



- The UVic Institute for Dispute Resolution is an interdisciplinary centre operating within the law faculty. It has recently been involved in international dispute resolution issues in Thailand and Cambodia. See <http://dispute.resolution.uvic.ca> for more information.

- The Canadian government just calls it DR. For its views on dispute resolution see: <http://canada.justice.gc.ca/en/ps/drs/index.html>

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.

ON THE EDGE OF YOUR SEAT UPCOMING FREE PUBLIC LECTURES

Mughal Gardens and the Religious Landscape in India
Professor D. Fairchild Ruggles, Cornell University
12 February, 7:30 p.m.
Strong Building, rm. C103

Japanese Corporate Governance at a Crossroads: Variation in 'Varieties of Capitalism'?
Luke Nottage, University of Sydney
14 February, 12:30 p.m.
Strong Building, rm. C108

Mameloshn' (Mother Tongue): Yiddish and Women in Eastern Europe (Ashkenaz)
Dr. Naomi Seidman, Graduate Theological Union, Berkeley, California
15 February, 7:30 p.m.
Strong Building, rm. C116



SPARK

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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 consensual 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.

DIANA NETHERCOTT PHOTO



Pirie

EDGE/WISE

The three branches of ADR

Alternative dispute resolution employs three main methods of dispute resolution — negotiation, mediation and arbitration.

Negotiation is most common, and happens on a daily basis. It can be talking with a co-worker about who will give a presentation or discussing with family where to hold Christmas dinner. Whereas both mediation and arbitration involve an outside party, negotiation happens solely between the disputants. Through conference, discussion and

sometimes compromise, the participants resolve their problem.

Mediation involves the intervention of a neutral third party facilitator. The mediator helps the other parties to reach their own solution. Where negotiation has not been successful, the mediator can often help to ease tension, encourage discussion between the parties or overcome other barriers.

"The real power of mediation is that it's a consensus process," says Pirie. In mediation, if the

parties don't agree, there is no resolution. It is a participatory model that emphasizes win-win resolutions.

Arbitration comes closer to the model of the courts. An arbitrator serves in a judge-like role, listening to the parties in an informal setting, and ultimately making a decision about who's right and who's wrong. Unlike litigation, arbitration allows the parties to choose their arbitrator and the manner in which to proceed.