

Assessing the Role of Failed-ADR in Civil Litigation

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Abstract : There is a plethora of literature (including judicial and extra-judicial comments) concerning the virtues of alternative dispute resolution processes within the English civil justice system. Lord Woolf in his Access to Justice Report ushered in a new pro-ADR philosophy and this was reinforced by Sir Rupert Jackson in his review of civil litigation costs. More recently, Briggs LJ, in his review of the Chancery Court, reiterated the significant role played by ADR and the need for better integration of ADR processes within the Chancery Court. His Lordship also noted that ADR which had failed to produce a settlement (i.e. a failed-ADR) continued to play a significant role in contributing to a 'substantial narrowing of the issues or increased focus on the key issues' which were 'capable of assisting both the parties and the court in the economical determination of the dispute at trial.' With the assistance of empirical data, this paper investigates the nature of failed-ADR and, in particular, assesses the effectiveness of failed-ADR processes as a tool in: (a) narrowing the legal and/or factual issues which may assist the courts in more effective and efficient case management of the dispute; (b) assisting the parties in the future settlement of the matter. This paper will also measure the effectiveness of failed-ADR by considering the views and experiences of legal practitioners who have engaged in failed-ADR.

Keywords : English civil justice system, alternative dispute resolution processes, civil court process, empirical data from legal profession regarding failed ADR

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