Solving problems the alternative way

By Leah Pence

Have you heard the one about the lawyer, the priest and the rabbi? Probably. And you probably know that the lawyer is the butt of the joke. Lawyers usually are.

But Alternative Dispute Resolution (ADR), a different approach to lawyering, may be changing that. Its growing popularity is showing that, as University of Victoria law professor Andrew Pirie believes, the modern role for lawyers is helping clients solve their problems.

Pirie has taught at UVic since 1981 and served as director of the Institute for Dispute Resolution from 1989–1996. His book Alternative Dispute Resolution: Skills, Science and the Law, published in December, 2000, by Irwin Law, comprehensively canvasses this new and evolving area with special emphasis on consensus methods of dispute resolution such as mediation and negotiation.

ADR developed in the United States in the 1970s. Its roots reach out to many disciplines including anthropology, economics, law, psychology and sociology.

ADR’s growth has been influenced by many factors, including Mennonite and Quaker approaches to peaceful problem solving, First Nations’ value of harmony in relationships, and labour and international relations’ methods of dispute resolution. The biggest factor for the growth of ADR, however, has been general dissatisfaction with the formal justice system.

Using the court system can be expensive, lengthy and frustrating, but ADR can often provide a quick, cost effective and satisfying alternative. “In the courts, it can be a matter of years to get to trial for a case that might be settled in a matter of hours if the appropriate process is used,” says Pirie. His shortest mediation session lasted only ten minutes. “However, ADR recognizes that conflict is very complex,” says Pirie, “and that in any problem there are often many issues at play.”

Pirie recalls how one mediated case seemingly about payment for a botched tailoring job turned out to be really about feelings of being insulted and disrespected. Once the parties apologized and solved the relationship conflict, resolving the financial issue was easy.

Though Pirie now focuses most of his efforts on teaching and research, he is also involved in the practical side of ADR. He trains other lawyers, judges and business people to become mediators and negotiators. He also acts as a mediator on a wide range of problems — everything from neighbour conflicts to complex multi-party matters.

Because many agreements reached in ADR are based on consensus there is often less of a problem of enforceability of the resolution. “The idea behind consensus is that when the parties agree to a solution, they are going to abide by that agreement,” says Pirie.

“Overall it’s been my own personal philosophy that the more everyone knows about dispute resolution, the more likely we are, individually and collectively, to achieve the positive results that all conflict can bring and avoid the destructive consequences that too often occur,” says Pirie.

FACTS FROM THE EDGE

• ADR is being taken very seriously by the justice system. Some jurisdictions have moved toward mandatory mediation, where parties must attend mediation before moving to court adjudication. B.C.’s system is a hybrid. For small claims cases (cases under $10,000) mediation, in the form of a settlement conference, is mandatory before going to court for a hearing. In all other civil cases except family disputes, if one of the parties asks for mediation, it occurs.

• Mennonite and Quaker involvement in law and criminal justice has pushed for alternative forms of justice. In the United States and Canada, Mennonites and Quakers have been leaders in the move towards restorative justice, a process whereby an offender seeks to repair personal and societal relationships that have been broken by a crime.

• There are some times when a conflict is best left to the courts. The Justice Department of Canada suggests that the courts may provide better protection for parties who have been the victim of violence or when there is a pronounced power imbalance between the parties. Because ADR processes are generally confidential, if one of the parties wants the issue to be publicized, court is more appropriate. A case should also go to court rather than ADR if there is a need to establish a binding precedent.

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Mameloshn’ (Mother Tongue): Yiddish and Women in Eastern Europe (Ashkenaz)
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