan *et al.*, *Black's Law Dictionary*, 6th ed. (St. Paul: West Publishing Co., 1990) at 472, "dispute" means "[a] conflict or controversy; a conflict of claims or rights; an assertion of a right, claim or demand on one side, met by contrary claims or allegations on the other. The subject of litigation...."

5 For a comprehensive discussion of the nature of environmental disputes and the use of alternative dispute resolution techniques to resolve them, see E. Swanson, "Towards Resolution: Alternative Dispute Resolution Processes, Environmental Conflict and the Law" (Edmonton: Environmental Law Centre, 1995) [unpublished].

6 In distinguishing between conflicts arising out of differences in values and those arising out of differences in interests, I adopt the definitions provided by A.H.J. Dorcey & C.L. Riek, "Negotiation-Based Approaches To The Settlement of Environmental Disputes in Canada" in *The Place of Negotiation in Environmental Assessment* (Hull: Canadian Environmental Assessment Research Council, 1989) 7 at 8 [emphasis in original]:

also true of conflict arising in the context of enforcement action taken or licenses issued by government though disputes in such circumstances likely involve both private and public interests.

While the legal authority to enact legislation and develop policy remains vested in governments, various forms of consultation have become an expected part of the legislative and policy making process. Disputes that typically arise in this context tend to result from a conflict of values as opposed to a conflict of interests. Positions are advanced by various parties, each of whom hopes to influence the ultimate decision maker and "win the day."

II. TOWARDS RESOLUTION: ADR, ENVIRONMENTAL CONFLICT AND THE LAW

What does the law have to do with ADR? Very little, according to some people who consider them to be two solitudes and hope to keep it that way.[7] Others acknowledge the interaction, but have very different views about the nature of the relationship. Timothy Sullivan, for example, believes that:

> As long as litigation offers an acceptable, trouble-free alternative to negotiation, then opposition groups and government agencies will seldom accept the heavy and often burdensome costs of training negotiators and undertaking the internal bargaining that successful negotiations require.[8]

while Gerald Cormick says:

> Actual or threatened litigation is often a necessary prerequisite to the willingness of a party proposing some action to negotiate; it is the source of power and influence that brings the parties to the table and to mediation....
>
> While the parties to a conflict may at some point choose to negotiate in lieu of initiating or continuing court action, mediation cannot reasonably be expected to supplant or negate the need for litigation until such time as protesting constituencies are provided with some other basis for their power and influence.[9]

In a recent study, the Environmental Law Centre reviewed the use of both traditional and alternative methods of dispute resolution and concluded that:

> *Value conflicts* stem from different preferences about the outcome...
>
> *Interest conflicts* occur when there are disagreements about the distribution of costs and benefits.

7 See *e.g.* D.P. Emond, "Accommodating Negotiation/Mediation Within Existing Assessment and Approval Processes" in *The Place of Negotiation in Environmental Assessment, ibid.* at 45.

8 T.J. Sullivan, *Resolving Development Disputes Through Negotiations* (New York: Plenum Press, 1984) at 182.

9 *Supra* note 3 at 37.

- the two approaches do interact in that the use of one may have implications for the other;
- this interaction can be either positive or negative; and
- while the law applies to and may be used to address many of the concerns surrounding the use of ADR, considerable uncertainty about important issues exists and needs to be addressed, if ADR is to be encouraged. [10]

The "important issues" referred to above include: (a) confidentiality and privilege; (b) mediator liability; (c) preservation of pre-existing legal rights; (d) subsequent right of legal action and standards for judicial review; (e) minimum qualification criteria or standards for mediators; and (f) participant rights, such as the right to funding and the right to information. While law reform is certainly one way to provide certainty and clarification, is it the *best* way?

A. THE CASE FOR (AND AGAINST) INSTITUTIONALIZATION THROUGH LAW REFORM

The case for the institutionalization of ADR, particularly through legislative reform, is neatly summed up by Vanderburgh and Hope:

> Advocates of institutionalized environmental mediation believe that institutionalization makes the process of mediation more predictable, provides a clear mechanism for enforcing the agreement and protects the parties that elect to use it, thereby encouraging its use. Institutionalization should also contribute to more successful mediation, measured not only by the numbers of agreements reached but by an increase in community participation in those agreements.[11]

Another commentator, Merton Berstein, also supports legislative reform, primarily because he is reluctant to let developments in the common law catch up with the practice of ADR. Though it may be nothing more than wishful thinking on his part, Berstein also believes that legislation providing for the enforcement of mediated agreements, in particular:

> would force the legal community to recognize the validity of the mediation process. Imposing a statutory process on mediation activities might overcome the general reluctance of lawyers to use any new approach which contains unfamiliar procedures and doctrines. Furthermore, the enactment of a statute adds a certain dignity and respectability to the use of mediation by lawyers.[12]

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10 The results of the study are presented in an unpublished paper by E. Swanson, *supra* note 5.

11 E. Vanderburgh & A. Hope, "Alternative Dispute Resolution" in C. Sandborn, ed., *Law Reform for Sustainable Development in British Columbia* (Vancouver: Canadian Bar Association, British Columbia Branch, 1990) 16 at 18. See also L.R. Freedman & M.L. Prigoff, "Confidentiality in Mediation: The Need For Protection" (1986) 2 Ohio St. J. Dispute Res. 37; J.B. Stulberg,"Mediator Immunity" (1986) 2 Ohio St. J. Dispute Res. 85; E. Swanson, "Legislative Reform and the Institutionalization of ADR" (Edmonton: Environmental Law Centre, 1995) [unpublished].

12 M.C. Berstein, "The Desirability of a Statute for the Enforcement of Mediated Agreements" (1986) 2 Ohio St. J. Dispute Res. 117 at 117-118.

Opponents of institutionalization are no less interested in finding answers than their reform-minded colleagues but either believe that: (a) the law as it now exists provides acceptable solutions; (b) ADR processes are so intricate and engage so many issues that creating workable legislation would be next to impossible; (c) solutions will be developed through the common law, as needed; (d) institutionalization will destroy the utility of ADR processes by limiting flexibility and creativity in favour of certainty and predictability; or (e) ADR requires further time to develop on its own before any concerted effort is made to codify or formalize it.[13]

In his report, "Environmental Mediation: From Theory To Practice,"[14] Steven Shrybman summarizes the results of a survey of government officials, members of environmental non-governmental organizations (ENGOs) and industry representatives. All three groups identified the lack of a legal framework as a significant impediment to the successful use of ADR to resolve environmental disputes. Notwithstanding these results, Shrybman expresses the view that:

> Clearly the institutionalization of mediation as a readily available option must await a much greater awareness of, and positive experience with, this process.[15]

That statement was made more than ten years ago. Given the significant increase in both the use of ADR processes and public participation in environmental decision and rule making, it is argued here that the time Shrybman spoke of has come and law reform is a current, not a future, need.

Firstly, the use of ADR is proceeding, often in an *ad hoc* manner. Formalizing procedure through the enactment of legislation would, at a minimum, ensure consistency between ADR processes and might, in addition, be used to provide some level of fairness to participants.[16] Secondly, confidence in and support for ADR processes is adversely affected by uncertainty about significant issues; confidentiality, for example. This uncertainty needs to be addressed, and to the extent reasonably possible, eliminated. Finally, there is a need to provide remedies for those who are adversely affected by or dissatisfied with the results of an ADR process. Although opinion is divided as to the adequacy of existing law to provide such remedies, legislative reform, in my view, is preferable to creative adjudication.

I do agree, however, with the caution that the task of merging certainty and fairness with flexibility and creativity (the hallmarks of ADR) is bound to be a difficult one.

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[13] See generally R.P. Burns, "The Enforceability of Mediated Agreements: An Essay on Legitimation and Process Integrity" (1986) 2 Ohio St. J. Dispute Res. 93; A.A. Chaykin, "The Liabilities and Immunities of Mediators: A Hostile Environment for Model Legislation" (1986) 2 Ohio St. J. Dispute Res. 47; E. Green, "A Heretical View of the Mediation Privilege" (1986) 2 Ohio St. J. Dispute Res. 1.

[14] (Toronto: Canadian Environmental Law Association, 1987) [unpublished].

[15] *Ibid.* at 103.

[16] This might be achieved, for example, by establishing rights of participation including: (a) the right to notice of ADR processes; (b) the right to funding to facilitate participation; and (c) the right to access information.

That challenge has already been taken up is some jurisdictions, both here in Canada and in the United States, with the enactment of legislation providing for the use of ADR.

B. ON THE ROAD TO REFORM: LEGISLATIVE DEVELOPMENTS TO DATE

1. Legislative Models or Types

A review of existing ADR legislation in Canada and the United States suggests that there are two types, or models, to choose from: (1) legislation dealing only with ADR, applicable across legislative subject matter ("ADR specific"); and (2) legislation providing for the use of ADR processes in the context of a particular subject matter ("ADR inclusive").

Legislation dealing exclusively with ADR can be found in the United States at both the federal and state level.[17] Two enactments will be described here by way of example: the federal *Administrative Dispute Resolution Act*[18] and the *Dispute Resolution Act* of Colorado.[19]

The *Administrative Dispute Resolution Act* ("ADRA") authorizes the use of ADR processes by federal agencies to deal with conflict arising in the context of an administrative program. An administrative program is defined to include: "a Federal function which involves protection of the public interest and the determination of rights, privileges, and obligations of private persons through rule making, adjudication, licensing, or investigation...."[20] As provided by the ADRA, ADR is a voluntary process intended to supplement other resolution techniques and may not be used in certain circumstances.[21]

Colorado's *Dispute Resolution Act* takes a slightly different approach by establishing an office of dispute resolution under the administration of a director. The director must ensure that dispute resolution services are available through each of the various judicial districts. Anyone involved in a dispute may access mediation services, before or after filing a suit, and upon payment of a fee.[22]

The recently proclaimed *Canadian Environmental Assessment Act* ("CEAA")[23] illustrates the second type of legislative enactment: the incorporation of ADR provisions in a statute dealing with a discrete subject matter; in CEAA's case, environmental assessment.

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17 Keeping in mind that arbitration is considered here as a *traditional* dispute resolution process, the author is not aware of any similar legislation in Canada.

18 Pub. L. No. 101-152, 104 Stat. 2736 (1990).

19 Title 13, Article 22, Part 3.

20 *Supra* note 18, §581(2) at 2738.

21 *Ibid.*, §582(b)(1)-(6) at 2739.

22 *Supra* note 19, 13-22-305.

23 S.C. 1992, c. 37.

The CEAA requires all federal authorities to undertake an environmental assessment of projects to which the CEAA applies. If the anticipated adverse environmental impacts of a project are significant (and unjustifiable) or unknown, or if public concerns so warrant, the project must be referred to the Minister of the Environment for a referral to a mediator or a review panel.[24]

Sections 29-32 authorize and provide details about mediation under the CEAA, including these:

- all or part of an environmental assessment can be referred to a mediator;
- a project may not be referred to a mediator unless interested parties have been identified and are willing to participate;[25]
- a mediation may be terminated at any time by the Minister of the Environment if the Minister or the mediator determines that it is unlikely to result in a result acceptable to all the participants;
- the selection of a mediator is left to the Minister of the Environment in consultation with the responsible federal authority and all parties who are willing to participate in the mediation;
- additional parties may be added to a mediation at any time, with the permission of the mediator; and
- upon the conclusion of a mediation, the mediator must submit a report to the Minister of the Environment and to the responsible federal authority.

2. An Overview of Legislative Developments in Canada

The CEAA, as described above, is currently the only piece of federal environmental legislation that specifically provides for the use of ADR. It should be noted that, in addition to authorizing and establishing a process for mediation in the context of environmental assessment, the CEAA addresses the issues of confidentiality and mediator qualifications. With respect to the latter, s.32(2) provides:

> No evidence of or relating to a statement made by a mediator or a participant to the mediation during the course of and for the purposes of the mediation is admissible without the consent of the mediator or participant, in any proceeding before a review panel, court, tribunal, body or person with jurisdiction to compel the production of evidence.

And, pursuant to s. 30(1)(a)(i), only persons with mediation experience or knowledge and who are unbiased and free from any conflict of interest may be appointed as mediators under the CEAA.

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[24] *Ibid.*, s. 20.

[25] As defined in s. 2 of the CEAA, an "interested party" means "any person or body having an interest in the outcome of the environmental assessment for a purpose that is neither frivolous nor vexatious...." While not expressly stated, it is likely that the Minister of the Environment would settle the issue of who is (or is not) an "interested party," though it should be noted that the mediator has the authority to add parties during the course of a mediation (*ibid.*, ss. 29(2), 31).

At the provincial level a number of statutes recently proclaimed or at the proposal (discussion) stage authorize the use of ADR. Of these, Nova Scotia's new *Environment Act*[26] is the most comprehensive. Details are set out in s.14 of the *Act*:

> 14(1) For the purpose of resolving a dispute, the Minister may refer a matter to a form of alternate dispute resolution, including but not limited to, conciliation, negotiation or arbitration.
>
> (2) Where the Minister decides to use a form of alternate dispute resolution...the Minister, in consultation with the affected parties and using criteria prescribed or adopted by the Department, shall determine which form of dispute resolution is most appropriate.
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> (3) Any form of alternate dispute resolution used shall strive to achieve consensus to resolve procedural and substantive issues throughout the process.
>
> (4) Where a form of alternate dispute resolution is being used...and where an independent party or neutral third party has been chosen to facilitate, mediate or arbitrate, at the conclusion of the process that person shall file a report...whether or not the dispute was resolved.
>
> (5) Without limiting the generality [of the foregoing] ... a form of alternate dispute resolution may be used
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> (a) in the case of a dispute over a certificate of qualification or certificate of variance;
> (b) in case of a dispute over an approval
> (c) in case of a dispute...respecting responsibility for rehabilitation of a contaminated site; or
> (d) generally, for conflict resolution.

Legislative references to mediation, in particular, can also be found in the respective environmental protection statutes of Ontario, Manitoba, Yukon and the Northwest Territories.

Section 6 of Manitoba's *Environment Act*[27] establishes the Clean Environment Commission which may, upon the request of the Environment Minister, "act as a mediator between two or more parties to an environmental dispute...."[28] In the Northwest Territories and Yukon, each Minister of the Environment is authorized to appoint a mediator to (respectively) resolve disputes or settle complaints.[29] Ontario's *Environmental Bill of Rights* provides for the use of mediation to resolve differences of opinion or issues with respect to proposed legislation.[30]

An environmental dispute mediation process is part of legislation proposed for British Columbia. Still at the discussion stage, the *British Columbia Environmental*

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26 S.N.S. 1994-95, c. 1.
27 S.M. 1987-88, c. 26.
28 *Ibid.*, s. 6(5)(d).
29 See the *Environmental Protection Act*, R.S.N.W.T. 1988, c. E-7, s. 2.2(f); *Environment Act*, S.Y. 1991, c. 5, s. 23(3)(b).
30 S.O. 1993, c. 28, ss. 24(1), 34.

Protection Act authorizes the Minister of the Environment to arrange for the mediation of environmental disputes.[31]

III. CONCLUSIONS AND RECOMMENDATIONS

The lack of a legislative basis for alternative dispute resolution has hampered, but not prevented, the use of ADR processes to address environmental conflict. While the informality and flexibility of *ad hoc* processes may be consistent with ADR theory and may, in some ways, enhance its success, there is a current and pressing need for law reform.

Formalizing ADR procedure through the enactment of legislation would, at a minimum, encourage consistency between ADR processes and could be used to provide some level of fairness to participants. In addition, the lack of certainty about significant issues, such as confidentiality of information and implementation of results, directly affects confidence in and support for the use of ADR. Finally, there is a need to provide remedies for those who are adversely affected by or dissatisfied with the results of an ADR process. All of these can be best achieved, in my opinion, through deliberate and thoughtful law reform.

We have already begun that process in Canada through the enactment of environmental legislation authorizing the use of ADR. The *Canadian Environmental Assessment Act* is one example of ADR-inclusive legislation; Nova Scotia's *Environment Act* is another.

Much more remains to be done. In particular, I recommend:

1. Negotiated rulemaking. If the desire of the federal or provincial governments is to provide for public participation in environmental law-making through structured negotiations, legislation should be enacted to: (a) authorize the practice; (b) provide for the implementation of the results; and (c) establish minimum procedural standards. A model to consider is the U.S. federal *Negotiated Rulemaking Act of 1990*.[32]

2. Dispute resolution. The use of ADR to resolve environmental (and other) conflict should be institutionalized through the enactment of both ADR-specific and ADR-inclusive legislation. ADR-specific legislation should deal with issues of common concern such as: (a) confidentiality and privilege; (b) mediator liability; (c) preservation of pre-existing legal rights; (d) subsequent right of legal action and standards for judicial review; (e) minimum qualification criteria or standards for mediators; and (f) participant rights; for example, the right to funding and the right to information. Other matters, such as authorization, participant selection and implementation, for example, should be addressed in their

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[31] J. Titerle, "Politics and BC's New Environmental Legislation" (April 1995) Compliance Report 5.

[32] 5 U.S.C. §581, Pub. L. No. 101-648, 104 Stat. 4969 (1990).

subjective context. The *Canadian Environmental Assessment Act* is an example of ADR-inclusive legislation and could be used as a model.

Finally, regardless of the specific intent or purpose of an alternative dispute resolution process, participation must remain voluntary and must not come at the expense of legal rights or recourse to traditional processes, like litigation. To do otherwise may deprive us of the full benefit of ADR and the full protection of the law.