canadian forum on dispute resolution

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forum canadien sur le règlement des différends

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Charting the course : report
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Report of the
Canadian Forum on Dispute Resolution

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Canadian Forum on Dispute Resolution Highlights of The Voyage

In February 1995, approximately 200 participants from across the country came together to chart a course for the future of dispute resolution in Canada. Working in eight subject-specific task groups over the span of two days, they developed a series of principles and recommendations for the field.

Built into the design of the Forum was a focus on consensus-making processes. The organizing of the event and the Forum itself were based on consensus principles so that any decisions or recommendations made would be inclusive, reflecting the broadest possible range of interests and concerns.

In this way, the Forum became a venue for discussion and decision-making and, simultaneously, a demonstration of this particular, inclusive form of decision-making.

At the end of two days of deliberations, the task groups brought forward an extensive series of recommendations and principles for the development of dispute resolution in Canada. The recommendations are included, verbatim, in the individual task group reports. They have also been consolidated by subject in Chapter 4, entitled "Way Points and Ports of Call."

Some highlights of those recommendations are as follows

> Each person in the group is signing the report ... and, in addition to that, they have each pledged individually to carry on the work that they were doing as a group, away from the Forum, . . . continuing to push forward with improving dispute resolution in governance.
>
> John Olynyk, Rapporteur
> Group 5, Dispute Resolution in Governance

Overarching Recommendations

- ensure that the quality of Canadian justice be acknowledged and enhanced through the design, development and implementation of innovative, flexible and accessible conflict resolution processes.
- consider dispute resolution processes as a continuum from private consensual resolution to adjudicated decision-making.
- evaluate dispute resolution processes in a comprehensive manner, not only by settlement rates or cost efficiency.

- provide education about dispute resolution alternatives to all participants in the administration of justice, including the judiciary.
- establish a public education and awareness campaign to make the public aware of dispute resolution choices and to promote appropriate dispute resolution methods.
- for training programs in dispute resolution, include, among other things, follow-up courses, practicums and co-mediation opportunities, to prepare trainees to become sufficiently qualified to mediate without supervision.
- develop a national working group to deal with certification and standards. To the extent that standards are found to be necessary, this working group should ensure that they are developed in a non-hierarchical fashion.
- make this information available in hard copy and electronically, including on the Internet.
- encourage the media to introduce a dispute resolution theme in scripts and programming.

Business and Professional Groups

- set an example and create incentives by promoting and practicing ADR within their organizations. This would include ADR clauses in contracts.

Education Ministries and Institutions

- support the development and distribution of suitable ADR curricula and integrate them at all levels of education, including elementary schools, secondary schools, universities and colleges, as well as legal, business and professional schools.

Courts

- continue to support pre-trial dispute resolution alternatives and encourage the use of other dispute resolution mechanisms both within and outside the courts.

Government

- lead by example:
  a) include ADR clauses in contracts
  b) use ADR processes to resolve inter-governmental disputes and to deal with public policy issues.

- appropriate federal and provincial ministers, issue a clear directive with achievable and measurable goals to encourage their governments to show that they are changing their behaviour to incorporate dispute resolution processes.
- participate, as facilitator and funder in the recommended national initiatives for dispute resolution.
- engage in broad consultation regarding implementation of ADR systems in the judicial process.
- examine areas of activity that could use dispute resolution and legislate that use, making access to ADR mandatory so that parties going through the justice system will be able to select the most appropriate option for their dispute.
- promote ADR in governance through defined strategies focusing on local groups, government institutions at the federal, provincial and territorial levels and the education system.

The following were among the recommendations for immediate next steps.

- establish a mechanism to enable Forum participants to continue to communicate, maintaining continuity and building on the momentum of the Forum.
- use all opportunities to further the recommendations of the Forum.
- create a successor organizing body to ensure follow-up to the Forum.
- Forum participants and members of existing national and provincial organizations take responsibility for promoting the recommendations of the Forum in their interest and geographic areas.
- develop a clearinghouse of available resources for training in mediation to assist trainers to coordinate and share more effectively.
- organize a follow-up conference or Forum within 12 months to
  a) follow-up on the progress made at the Forum;
  b) continue the dialogue;
  c) develop a national dispute resolution strategy.

- produce a report of the Forum and ensure its widest possible dissemination. Invite readers to comment on the report, thereby transforming it into a springboard for further discussion.

1. Rationale for the Journey

The Need for a Consolidated Vision on Dispute Resolution in Canada

Sometimes throughout the last couple of days we struggled with the question of what is included in alternative dispute resolution and I know that other groups did as well.

Julie Devon Dodd, Rapporteur,
Task Group 1a - Promotion, Marketing and Public Education about Dispute Resolution

The Canadian Forum on Dispute Resolution was the first meeting to bring together interested participants from across the country to develop consensus on charting a course for dispute resolution in Canada. The Forum was created in response to a widely felt need for communication and consensus in the field of dispute resolution, which has blossomed over the course of 15 years and which has seen exponential growth during the last five.

Dispute resolution has provided an answer for practitioners in many sectors of society who have found traditional ways of dealing with conflict unsatisfactory. Wide-ranging concerns for improving access to justice and managing conflict effectively have covered many fields of endeavor. As collaborative conflict resolution techniques have been utilized in one kind of conflict, their potential relevance to others have been recognized. Much of the development in dispute resolution has been simultaneous across different fields of activity, so that the path that it has followed to date is difficult to trace. Today, mediation, consensus-building, collaborative conflict resolution, principled negotiation and a host of other methods for resolving disputes effectively and appropriately, are either in use or under active consideration in a wide range of subject areas.

These alternative methods of dispute resolution hold the promise of providing better ways to deal with differences. It is becoming evident that decision-making should seek to include the voices of those affected if the decisions are to be seen as effective and fair. When parties to a conflict can contribute to finding its resolution, they are more likely to be content with the result and to cooperate in its implementation.

As increasing numbers of people become trained in conflict resolution techniques, as organizations proliferate, offering training, information and support to people interested in conflict resolution, and as the methods for decision making and resolving disputes are affected in virtually every quarter, we must consider how we wish to address the issues that arise from this phenomenon. Issues include questions such as whether the practice of mediation should begin to take on some of the features of a profession, with regulation and certification procedures. Answers to such questions, in turn, may have profound implications for other aspects of the field, such as training, which is currently provided by a range of organizations and individuals, focusing on different subject areas or different geographic locations. Should training be standardized? What constitutes sufficient training to enable the recipient to take the role of mediator? Such questions abound in every area of the development of dispute resolution in Canada.

Developing Consensus on the Future of Dispute Resolution in Canada

The Canadian Forum on Dispute Resolution was the result of an initiative of the Dispute Resolution Project of the federal Department of Justice.[1] In recognition of the importance of developing a coordinated approach to the development of dispute resolution in Canada, the Department convened a meeting of ten

[1] This is a follow-up to a commitment made by the Honourable Allan Rock, Minister of Justice, at a National Symposium of the Canadian Bar Association in Vancouver in March 1994.

Canadians active in conflict resolution.[2] This group constituted the Steering Committee. They were invited to discuss the formation of a dispute resolution round table which would begin to address the issues facing the field and provide guidance in the development of dispute resolution in Canada.

The Steering Committee concluded that it would be contrary to the principles of collaborative decision-making to make decisions on behalf of their colleagues. Rather, it was determined that the best way to discern appropriate directions for the field would be to facilitate a dialogue among members of the dispute resolution community in Canada. Using a process based on consensus principles and procedures, reflecting the priorities and the nature of the field, people involved in dispute resolution were invited to share their perspectives and ideas.

This marked the beginning of the Canadian Forum on Dispute Resolution: an opportunity for the Canadian conflict resolution community to engage in collaborative problem-solving and planning to give shape to the future of dispute resolution in Canada. The Forum was designed to provide a venue for those wishing to participate in a consensus-building process to "direct the design, development and implementation of an action plan for the advancement of dispute resolution across Canada in the public interest."[3]

In laying the groundwork for the Forum, the Steering Committee worked in a collaborative fashion, making their decisions by consensus. In so doing, the people involved in the planning process actively demonstrated the strength of their commitment to using consensus-based models for decision making.

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[2] The names of the Steering Committee members are listed in Appendix V.

[3] The objective was developed by the Steering Committee at the initial meeting in Toronto.

2. Ship Design and Launch

The Forum

The Forum provided a vehicle by which interested members of the dispute resolution community could meet to consider issues facing the field in Canada and develop a plan for addressing those issues. This chapter describes how the Forum was designed and then, how it was implemented.

The Canadian Forum on Dispute Resolution provided "a first" in a number of ways. One of the more interesting from the point of view of those in the field was the process used to encourage discussion and generate results.

Gordon Sloan, Lead Facilitator

The Design of the Forum Process

Early in autumn 1994, the Steering Committee sent an announcement of the Forum to individuals who could be identified as having significant interest in the field. To maximize inclusivity and ensure that a diverse pool of knowledge and experience would be represented, while keeping numbers at a manageable level, participation eligibility was determined on a "first come, first served" basis, to a maximum of 150 participants. The Steering Committee wanted to ensure a balance of participants among these dimensions of dispute resolution activity. Potential registrants were asked to identify their three primary areas of interest and employment from the following categories: judiciary, research, commercial, aboriginal, practitioner, educator, trainer, government, non-profit organization, professional association or "other."[4]

[4] The other primary consideration regarding inclusivity of participants was geographical distribution. In recognition of the inequitable transportation costs associated with travelling to Toronto, a registration fee with a sliding scale was instituted for those would have to travel greater distances, and whose participation was not subsidized by a governmental or corporate employer.

A nationwide search for a Lead Facilitator was undertaken.[5] The Lead Facilitator analyzed the requirements of a consensus-building process resulting in the design of the Forum process which reflected, at every stage, the desire to maximize participants' choices and ability to focus on issues that were priorities for them. Together with the Steering Committee Planning Group, the Lead Facilitator also recruited eight facilitation teams, consisting of a facilitator and rapporteur for each group, as well as a lead rapporteur to write the Forum report.[6]

Those who initially registered their intent to participate (about 170 people at that time) were asked to identify four topics they considered to be the most pressing and relevant in the field. Responses to the open-ended question, "please list in order of priority four themes or issues that you consider important for Forum discussion," varied considerably. However, seven common threads became apparent during the analysis and compilation of the resulting data. That information was used to create seven task groups.

A detailed description of each task group topic was included in the packet mailed to those who had expressed an interest in taking part in the Forum. (See Appendix I for Description of Task Groups). People were asked to select the group in which they would most like to work. Later, when registrations were finalized, it was discovered that only five people had signed up in two of the groups. These topics (Code of Ethics and Networking and Communication Issues) were eliminated. Two other groups (Promotion, Marketing and Public Education and Dispute Resolution in the Administration of Justice) were split into sub-groups of 20-25 participants each because of the large numbers of people who had indicated their preference for those topics. The final configuration of task group topics was:

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[5] Gordon Sloan, from British Columbia, served as Lead Facilitator.

[6] Rosemarie Schmidt, from Ontario, served as Lead Rapporteur.

Task Group 1: Promotion, Marketing and Public Education about Dispute Resolution (two subgroups)
Task Group 2: Standards, Certification and Credentials
Task Group 3: Training in Dispute Resolution
Task Group 4: Dispute Resolution in the Administration of Justice (three subgroups), and
Task Group 5: Dispute Resolution in Governance

The Facilitation Team had to be enlarged to accommodate the amount of interest expressed for a couple of the theme areas. As a result of the enlarged facilitation staff, almost every participant was able to join the task group of their choice.

Gordon Sloan, Lead Facilitator

The process of determining task group topics and assigning participants to their groups was based on two principles of consensus processes. First, those affected by the outcomes of a decision-making process are best suited to determine their collective agenda and, second, individuals are primarily driven by their own needs and interests. Thus, Forum organizers established a form of "dialogue" with the participants by soliciting their opinions about what they saw as the most relevant topics related to conflict resolution issues in Canada. Once that information was distilled, and the resulting task groups created, every effort was made to put participants in the task group of his or her choice.

Meanwhile, the facilitators and rapporteurs from across Canada prepared themselves for the Forum. Each facilitator was paired with a rapporteur, and these teams of two were encouraged to develop their joint understanding of the consensus process they would facilitate together in the task group to which they were assigned.[7]

[7] The facilitator and rapporteur teams also assumed the task of selecting articles and other informational materials about the task group subjects. These orientation resources were sent to the conference coordinator, who compiled them in binders for each participant.

The Forum

Approximately 200 participants took part in the Forum, coming from every region in Canada. They included dispute resolution practitioners, trainers, lawyers, judges, public servants, academics, educators and representatives from non-profit organizations and various dispute resolution services.

The actual event took place over the course of two days in Toronto. Participants met on the morning of Friday, February 17. Each participant received a binder containing background information and reference materials for each of the Task Group subjects. After an opening plenary session in which the Federal Deputy Minister of Justice, George Thomson, addressed the Forum, the groups went to their assigned locations to begin two days' work.[8]

> I would like to make one comment about our process together ... I think people in our group, throughout the process, really understood that the ownership of the process is with the individual and the people here.
>
> Julie Devon Dodd, Rapporteur,
> Task Group 1a - Promotion, Marketing and Public Education about Dispute Resolution

Each group was responsible for its own process and results. The process was loosely designed as beginning, on the first day, with an expression by group members of their interests, goals, needs and concerns in relation to the subject. After canvassing the interests that participants brought to the table, issues would be identified and, on the second day, translated into recommendations for action. Action plans could include principles upon which any future initiatives should be grounded as well as concrete recommendations for specific tasks to advance those recommendations.

At the end of the second day, each group had reached agreement about the product of its deliberations. The task groups' interests and concerns, ideas and recommendations constitute the text of this report. Forum participants were also asked to make specific recommendations for immediate "next steps" that

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[8] Simultaneous interpretation in both official languages was provided where needed.

ought to be taken to follow up on the work completed at the Forum. These recommendations have been synthesized and are presented in Chapter 4. The original recommendations can be found in each group's individual report in Appendix II.

The closing plenary provided a brief opportunity for participants to hear from one another about the work each group had accomplished.[9] As was evidenced by the verbal reports given by each task group, each group had indeed taken on a life of its own. Although there was some overlap in the recommendations brought forward, there were many areas of independent concern and interest as well.

As indicated in the principles and recommendations generated by each task group, Forum participants were committed to the results of their work and, based on the recommendations made for "next steps," they were eager to see the work completed at the Forum be continued for the advancement of dispute resolution across Canada.

Peggy English: Now you should start.
Neil Gold: Why?
English: Because part of what I have seen is that you can take the leadership easier than I can.
Gold: Yes, but aren't we here to build a consensus together on how to proceed?

Forum Plenary presentation

[9] Aside from the opening plenary, there were two other opportunities for Forum participants to gather as a group. One was a luncheon on the second day, during which Neil Gold and Peggy English, two experienced and respected members of the dispute resolution community, provided their reflections on the Forum and its place in the wider context of the developing Canadian conflict resolution field.

3. Parallel Courses

Common Themes That Emerged in the Group Discussions

The individual task group reports revealed that some subjects were of concern to more than one group. This chapter brings together those subjects, or themes, that were raised by three or more groups, either in the body of their reports or in their recommendations. The parallel courses, set out by different groups, can help to identify issues of broader concern to the dispute resolution community.

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Definitions and Qualities of Dispute Resolution

Concern for Terminology

The name "Alternative Dispute Resolution" is both misleading and tends to marginalize dispute resolution ideas and approaches. It is misleading in that ADR is more than an alternative to litigation. ADR refers to a range of options for resolving disputes, recognizing the variation in types of disputes and the dynamics that they bring. ADR should, therefore, be considered an umbrella term which encompasses litigation, focusing on the appropriate method for resolving any given dispute. Recommended alternative names are: "appropriate dispute resolution" and, simply, "dispute resolution."

Within the field of dispute resolution, several terms are used differently by different people, including "conflict resolution" and "dispute resolution." Even "mediation" can mean different things, depending on the kind of dispute under discussion. A common terminology should be developed for the field. (Groups 1a, 1b, 4b, 4c)

ADR provides options for resolving disputes. Therefore, focus is on appropriate choices of dispute resolution method.

ADR provides people with options for dealing with their conflicts. It is, in fact, a dispute resolution continuum, extending from private consensual resolution to adjudicated decision-making. Conceptions of ADR should go beyond mediation and arbitration and include conflict analysis and process design, so that disputants can choose, from a range of options, the method most appropriate to their specific dispute. This ability to match processes of dispute resolution to user need is basic to the dispute resolution approach.

One or more dispute resolution mechanisms may be appropriate at different stages in the dispute and should be considered by the parties and their advisors throughout the dispute. The dispute resolution alternative that is appropriate depends on the individual and cultural needs of the parties, the public interest and the dynamics of the dispute. The selection of a dispute resolution option should be voluntary, consensual and accessible, respecting parties' wishes by providing them with enough information to make an informed choice.

The dispute resolution methods offered should be consistent with the needs of the parties and the public interest. A system is needed to assess the dispute and determine the appropriate range of alternatives for dealing with it. Clear principles need to be developed for diagnosing selecting, referring or mandating cases for ADR.

There remains a question of whether ADR options available across the country should be consistent and uniform or diverse. (Groups 1a, 1b, 4a, 4b, 4c)[10]

Process should be Flexible

Any model of dispute resolution must incorporate flexibility as an essential feature. This would include flexibility in locations, procedures and cultures, allowing for variation from community to community. The system must be responsive to the needs of the community.

Flexibility should also be a feature of the roles of the parties engaged to help resolve disputes. Thus, lawyers could expand their roles by becoming involved in the full range of dispute resolution options, including litigation, where appropriate. Judges, as well, might be permitted to participate more actively in creating a resolution. (Groups 1b, 4b, 4c)

Dispute Resolution Builds Skills For Problem-Solving Among Citizens

Dispute resolution has a very powerful social component. By encouraging parties to resolve their own disputes, it becomes a learning experience for participants -- and, by extension, for society. By bringing cooperative problem-solving skills into the community it can be a kind of community-building or community development that helps to prevent disputes from escalating into violence. The use of ADR in public policy disputes encourages greater citizen participation in civic matters.

ADR supports individual self-determination by making it possible for parties to retain control over the process

[10] Comments or recommendations made by the various task groups have been consolidated throughout the report. The particular task group reports that contained these comments or recommendations are listed, by number, at the end of each topic summary. The complete task group reports can be found in Appendix II.

and the outcome of their disputes. The process strives to be participatory and empowering, thereby maintaining or helping to engender positive relationships among the parties. Consequently, public education about ADR promotes better communication within society generally. (Groups 1a, 1b, 4b, 4c, 5)

There seems to be another level within this group that believes in the worth and value of ... having people look at their own problems and deal with their own problems.

Peggy English

Cultural Sensitivity is a Component of ADR Processes

Any model for dispute resolution processes, standards or training should incorporate safeguards to ensure cultural sensitivity. Cultural sensitivity can be described as raising self-awareness and reducing prejudice, showing respect for cultural differences, and ensuring that one's cultural ideas are not imposed on another. In the case of mediation training programs, cultural sensitivity must be integral to the program, not tacked on as incidental.

Respect for cultural differences reflects the kind of contextual appropriateness that ADR processes strive for and the need for the system to be responsive, both to characteristics of particular cases, as well as to changes that cases might undergo. (Groups 2, 3, 4b, 4c)

Concern for Dealing with Power Imbalances

In screening cases for suitability for mediation, one factor that must be considered is the power relationship between the parties. The more unlikely it is that mediators will be able to redress the power imbalance through mediation processes, the more likely that it will be necessary to protect the weaker party by proceeding through the courts.

If parties cannot choose their mediator, a concern arises about coercive mediations and resulting power imbalances. Such power imbalances must be rectified. One way this can be done is by ensuring that parties are accompanied by counsel throughout the process. However, this raises further questions about whether parties should have independent legal representation and, if so, at what point(s) in the dispute, for how long, and in what kinds of cases. (Groups 4a, 4b, 4c)

National Effort

A national working group should be established to deal with issues facing the field on a national level. The functions of this group would include:

Standards, Certification and Credentials

- build on existing work, addressing questions and and examining boundaries for ADR, recognizing different practices and sectors within ADR
- develop national standards for mediators (code of ADR ethics)
- develop national guidelines for ADR processes, including ADR practiced within government
- identify general principles (*e.g.* values, visions, ethics) and core competencies for the various ADR disciplines
- help to enhance the credibility of ADR

Research and Information Sharing

- monitor new and innovative practices within different ADR fields
- gather information presently available
- ensure that discussion is informed by research

Training

- provide training in conflict resolution techniques for persons who, by the nature of their jobs, will be called upon to perform conflict resolution functions.

Promotion and spokesperson for the ADR Public Education

- educate, promote and be a community, with the support and participation of government
- coordinate ADR marketing strategies and models, for purposes of consistency and to avoid duplication. (Groups 1a, 1b, 2, 4a, 4b, 5)

Monitoring and Evaluating ADR Processes

As part of ensuring the ongoing integrity and competency of ADR options, there must be continual monitoring and evaluation built into the design of any ADR activities. This would include a mechanism for monitoring the profession as a whole. Assessments could be conducted by joint committees of the judiciary, practising bar, government and other service providers. Information from the evaluation of pilot projects would show whether ADR has produced better results.

What constitutes "success" in dispute resolution? Settlement rates or cost efficiency statistics are not sufficient measures of success. Rather, continual and comprehensive evaluation would include both statistical information and user satisfaction levels. (Groups 1b, 4b, 4c)

Government Involvement

While it is the responsibility of government to offer ADR as a choice, the practice of conflict resolution need not be the purview of any one group. Rather, the implementation of ADR systems in the judicial process should be predicated upon broad consultation between Provincial and Federal governments, judges, lawyers and other interested groups.

Government will find an action plan for advancing ADR in Canada appealing because it fits into government needs. For the ADR community, especially in the area of developing national standards of practice, the support and presence of government, participating in the role of facilitator and funder, is crucial.

Public Declaration

There should be a declaration by the federal government, endorsed by the provincial and municipal governments that ADR is a legitimate and positive means to resolving conflict. Appropriate ministers of federal and provincial governments (*e.g.* Justice, Education) should be encouraged to promote dispute resolution in public presentations such as speeches.

Internal Government ADR Culture

There will need to be training and culture modification for government representatives who are to be involved in public policy dispute resolution. There will have to be less imposition of top-down definitions of the public interest and more willingness to allow others to define what is in the public interest (or the interest of the various groups making up the public). Ministers should be accountable for reporting on the application or integration of dispute resolution in their portfolios' activities. They could, for example, report annually to the "ADR Ombuds" to go beyond mere reporting in the House but still maintaining a degree of accountability. (Groups 1a, 1b, 4a, 4c, 5)

Legislation

In order to make choices truly available, a legitimate expectation of appropriate dispute resolution must be encouraged or recognized by legislation. Legislative change would be a very effective way of supporting the use of ADR in governance. Legislation could also be used to encourage lawyers and other decision-makers to inform their clients about ADR options for settlement, *e.g.* as a rule of professional conduct, whether through legislation or Professional Code. Legislation could expressly empower courts to delegate tasks to qualified ADR practitioners.

There is a need to ascertain what current legislation and public policy encourages the use of ADR. Existing and new legislation should be reviewed and revisited to add provisions for ADR where appropriate, and to remove any disincentives to using ADR. Consider legislative changes that would increase opportunities for parties to make their own decisions about how to proceed. Federal and provincial governments should examine areas of activity that could use dispute resolution and legislate that use. (Groups 1a, 4a, 4c)

Government Leading by Example

The Provincial and Federal Governments should lead by example, promoting ADR within government departments and agencies and using ADR processes to resolve their own disputes. Governments could incorporate non-court dispute resolution alternatives in legislation, government contracts, inter-governmental activities and public policy issues.

Government could seek effective ways to show a commitment to ADR, possibly by providing support services to departments and agencies attempting to use these processes. Similar principles would apply to major institutions such as corporations, universities and hospitals. (Groups 1a, 1b, 4a, 4c, 5)

Research and Information Needs

In this emerging field, there is a vital need to track developments, evaluate their effectiveness and disseminate this information widely. Specific recommendations include the following

- Evaluate existing court structures and ADR options to determine what ADR options there are and whether existing structures provide maximum benefit for resolving disputes.
- Analyze the economic, social, time, and human energy costs of current governmental systems to identify where and how ADR could best be used within the governmental framework.
- Ascertain why people currently use the courts. Is it to seek retribution? Do they derive some benefit from the delay? Is litigation viewed as the only way to solve the problem?
- Evaluate current pilot projects.
- Examine the infrastructure for structural and systemic incentives and disincentives.
- Government, as a party to disputes, ought to undertake a self-analysis to determine how disputes are currently being handled and what costs might be saved through ADR approaches.
- Ascertain the range and content of ADR certification processes currently in place in Canada.
- Maintain currency with new developments, as they emerge.
- Learn from the experience of others by evaluating existing programs, worldwide, against ADR principles.

Create Information Sources

- Create a central shorehouse or national clearinghouse for information on:

a) ADR models
b) how to access ADR
c) ADR initiatives across the country, including current initiatives in family law
d) the results of this forum.
  - Charge this body with the responsibility of disseminating the information to target groups.
  - Create a central think tank and research agency for ADR.
  - Provide support and funding for university-based ADR research and training centres.

Dissemination/ Sharing of Information

Develop a national strategy to provide the public with information on the continuum of conflict resolution options. This could be effected through community organizations, schools, professional bodies and members of the legal system as well as the media.

Use technology to disseminate information about ADR, making it available both in hard copy and electronically, including on the Internet. Ideally, an overseeing body would share this information on ADR. Research results should be disseminated to interest groups, in order to support and encourage the development of Canadian scholarship in the ADR field and to allay the public's concerns regarding ADR.

Convene national conferences to enhance the exchange of education and information. (Groups 1b, 2, 4a, 4b, 4c, 5)

Public Education

If we seek to create a dispute resolution consciousness in Canada, public education must be directed at changing attitudes. Incentives should be provided and opportunities created in the community for public education about ADR. ADR curriculum should be used at all levels of education, including elementary schools, secondary schools, universities, colleges, legal, business and professional schools. Education in ADR should also be provided to the judiciary, Bar, court support staff, ADR providers and the public. One could provide ADR information to other major institutions, such as the insurance industry.

Work needs to be done to change attitudes "at the top" with respect to the credibility of ADR as an alternative to existing methods of governance. (Groups 1b, 4c, 5)

Advocating Public Education about ADR

It is recommended that national public education and awareness campaigns be established, providing information about the benefits of alternative methods of dispute resolution. Education about dispute resolution alternatives is critical for the public and all participants in the administration of justice. The goal would be to enhance general knowledge of ADR and attitudes towards its use. Such education would also help to foster community responsibility for justice issues and challenges.

There is a question of who should be responsible for public education and promotion of ADR, both within the Justice System and in the general public. (Groups 1b, 4a, 4b, 4c)

Instruction in ADR Should be Offered in Schools

Elementary and Secondary All provincial ministries of education should ensure that dispute resolution processes and skills are part of the curriculum for all students. Schools should seek to develop conflict resolution skills generally, by teaching them throughout, beginning at the elementary level. This would be creating no less than a paradigm shift towards non-violent responses to conflict in society.

There should also be an examination of current ADR policies and protocols within the educational institutions themselves. Institutions should approach their respective Ministers of Education and Justice for policy objectives which will facilitate and encourage change in the internal processes of the institutions themselves. (Groups 1a, 4a, 5)

Post-secondary Post-secondary institutions should ensure that ADR skills training forms part of all programs. While certain professional programs, such as law and business schools, may have a very obvious need for ADR instruction, it would not be appropriate to limit efforts to those groups. All individuals should have dispute resolution skills, not just certain specialists. Therefore, post-secondary programs ought to provide ADR training as part of their general education curriculum as well. (Groups 1a, 5)

Professional Education about ADR should be directed to front line people, such as court clerks and police officers. Organizations and government departments could also include contractual clauses specifying that parties will use ADR, at least initially, to resolve internal disputes. (Groups 4a, 4b)

Legal Law schools need to expand their course offerings in ADR and raise the profile of ADR generally. Legal education could be modified to include ADR instruction in the first year of all law school programs, throughout subsequent law courses and in Bar Admission courses.

There is a general lack of knowledge of ADR and lack of support for these processes within the legal profession. Lawyers need to be educated about the benefits of ADR options. Training should be encouraged for both

government lawyers and government decision-makers in how to use ADR, though not necessarily in how to be mediators themselves.

Another goal would be to change the culture in the Justice system, in part by de-formalizing the processes used. One could institute continuing examination of the practice of ADR by the judiciary and the bar, provincially, perhaps with the results liaised nationally. (Groups 4a, 4b, 4c)

Judicial There is a need for the judiciary to increase their awareness of ADR processes. Information about ADR could be provided through judicial associations. The National Judicial Institute could, for example, develop and deliver an awareness program in ADR to its member judges. In situations where judges themselves have opportunities to use mediation, actual training should be made available, but not mandated. (Groups 4a, 4b, 4c)

Media as a Vehicle for Public Education

The media are a powerful vehicle for conveying messages about the nature of conflict and ways of resolving it. The media could be used as a vehicle of public education and promotion of ADR by, for example:

- influencing the creative media (television, theatre, literature, arts, *etc.*) to introduce a dispute resolution theme;
- getting people within the ADR community to develop appropriate TV scripts;
- finding a way to deal with the "good news is no news" mentality; and
- engaging the media to provide a repetitive, consistent message regarding ADR. (Groups 1a, 1b, 4a, 5)

4. Way Points and Ports of Call

Consolidated Principles and Recommendations

The consensus-building process carried on throughout the Forum culminated in a product from each group. Some of the groups recommended specific action plans, others articulated principles which can later be used to guide and to evaluate proposed courses of action. Several of the groups reached consensus, not only on the meaning of particular recommendations, but also on their precise wording. The full text of each group's recommendations can be found in the individual group reports in Appendix II. This chapter brings together the principles and recommendations from all of the individual groups, summarized and synthesized for purposes of clarity and brevity.

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Qualities of Dispute Resolution in the Administration of Justice

The administration of justice must recognize and foster dignity and fairness to participants, without compromising the concepts of judicial independence and the rule of law. The application of justice in our legal system should be governed by principles of restorative justice.

It is in the public interest that the quality of Canadian Justice be acknowledged and enhanced through the design, development and implementation of innovative, flexible and accessible conflict resolution processes. Such processes need not be the purview of any one group. They must, however, be fair and accessible and seek to achieve a cost-effective, efficient, timely and enforceable resolution of disputes. Such processes would help to promote reconciliation.

These principles can be used to enhance the public administration of justice with dispute resolution approaches.

Ayumi Bailly, Rapporteur
Task Group 4c

Dispute resolution processes should be participatory and empowering in nature with the objective of positive relationships between the parties. The parties should, to the greatest extent possible, have control over the mechanisms used to resolve their dispute and the outcome of those processes.

Dispute resolution processes must be continually evaluated in a comprehensive manner, not just by settlement rates or cost efficiency. (Group 4a, 4b, 4c)

Staged Intervention and Situation-Appropriateness

The dispute resolution process should be viewed as a continuum from private consensual resolution to adjudicated decision-making.

One or more dispute resolution mechanisms may be appropriate at various stages in the dispute. The dispute resolution alternative that is appropriate depends on the individual and cultural needs of the parties, the public interest and the dynamics of the dispute. All available options should be considered by the parties and their advisors throughout the dispute.

A selection system might be used to refer cases to the appropriate dispute resolution method.

The array of available dispute resolution options should meet the needs of disputants as well as the community, reconciling community rights with individual rights. (Group 4b, 4c)

Process of Developing Models for ADR in the Administration of Justice

A committee should be struck to evaluate programs presently functioning with a view to developing dispute resolution models to incorporate into the administration of justice. In developing these models, the committee should articulate the underlying principles of ADR, which are compatible with and reflect the principles of restorative justice. As well, active efforts should be made to involve the community in the development of ADR processes for inclusion into the justice system. (Group 4b)

Naming/Definitions

In recognition of the fact that cases are varied and demand a range of options for dispute resolution which include (but are not limited to) litigation, arbitration and mediation, it was recommended that all of the options be encompassed in the term ADR, by considering the "A" in ADR to refer to "Appropriate" Dispute Resolution. (Group 1a, 1b)

Public Education

In the interests of informed choice, it is critical that education about dispute resolution alternatives be provided to the public and to all participants in the administration of justice.

Training in conflict resolution techniques should also be provided to persons who, by the nature of their jobs, will be called upon to perform conflict resolution functions. These would include the Judiciary, Bar, Police and Court support staff.

Implementation of this public education and training should be done through the development of a national strategy, which would include the development and presentation by the National Judicial Institute of an ADR awareness program for its member judges. (Group 4a, 4b, 4c)

Training

The group dealing with Training in Dispute Resolution articulated a set of principles to guide the development and delivery of mediation training programs. These principles give recognition to the wide range of approaches to mediation training and can be used to assess existing programs or any action plans developed in the future.

Beginning with the general statement that every mediator be honest and self-aware, the principles go on to describe the priorities of trainers and training institutes. Trainers working in teams need a shared vision and values about mediation that respect the diversity of mediation practice. Trainees should solicit feedback from trainees in order to learn from them. Training institutes, moreover, should clearly set out their objectives for the courses they offer and their expectations for the trainers who present them.

With regard to training programs, the following series of principles was presented

- theory, knowledge and skill components
- follow-up courses, practicums and co-mediation opportunities, which would prepare trainees to become sufficiently qualified to mediate without supervision
- training in principled negotiation
- a large experiential component, with sufficient time for role-plays to unfold and adequate debriefing
- a practicum, integrated into the training program and conceptualized as more than practising process skills
- observation of learned mediation skills and constructive feedback by a skilled mediator
- discussion of the mediator-client relationship, client expectations and the educative role of the mediator
- a comprehensive evaluation component, including self-evaluation
- assessment should be considered a continuous process

Training courses should also

- be linked to community initiatives in the case of specialized training, to avoid "reinventing the wheel"
- consider legal aspects of mediating in a given area
- have cultural sensitivity woven through the entire program, not tacked on as incidental
- acknowledge the diversity of practice, so that a single model is not taught as the only correct one.

A basic mediation training course should contain instruction on:

1. Communication Skills
2. Mediation Processes
3. Mediation Specific Skills
4. Self-Management and Understanding
   a) Self-analysis of Conflict Styles
   b) Characteristics of a Good Mediator
5. Ethics
6. Concepts and Theories of Conflict and Dispute Resolution
7. Mediation on a Dispute Resolution Spectrum
8. Negotiation Skills (Group 3)

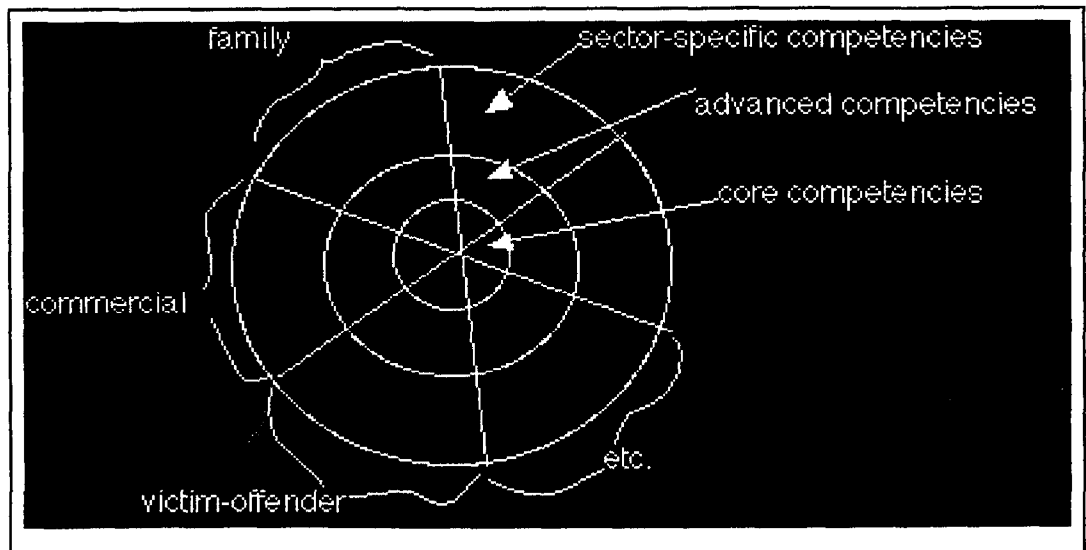
Standards And Certification

The group dealing with standards and certification did not agree that credentials should be mandatory. However, to the extent that standards and credentials are needed, the task group recommended that a National Working Group be formed to:

- capture new and innovative practices
- gather information currently available to ensure that discussion is informed by research
- identify general principles and core competencies for various ADR disciplines
- coordinate existing standards for specific practices, and
- assist in establishing standards if they do not exist.

The structure of an onion was chosen as a metaphor for a non-hierarchical view of standards. In the same way that an onion is made up of concentric layers around the centre, levels of skill and specialization would build around core competencies of mediation practice. At the core and intermediate levels, skills are generic and can be shared across subject types. As one adds more layers, the level of subject or sector specialization increases.

Onion diagram



It is important that a Canadian statement be developed regarding the formation and use of standards of competency in various ADR practices. It is recommended that this be done through the creation of a process for on-going discussion, including consultation between the relevant stakeholders, which would consist of practitioners, dispute resolution associations and other groups. (Group 2)

Two of the three groups dealing with dispute resolution in the administration of justice recommended that methods be put in place to ensure that providers of dispute resolution services are competent. One group further recommended that providers be independent in order to inspire trust. (Group 4a, 4c)

National Body

Three groups called for the formation of a non-governmental national body to assist in the development of dispute resolution in Canada.

The two groups dealing with Promotion, Marketing and Public Education both recommended that a National Body be created to enhance consistency and avoid duplication in promotion and public education efforts. This could be done by promoting cooperation among ADR groups and helping them to coordinate their marketing strategies and models. It was recommended that the National Body develop and publish a national code of ADR ethics, promote dispute resolution, provide public education and serve as spokesperson for the ADR community. (Groups 1a, 1b)

What we noticed as the discussion unfolded was that everybody had a little piece of the total picture. We felt that a National Task Force should be charged with putting together an inventory of all of the programs and all of the experiments that are happening across the country along with any evaluation studies and results of those dispute resolution initiatives.

Ginny Wilson, Rapporteur
Task Group 4a

The group working on Standards, Certification and Credentials recommended that a National Working Group be established to address issues of certification and standards for mediation practice. The National Working Group would build on existing work so as to avoid repetition of work already done. It was recommended that the working group address issues and examine boundaries for ADR, giving recognition to different practices and sectors within the field. (Group 2)

Responsibility Centres

Several recommendations were directed toward specific groups who would be responsible for implementing them.

Business and Professional Groups

Business and professional organizations, including the Canadian Bar Association, should set an example and create incentives by practicing and promoting ADR within their organizations and agencies. When writing contracts, they should recommend clauses for appropriate dispute resolution.

A protocol or statement of commitment should be created for endorsement by members of business, professional and other associations, (including, for example, the Chamber of Commerce, small business associations, Rotary Clubs), to explore ADR processes before proceeding with litigation against other members. (Group 1a, 1b)

Education Ministries and Educational Institutions

Through a combination of incentives and opportunities, provincial ministries of education should ensure that dispute resolution processes and skills form part of the curriculum for all students.

Suitable ADR curricula should be made available and incorporated into all levels of education, including elementary schools, secondary schools, universities and colleges, as well as legal, business and professional schools. (Group 1a, 1b)

The Courts

The courts should be expressly empowered to delegate tasks to qualified ADR practitioners. This would make more resources available to the court to assist in decision-making.

Meanwhile, the courts should continue their support for pre-trial dispute resolution alternatives and encourage the use of other dispute resolution mechanisms both within and outside the courts. (Group 4a, 4b, 4c)

Government – General

Government should participate in national initiatives as facilitator and funder.

Government should engage in broad consultation regarding the implementation of ADR systems in the judicial process. This consultation should include provincial and federal governments, judges, lawyers and other interested groups.

Government should support the advancement of ADR by:

- encouraging ministers of appropriate federal and provincial departments to promote dispute resolution in public presentations such as speeches
- making a declaration, sponsored by the federal government and endorsed by provincial and municipal governments, that ADR is a legitimate and positive means of resolving conflict. (Group 1a, 1b, 2, 4a)

Government – Leading by Example

Governments, at all levels, should lead by example and:

- include clauses in contracts specifying that, in the case of disagreements, ADR will be used prior to litigation
- practice and promote ADR within government departments and agencies
- use ADR processes to resolve inter-governmental disputes
- use ADR processes to deal with public policy issues.

These recommendations may also apply to other major institutions, such as corporations, universities and hospitals. (Group 1a, 1b, 4a, 4c)

Government – Legislative Initiatives

Legislation can enhance and encourage the use of ADR in the administration of justice. This could be approached in various ways. One possibility would be to make express reference to ADR in specific pieces of legislation where such references do not currently exist. Alternatively, existing legislation that contains references to ADR could be strengthened to encourage its use earlier in the process, as with the *Divorce Act*.

Both the federal and provincial governments should take the initiative to examine areas of activity that could use dispute resolution and legislate that use. As a result, a legitimate expectation of ADR would be encouraged or recognized by legislation.

The overriding principle is that of availability of choice. Access to ADR should be made mandatory, so that parties going through the justice system will be able to select the most appropriate option for their dispute. (Group 1a, 4a, 4b)

Dispute Resolution in Governance

Group 5 developed a series strategies for encouraging the use of ADR in governance, in order to provide a framework for further work in the future on reforms to ADR in governance. The group focused on the following areas:

- local groups and governance
- federal, provincial, territorial governments and governance
- education and governance, and aboriginal governance.

These recommendations are summarized below. For a full account of both the recommendations and the principles that underlie them, please see the Group 5 Report in Appendix II.

Local Groups and Governance

To advance the use of dispute resolution processes in formal and informal community-level dispute resolution and governance, an on-going, iterative strategy was proposed. This process would include constant review, appraisal, modification and improvement of the approaches used to increase the use of ADR at the local level through the following steps:

1. preparing the ground for change
2. building a structure
3. implementation and evaluation, and
4. sustaining the changes

The term "governance" covers a wide range of activity, from governance cast in a relatively narrow sense (government regulation ... or governance as it applies to professions through such mechanisms as the Law Society of Upper Canada) to governance in a much borader sense (participation by individuals and groups in the processes of making decisions that affect their lives at a local level, whether by government or others).

Report of Task Group 5

1. Preparing the Ground for Change

The first phase would involve promotion of dispute resolution in order to convince people of the need for change. Advocating a return to consensus decision-making, public education efforts would emphasize the efficiency of ADR processes and the enhanced quality of decisions produced through these processes. Cost-effectiveness, both financial and in human terms, and the relationship building aspects of dispute resolution would be stressed in order to show that it is a viable alternative to current ways of dealing with conflict.

Through careful analysis and research, a community of support would be gathered to assist in bringing about change in existing dispute resolution systems for those aspects that do not work. Using specific case studies, local people with a high profile and good credibility in the DR field would be enlisted to help promote ADR to local institutions.

2. Building a Structure

Reallocations of financial and human resources would form the second phase, using existing mechanisms at the local level (*e.g.*, federations, associations and community groups) to help incorporate dispute resolution into current structures and processes. Structures for developing dispute resolution systems would be created by helping groups to take on responsibility at the local level and provide the necessary coordination to support taking on greater responsibility.

3. Implementation and Evaluation

Beginning with the development of appropriate training for local needs, pilot projects would be developed, implemented and evaluated. With these concrete demonstrations of dispute resolution in action, the effectiveness of these processes could be demonstrated and momentum for change could be enhanced.

4. Sustaining the Changes

The development of dispute resolution should be sustainable at the local level. Efforts to ensure this would include lobbying for any necessary enabling legislation and expanding activities beyond pilot projects to more integrated use of the dispute resolution approaches.

Federal, Provincial, Territorial Governments and Governance

How can ADR be encouraged in government institutions in order to achieve better governance? One way would be to achieve routine use of dispute resolution techniques in resolving and developing public policy questions.

As it is important to build a strong case for broader use of ADR techniques in government, the group recommended that the pilot projects be evaluated and that greater analysis be carried out of the economic, social, time, and human energy costs of current governmental systems. This would provide the information needed to identify where and how ADR could best be used within the governmental framework.

Five strategies were identified for achieving this:

1. develop pilot projects to demonstrate non-judicial public policy dispute resolution
2. change attitudes "at the top" regarding credibility of ADR
3. demonstrate central commitment by the governing body
4. introduce legislative change
5. training and culture modification for government representatives

1. Pilot Projects

Pilot projects could apply both to resolution of specific disputes and development of policies, legislation and rules. They could deal with issues within and between governments, and between government and non-government stakeholders (such as the regulated or the public).

2. Attitude Change "At The Top"

The pilot projects could demonstrate to key decision-makers the credibility of ADR as an alternative to existing methods of governance.

3. Demonstration Of Central Commitment By The Governing Body

This could follow the example of the special support team that the Saskatchewan Department of Justice makes available to other departments, as needed, to support mediation activities undertaken by those other departments.

4. Introduce Legislative Change

As long as the proper climate for the DR work exists, people outside the governance structure can also do dispute resolution work. However, legislation can be very effective in supporting the use of ADR in governance.

5. Training And Culture Modification For Government Representatives

To the extent that government representatives define public policy, they would need to be prepared to accept less imposition of top-down definitions of what is in the public interest and be willing to allow others to define what is in the interest of the various groups making up the public.

Education and Governance

Focusing on educational institutions such as public and separate schools, as well as post-secondary institutions, several areas for action were identified.

1. *Internal Relationships Within the Institutions*

   There is a need for better communication within educational institutions, instruction in public facilitation skills and information on effective dispute resolution practices in educational settings.

2. *Standing Advisory Committees*

   These committees make it possible for interest groups to be directly involved, providing the education system with pro-active, ongoing advice and participation. There is a need for more training of the persons involved in these committees, and for review of the selection process to ensure that committees are representative of the population.

3. *Current Dispute Resolution Policies and Protocols Within Educational Institutions*

   Peer mediation programs should be established at all levels. Institutions should also approach their respective Ministers of Education and Justice for broad policy objectives which could help to provide the proper climate to facilitate and encourage change in the internal processes of those institutions.

4. *External Relations*

   There is a need for institutions to reach out to the community and contribute to community life by, for example, sponsoring community-based conflict resolution training. External relations could also be improved by enhancing the involvement of parents and community organizations in decision-making through such measures as the implementation of permanent parent advisory committees at each school site.

5. *ADR Skills Training*

   This should be a part of all professional and general education programs. While certain programs may have a very obvious need for ADR instruction (such as law and business schools), it would not be appropriate to limit efforts only to those groups.

Rather, all individuals should have dispute resolution skills.

6. University-Based Dispute Resolution Research And Training Centres

Support and funding for these initiatives is crucial.

Aboriginal Governance

Given the diversity of perspectives within and among aboriginal peoples and given the state of development of concepts of aboriginal self governance, it is inappropriate to make specific recommendations for the use of ADR. Instead, the following principle was enunciated to guide thought in this area: *"The foundations of self governance are respect and sharing."*

Information Dissemination

Three groups expressed concern in their recommendations about the dissemination of appropriate information about ADR to the general public, interest groups, professional bodies, businesses, lawyers, other advisors and influential people.

They recommended that information be disseminated on

- results of research in ADR
- the continuum of conflict resolution options
- dispute resolution programs that have functioned
- the results of this Forum.

The purpose of disseminating this information is to support and encourage the development of Canadian scholarship in ADR and to allay concerns that might exist within the public regarding ADR.

Dissemination could be effected, through a national strategy, by:

- community organizations
- schools
- professional bodies
- members of the legal system
- the media
- national publications.

The information should be made available in hard copy and electronically, including on the Internet. (Group 1b, 4a, 4b)

Marketing and Promotion

A national public education and awareness campaign should be established to make the public aware of dispute resolution choices. This campaign would provide information about ADR and promote appropriate dispute resolution methods. The materials, including brochures, public service announcements and press releases, should be generic and endorsed by the provincial and federal governments. They should include a 1-800 number to enable the interested public to find additional information.

A national ADR day should be established, together with a logo and poster, not as a holiday but as a day of recognition and promotion for ADR.

In order to assist dispute resolution professionals entering the field, a list of promotional steps should be prepared. It is then the responsibility of each dispute resolution practitioner to conduct his or her own self-promotion through articles, media, etc.

By Media

The media should be encouraged to assist in the promotion of ADR by introducing a dispute resolution theme in scripts and programming.

The media could also be engaged to carry advertising, providing a repetitive, consistent message regarding ADR.

By The ADR Community

The ADR community should use existing technology to promote ADR and enhance communication among groups. (Group 1a, 1b)

5. Charting the Course for Future Destinations

Next Steps: Consolidated Recommendations

During the Forum, participants were asked to take some time in their task group sessions to make recommendations to the Steering Committee on steps that should be taken immediately following the Forum. This consolidated version of the follow-up recommendations is taken from the groups' reports. Not all of the groups provided recommendations for immediate action; some chose to use their time to refine the subject-specific principles and recommendations for their task group.

A question about immediate next steps was also included in the questionnaire distributed to participants at the end of the Forum.

The responses have been collated and are summarized in Appendix VII.

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Communication Among Participants

A mechanism should be established to enable Forum participants to continue to communicate, maintaining continuity and building on the momentum of the Forum. Available technology should be used to strengthen connections among Forum participants, regionally and provincially. Participants want to continue the work that was begun with the Forum and they want to hear back from the Justice Department about what action has been taken.

The members of the "Dispute Resolution in Governance" task group decided to maintain a working relationship, as a group, after the Forum in order to continue to build on the progress they had made during the Forum. (Group 4c, 5)

Implementation

Use all opportunities to further the recommendations of the Forum (*e.g.*, through the use of regional and national conferences).

Commit existing resource of "600" lawyers in the Justice Department, including the ADR Group, to carrying on with these recommendations of this Forum. Provinces should make a similar commitment.

There should be some form of reciprocal commitment from at least the federal government, if not other sectors, to continue the excellent work begun at the 1995 Forum. (Group 4c, 5)

National Body to Move This Initiative Forward

A successor Organizing Body should be created to ensure follow-up by reviewing, monitoring, implementing and initiating the action plans developed at the Forum.

Alternatively, the government should consider the formation of a National Roundtable on Dispute Resolution.

Another alternative would be to create a National Multi-Disciplinary Task Force on Dispute Resolution. This Task Force would have wide representation, including representatives of the federal and provincial governments, community-based organizations, professional and non-governmental organizations and the judiciary. It would put in motion an integrated

national action plan to advance dispute resolution in Canada.

This Task Force should:

- create an inventory of existing ADR programmes and resources
- create and promote uniform terminology for dispute resolution in Canada
- develop a communication strategy to promote ADR in Canada, including
  a) a public awareness campaign
  b) a networking mechanism
- identify sources and initiatives for the funding of ADR activities, including
  a) investigate user-pay approaches to ADR that ensure access to justice while encouraging parties with resources to share the costs
  b) investigate how existing resources can be reallocated to ADR as these processes become more widely used
  c) implementing court service surcharges
  d) community-based and private sector sources. (Group 1a, 1b, 4a, 5)

Government Involvement - Leading by Example

Government should play an active role in making changes and in facilitating and encouraging change by others involved in governance.

Government should demonstrate a commitment to using mediation and negotiation to resolve disputes. For example, the Department of Justice could set an example by making a commitment to mediate 100 files over the next 12 months as a starting point. The appropriate Ministers (both federal and provincial) should issue a clear directive with achievable and measurable goals to encourage their governments to show that they are changing their behaviour to incorporate dispute resolution processes. (Group 4c, 5)

Individual Responsibility

It was recommended that each participant at the Forum take personal responsibility for promoting recommendations in their interest and geographic areas. Members of existing national and provincial organizations should, further, promote Forum recommendations through their organizations.

With regard to the use of dispute resolution in governance, it is not necessary to have government involvement for significant advancement to occur. Each member of the "Dispute Resolution in Governance" task group signed a copy of the draft document that the group produced at the end of the second day of the Forum (see Appendix II). This was intended to demonstrate their commitment to carrying forward the work of the Forum and to implementing the principles and recommendations of the Forum to the extent that they could, as individuals and as members of their groups and organizations. (Group 1a, 5)

Information Sharing

A national press release should be written about the Forum.

Those who offer training should strive to coordinate and share more effectively. A clearinghouse of available and developing resources for training in mediation would assist this effort. (Group 1b, 3)

Follow-up Forum

The government should facilitate the convening of a conference to explore the feasibility of developing a national dispute resolution strategy by individuals and organizations reflecting the full diversity of regions, backgrounds and disciplines. To this end, and to further the work of the Forum, the working group recommends the formation of an *ad hoc* transition team.

A follow-up conference or another Forum should be organized within the next 12 months, to follow up on the progress made here and to continue the dialogue. Bi-annual conferences of this kind would also be helpful. (Group 1b, 4b, 4c, 5)

Forum Report

The Steering Committee should produce a report regarding the Forum and ensure its the widest possible dissemination. This report should highlight the intrinsic value of the consensus processes that the groups underwent. Readers should be invited to comment on the final report, thereby transforming it into a springboard for further discussion. (Group 1b, 3)

Crew, Gear & Tackle

Appendices

Description of Task Groups

Task Group 1

Promotion, Marketing and Public Education about Dispute Resolution

If dispute resolution is to be accessed broadly across Canada, it will have to be promoted both by private practitioners and by large public users. But how is this to happen in the next few years and who will be behind it? Will the promotion of dispute resolution be fueled by market pressure or will there be a strategy for broad marketing among the consuming public? How can practitioners get a practice going, noticed an used by those who most need it? What role does public education (including the school system) have in promoting dispute resolution? Within the professions immediately affected by a growing public thirst for dispute resolution options, what can be done to increase information about access to methods of dispute resolution alternatives? What action plan can be put in place to bring about the recommendations of the task group?

Task Group 2

Qualifications, Certification and Credentials of Mediators

In the last few years, there has been intense discussion, at times heated debate, over the question of mediator qualifications and credentials. Views range from complete *laissez faire* to the creation of a self-regulated professional body. A number of processes exist for establishing qualifications and some are offering credentials and certification in the absence of a consensus over standards. Do you recommend some qualifying of mediators and, if so to what degree? What qualifications are associated with the claim "mediator"? Are there established norms for competency and are they appropriate? What minimum standards are desired if standards are to be established? What are the appropriate roles for government, non-government organizations and users of mediation services in this subject? Where does the mediation field go from here in the continuing discussion of qualifications?

Task Group 3

Training of Mediators

There are a number of organizations in Canada which offer mediation training. Some provide a curriculum in conflict resolution. There are also numerous independent trainers providing mediation training through government, industry and by private contract. What minimum standards are to be expected of trainers and conflict resolution courses for mediators? Is there any basic course content for generic mediation training and negotiations skills training and process knowledge? What about basic course content for mediation training for particular applications such as family, victim/offender, commercial, community and environmental disputes?

In order to obtain many professional degrees and licenses, there are requirements for supervised practicums and internships in addition to basic course work. Should there be required practicums and internships for mediators?

Should credit be given for experience gained prior to mediation training? If so, how would this experience be evaluated?

Task Group 4

Dispute Resolution and the Administration of Justice

In the past few years, almost every jurisdiction has considered the use of unconventional dispute resolution methods to manage caseloads, improve outcomes and deliver justice more effectively. Procedures such as mediation, neutral case evaluation, arbitration, settlement conferences, and mini-trials have been implemented at various levels of the justice delivery system. A number of jurisdictions now have a track record in using this alternatives.

What are some of the major initiatives and how have they fared? What methods are appropriate to what kinds of case situations and are there criteria which can be developed to define these? What could, or should, governments be doing to make unconventional dispute resolution processes available to the public? How can the delivery of alternative dispute resolution methods be effectively administered? What about concerns that diverting cases away from conventional treatment may "bleed" the developing common law of its caseload? How should provinces and the Federal Government co-ordinate the ongoing experimentation in this area?

Task Group 5

Dispute Resolution in Governance

Experiments in governance and methods of governing are a hallmark of this decade. Dispute Resolution has so far played a conspicuous role in breathing new life into the sometimes tired orthodoxies of governance. In what ways can dispute resolution methods assist in the development of policy in matters of intense public interest? What lessons for self-governance can be adopted from traditional methods of resolving disputes which have long been practiced by First Nations? How do we facilitate the co-existence of different cultures in governance systems? What possibilities are there for dispute resolution methods to be more fully utilized by community justice initiatives? How can methods of governance use dispute resolution alternatives to take better account of cultural differences, particularly in urban centres?

Appendix II

Task Group Reports*

* *The Task Group Reports have been lightly edited; transcriptions of flip chart notes have been omitted from this report.*

Report of Task Group 1a

Promotion, Marketing and Public Education about Dispute Resolution

Facilitator - Frank Wiley
Rapporteur - Julie Devon Dodd

I. Background

Participants in Group 1a began with Questions and Issues to identify common areas and differences. These comments are summarized:

Questions to start off

How do we get to the level of changing attitudes?

It is important that promotion also be directed at attitude change. Promoting this change in attitude needs to be done in a way that is inclusive and does not present a threat to others, for example, lawyers. Can we move ADR from being an alternative to being the norm? The justice system never has to promote "justice," it is defined in law.

Are there representatives of provincial governments here?

The role and participation of the federal Department of Justice in helping to create the forum was acknowledged. There was concern expressed that no representatives of provincial governments were present in Group 1a, and participants were not aware that representatives from provincial or territorial Departments of Justice or Attorneys General were at the Forum.

What is the relationship between promotion, marketing and credentials?

There were several issues raised on this question. Promotion was broadly described as public awareness and education, and marketing as marketing a specific practice or mediator. The relationship among these factors was acknowledged, since credentials and success are important marketing tools and, therefore, part of an overall approach to promotion.

Raising the profile of the alternative dispute resolution profession is a collective and individual responsibility.

How do you identify "good" mediators?

Specific issues were raised including:

- referrals by one mediator to another, when one is not able to provide the service because one of the parties is already known
- increasing the confidence of large institutions (*e.g.* banking) in ADR
- where specialization outside of the legal field would be beneficial (*e.g.* technical engineering information).

Ideally, referral between a group of mediators could take place within a relationship of confidence. We acknowledged that the work of the group addressing standards would consider some of these issues.

Who is the community; who is the strategy for?

One part of preparing a promotion strategy is to know the target audience and to listen to potential clients. Two major target groups were identified:

1. clientele who are unaware of ADR
2. clientele who know about ADR, but do not use it

Clientele must have confidence in the process, must see Win/Win possibilities.

Who is a mediator or alternative dispute resolution professional?

The alternative dispute resolution community is not well defined. There is no discrete conflict resolution community in Canada. There are a number of national organizations, such as the Arbitration and Mediation Institute of Canada which has been operating in Canada since 1974 and, since 1977 in Quebec. This organization provides certification and has 30 certified arbitrators in Quebec. Some trades and professions have national associations to promote and protect the interests of the group.

How can alternative dispute resolution be valued?

Clientele must have confidence in the process, and the profession must value itself by setting realistic fees. It is important to financially value the process of ADR and to make it accessible. Valuing the service makes it easier to sell.

Attempts at Some Broad Definitions

Mediation: bring parties to the table to reestablish communication toward resolution.

Arbitration: private justice (commercial arbitration has many options and is less antagonistic than court system)

Principled Conflict Resolution: broad term implying a process for resolution.

Mission Statement proposed by one participant: Access at lower cost given to people and companies with quality service for alternative to more quickly resolve dispute in WIN/WIN (definition not accepted by group for several reasons, including a question on promoting a lower cost)

The Group agreed that:

"potential clients (of ADR/promotion) know they have a problem."

II. Sub-groups

Group 1a participants divided into three working groups to explore some of the questions raised in the opening session. The three groups were:

1. Defining who we are (who is the alternative dispute resolution community in Canada)
2. Promotion to the public who is unaware of the existence of alternative dispute resolution, and
3. Promotion to the public who is aware of alternative dispute resolution, but does not use it.

1. Defining who we are

There is not a discrete conflict resolution community in Canada

Different kinds

- professionals (medicine, law, engineering)
- relational/interpersonal concerns
- pragmatists (business activity)
- interests in changing society

- resource allocation problems
- process approaches
- cultural differences
- subject matter

Picture the community on a matrix with different interests:

Subject Interests
Process Interests
Personal Values Interests
Profession/Calling Interests

Broad audience groupings:

- general population
- family units
- schools
- community organizations
- government/tribunals/boards

What do we have in common?

A common element of the dispute resolution community was defined as an ability to match processes of dispute resolution to user need. The sub-group determined that the focus should be on the idea of appropriate processes/ choices and not the exclusion of specific types of dispute resolution.

2. Promotion to public unaware of alternative dispute resolution

How:

- use press
- government ad campaign similar to drinking and driving
- university/college courses in dispute resolution
- logos and signs
- mission statements
- brochures
- promote each other's disciplines when speaking with media
- free session to demonstrate dispute resolution
- computer technology through the Internet, promote on lists and newsgroups
- word of mouth
- educate people in positions of power to use and promote ADR
- educate youth who will educate parents (*e.g.* recycling)
- conflict resolution curriculum as part of school program
- educational sessions with large institutions such as banks, insurance companies and universities.

Who:

For everyone - women's shelters, schools, disability groups, staff in education institutions, *etc.* (not limited)

Why promote ADR:

- resolution not adversarial
- greater control
- reduction in violence (violence prevention)
- quicker
- cheaper
- WIN/WIN
- must be seen as WIN for judicial sector
- government responsibility to offer as a choice
- confidentiality (for businesses)

Who:

- government
- judiciary
- habitual disputants
- major parties who impose contracts on smaller parties (e.g. loans and mortgages at banks)
- commercial lawyers (include broad conflict resolutions

Why (Incentives):

- cost
- what they are presently doing isn't working
- it is working, but slowly, but costly, not as well as something else
- lacks confidentiality
- who takes part (*e.g.* litigation can end business relationship but with conflict resolution, relationship goes on)
- fear of the unknown

How:

- convincing a person in power (*e.g.* CEO) must result in shift of attitudes within organization and reinforced so shift is lasting
- success in all incentives (cost, speed, confidentiality, maintaining relationships) will achieve goals of promotion
- make it attractive (allow parties to withdraw including ending up with non-binding arbitration)

Who does it:

- government to lead by example and educate targets
- individuals and groups

III. Conclusions - Promotion, Marketing and Public Education Wish List

Group 1a participants brainstormed a "wish-list" which was reviewed with some items being eliminated and others revised. The following list represents those "wishes" agreed to by most members of Group 1a. The group also agreed that "alternative" in ADR be dropped and replaced by "appropriate." The term "alternative" will keep ADR out of the norm and dropping the term is a step to inclusion in dispute resolution. The word "alternative" or "appropriate" as used in the Wish List is intentional.

Foundation of all ideas: That there be a process developed that is made-to-measure for what our goals and objectives are which can be broadly defined as creating a dispute resolution consciousness in Canada.

1. A national campaign to make the public aware of dispute resolution choices, including a 1-800 number, funding to be secured from appropriate sources, which could include government, private practitioners and others.

2. Government modify rules of the *Divorce Act* to include appropriate dispute resolution as part of the process prior to litigation and provide appropriate dispute resolution services.

3. Encourage government and major institutions to lead by example and seek appropriate dispute resolution. (Major institutions include corporations, universities, hospitals).

4. Encourage appropriate ministers of federal and provincial governments (e.g. Justice, Education, Tourism) to promote dispute resolution in public presentations such as speeches.

5. Prepare a list of promotional steps for any person entering field to promote self.

6. Request that government include regulations in contracts, agreements, etc. that include clauses for disagreements to go to appropriate dispute resolution processes prior to litigation.

7. Each dispute resolution practitioner promote self through articles, media, *etc.*

8. Choices must be available . . . there must be a legitimate expectation of appropriate dispute resolution encouraged and recognized by legislation.

9. Promote, in an appropriate manner, cooperation among Alternative Dispute Resolution groups (*e.g.* umbrella organization).

10. Drop the word "alternative," and use "appropriate dispute resolution."

11. Federal and provincial governments examine areas of activity that could use dispute resolution and legislate that use.

12. All provincial ministries of education ensure dispute resolution processes and skills are part of curriculum for all students.

13. Require post secondary programs to include dispute resolution courses in curriculum (e.g. legal, medical training).

14. Promote dispute resolution with all other professional groups and, especially for those writing contracts, to include clauses for appropriate dispute resolution.

15. Influence creative media (television, theatre, literature, arts, *etc.*) to introduce dispute resolution theme.

IV. Ideas for Implementation

Ideas for implementation included the need for collective action, and the potential for individual participants at the Forum to act on the ideas presented.

An organization or group to insure follow-up that includes Department of Justice and other organizations, with continuity from the Forum Steering Committee, and within a defined process.

> *Participants thought continuity from the present Forum Steering Committee was important, and that a defined process be established for acting on the recommendations from this forum. Models of national organizations exist in other disciplines. One option to explore is the national literacy organization, ABC.*

Each participant at the Forum, take the ideas and implement them, and work in interest and geographic areas.

> *Participants did not need to wait for collective action, but could begin to act on some of the suggestions for promoting alternative dispute resolution developed by Group 1a.*

Report of Task Group 1b

Promotion, Marketing and Public Education about Dispute Resolution

Facilitator - Sally Campbell
Rapporteur - Betty Pries

Outline Of Process

Mandate: *The Design, Development and Implementation of an Action Plan for the Advancement of ADR in Canada - With a View to Promotion, Marketing and Public Education.*

Day 1

1. Introduction (Small Groups And Large Group)
2. Examination of Values of ADR Field Appreciated by Participants
3. Setting The Agenda - Identification Of Issues
4. Who Are We as an ADR Community?

Building Common Ground Between the Variety Of Practitioners Represented.

5. Who Is Our Public/Consumer? (Small Group Work)

Community Groups, Family, Education, Schools, Business/Commercial, Lawyers

What Are Their Sources Of Conflict?

What Are Their Interests/Needs/Fears, Etcetera?

6. Reporting From Small Groups
7. Criteria for Action Plan
8. Brainstorming Possibilities

Day 2

1. Welcome
2. Regarding Action Plan - Hard/Soft Outputs, Role of Government
3. Establishing Definitions Re: Public Education, Marketing, Promotion
4. Developing Action Plans (Small Group Work)
5. Regarding Implementation

Values About ADR Appreciated By Participants

To begin the first session, the group identified the values about ADR that they appreciated and that drew them to the field. These values included:

- the control of the process by participants
- the speed of the process
- building positive values for our society; there is a value-based lifestyle associated with ADR
- ADR is flexible and accessible for all ages
- ADR promotes cooperative problem solving; it positively impacts the community, building skills within the community. ADR can be considered community development
- ADR allows people to hear one another, to listen and enhance relationships
- ADR is a learning process for participants and society; pro-active
- With ADR people get decisions, cases don't drag on forever
- The ADR process does not do damage to participants
- ADR is win/win, less adversarial
- ADR provides people with more options for conflict resolution
- ADR is cost-effective, informal and gives participants satisfaction

Who Are We As An ADR Community? What Are Our Interests? Where Do We Place Ourselves On The ADR Continuum?

- As ADR practitioners, many of us are interested in making positive differences in people's lives, including our children, in our culture and in our society. ADR can provide healing for broken people. This is basic to ADR.

- ADR gives people decisions, it solves problems, and in that itself, it is positive. We are interested in maintaining this.
- ADR has the potential to bring skills into the community. By promoting ADR, we can positively influence the attitude of society towards ADR.
- Through promotion, ADR should become a dispute prevention technique as well. ADR can be proactive, such as including a mediation clause in contracts before conflicts arise, suggesting that individuals seek out ADR should a conflict develop.
- Public education regarding ADR should promote better communication within society generally. It should promote ADR in a variety of communities, interest groups
- Any promotion regarding ADR should be honest, both its pluses and its minuses should be stated.
- The field of ADR has become competitive. There is a need more cooperation. Indeed, we should be modelling cooperation. We must recognize the interdependence of the ADR community, which has become relevant in a variety of contexts, bringing a variety of ADR practitioners to the field. This is positive, as different practitioners reach different and specific communities. These groups should act more cooperatively, being open to learning from one another.
- It is important to recognize this varied nature of the ADR community as this will affect our public education. On one end, ADR driven by altruism, especially in community-based programs. On the other end, ADR driven, in part, by personal gain, especially in commercial cases
- ADR is "Appropriate" dispute resolution. ADR provides options for clients from litigation, to arbitration, to negotiation, to mediation. We should each be diagnosing the problem then determining the appropriate DR from these options on the continuum. The ADR community needs to develop diagnostic techniques to accurately refer people to the *range* of alternatives.
- ADR promotion should take place generally, to all Canadians.
- ADR marketing should target both the ultimate consumer (e.g. the business itself) and the advisor (bookkeeper, lawyer) especially regarding alternatives to litigation, recognizing efficiency, economic viability, satisfaction.
- As an ADR community, we should promote benefits not features: e.g. reputation, time, opportunity to build relationships (ADR as an opportunity for constructive networking)

Common Needs of ADR Practitioners

- To connect with advisors, influencers and educators (schools, lawyers, accountants, physicians)
- To promote benefits to specific markets
- Greater cooperation of the DR community. There are many different areas of DR being practiced. These groups should act more cooperatively, being open to learning from one another.
- ADR should not be focused only on the process of mediation or arbitration itself. Rather, it should look also at the larger issues of conflict analysis and process design, offering to participants a range of options appropriate to their specific conflict.

Who Is Our Public/Consumer? What Are Their Sources Of Conflict? What Are Their Interests, Needs And Fears?

Target groups include:

- lawyers (commercial and litigation)
- government departments, tribunals and boards
- doctors in conflict with patients
- small and large business, family business
- contractual disputes (put ADR clause into the contract at the beginning)
- families (custody/access, money, separation/divorce, parent/child, child protection, elder abuse)
- individuals, the general population
- public and not-for-profit institutions
- victims and offenders
- neighbours
- workplaces, schools, parent councils
- community organizations

Sources of conflict *are often not of a content nature but of an emotional nature including: personalities, poor and miscommunication, ignorance, money, system bias, dishonesty, pride, mistakes, territorialism, empire building, power imbalances and procedures*

Interests Common To All Groups

- privacy, confidentiality
- wish/desire to avoid public embarrassment
- save, repair, rebuild relationships
- gain outcomes and closure, see problem solved
- preventative approach to ADR

Fears Common To All Groups

- loss of control
- the unknown (what am I getting into?)
- image of backing down
- legitimacy of outcomes - are outcomes legitimate?
- disclosure (will it hurt me, if I try ADR now and want to pursue court later ...)
- shifting workload and responsibility (In some agencies, choosing ADR puts workload onto the plate of the individual rather than another department in the agency)
- exposure of conflict
- shifting blame "it is not my responsibility, so let the courts deal with it."
- "We may not like our systems of resolving conflict, but at least we know them"

Definitions Of Promotion, Marketing And Public Education

Promotion

- procedure and means of getting a message to an identified market
- includes both generic and specific promotion
- advances a point of view
- long term, general expression of ADR
- creating awareness
- vehicle to sell ADR message

Marketing

- determination of target public
- knowing self and service
- selling product, selves
- tool, strategy to sell ADR

Public Education

- awareness and consciousness-raising of whole field for general public
- addresses benefits and diminishes fears
- addresses needs
- common, basic understanding of ADR, public information re: ADR, from a neutral source

Criteria For An Action Plan

The plan should appeal to government because it fits into the government's needs. But in order to decide the appropriate course of action, the following questions need to be addressed:

- what can we give or tell government re: ADR?
- how can the government help or hurt ADR?
- do we want government involvement?
- what can government invest to enhance itself and the ADR community?

The action plan should anticipate resistance and balance this in the options included. It should be concise, professional, focused and clear. It should include incentives for promoting ADR and funding options for making this possible.

Follow up, implementation and evaluation must be part of the plan. This would include a mechanism for monitoring profession as a whole.

Highlight benefits, not features, to government and the larger community. The benefits would be specific to the audience and should address the variety of conflicts that we are involved in.

Options For Action Plans

Education

- post-graduate programs in ADR
- CR training for all school ages
- ADR literature for children, youth including video games, rock music, comics (the ADR Man/Woman) and nursery rhymes

Courts And Lawyers

- all families to receive mandatory exposure to mediation prior to litigation
- court-mandated ADR for all civil cases
- mandate bar and law society to inform clients to ADR as a duty
- mediation to remain voluntary, not mandated by courts

Commercial

- all commercial contracts - ADR clause by default

Community Mediation Programs

- more community programs
- adequate funding

EAP And Doctors

- education for both re: ADR

Government

- all government contracts to include ADR clauses by legislation
- play a role in funding ADR
- play no role in providing practitioners funding
- ADR to replace or cooperate with Worker's Compensation
- mandatory ADR for politicians

National Coordination

- logo, handshake, poster, ADR day
- national body
- pension plan

- code of ethics
- general, national ADR fund
- ADR merchandising company
- ADR advice bureaus

Media

- sitcom
- talk-shows
- radio, TV and newspaper exposure
- equal time for good news in media
- ADR on net
- usage of other technological opportunities to advance ADR

ADR Cooperation

- co-partnering with lawyers
- lawyers as part of process and not the enemy
- mandatory cooperation between professionals (both generally and ADR professionals)
- no turf wars between ADR practitioners, rather support within the ADR community, synergism
- increased non-lawyer involvement in ADR
- clarification of ADR language
- multi-door dispute resolution centre
- dispute resolution centre independent from association with courts

The ADR Community

- create ADR as a profession
- circuit mediators and arbitrators for rural areas
- all resolutions to remain confidential, except for government agreements
- protect integrity of ADR
- new attitudes
- adequate government funding for not-for-profits
- for-profits to be well paid

Action Plans

Regarding ALTERNATIVE DISPUTE RESOLUTION

We recommend that:

Alternative Dispute Resolution be renamed "Appropriate" Dispute Resolution, recognizing that cases are varied and demand a range of options for dispute resolution, from litigation, to arbitration, to mediation.

Regarding PUBLIC EDUCATION

We recommend that:

1. a new, single, national non-government organization, built on a commitment and alliance of existing organizations be developed, to educate, promote and be a spokesperson for the ADR community. Government participation and support at this table is encouraged.

2. a national public education and awareness campaign be established, providing information regarding and promoting appropriate dispute resolution methods. This material, including brochures, public service announcements and press releases, should be generic and endorsed by the provincial and federal governments.

3. all levels of governments set an example and create incentives by practicing and promoting ADR within government departments and agencies.

4. business and professional organizations, including the National Bar Association, set an example and create incentives by practicing and promoting ADR within their organizations and agencies.

5. incentives be provided and opportunities created in the community for public education regarding ADR, including for example, ADR curriculum at all levels of education, including elementary schools, secondary schools, universities, colleges, legal, business and professional schools.

6. there be a declaration by the federal government, endorsed by the provincial and municipal governments regarding ADR as a legitimate and positive means to resolving conflict.

Regarding PROMOTION

We recommend that:

1. a national code of ADR ethics be developed and published by a neutral body, in order to establish credibility for ADR and to ensure the quality and consistency of promotion and public education.
2. a national ADR day be established together with a logo and poster, not as a holiday, but as a day of recognition for ADR.
3. the ADR community use existing user-friendly technology for ADR promotion and communication.
4. national publications be used to promote ADR to professional bodies, businesses, lawyers, and other advisors and influencers.
5. a protocol or statement of commitment be established for endorsement by members of businesses, professionals and other associations, (for example, Chamber of Commerce, small business associations, rotary), to explore ADR processes before proceeding with litigation against other members.

Regarding MARKETING

We recommend that:

1. in addition to current marketing initiatives, national bodies are encouraged to draw together, by consensus, ADR marketing strategies and models for specific user and consumer groups, for the purpose of consistency and to avoid duplication, to be coordinated by a neutral ADR body and to be guided by a code of ethics.
2. the media (including videos, speeches and print) be engaged to provide a repetitive, consistent message regarding ADR.
3. research results be disseminated to interest groups, in order to support and encourage the development of Canadian scholarship in the ADR field, and to allay the public's concerns regarding ADR.

Regarding IMPLEMENTATION

We recommend that:

1. commendation be given to the Department of Justice for hosting the Canadian Forum on Dispute Resolution.
2. a national press release regarding the forum be written, to be made available for local press release.
3. another forum be organized within the next 12 months, to follow up on the progress made at this forum.
4. the steering committee produce a report regarding the forum and create a successor organizing body to review, monitor, implement and initiate the action plans developed at the forum.

Report of Task Group 2

Standards, Credentials and Certification

Facilitator - Glen Gardner
Rapporteur - Elinor Whitmore

RAPPORTEUR'S GENERAL COMMENTS

The conversation sometimes focused specifically on mediation and, at other times, on dispute resolution as a whole. Unfortunately, people did not always specify whether their comments were restricted to mediation or the broader topic of dispute resolution. Whenever the person's comments specifically referred to "mediation" or "dispute resolution" I have included those words in the comment. I think it is safe to assume (although, as we know, one is never safe assuming anything!) that, unless otherwise stated, the comments should be related to the field of mediation alone.

THE FORUM BEGINS!

*The Group began with each participant introducing him/herself and a brief discussion of his/her interest in the topic of qualifications, certification and credentials of mediators. The following list of concerns, interests and goals represent the comments of individual participants (although some interests and concerns were identified by several members of the group) and arose during the introductions. As a result, there was not a consensus reached by the group on these comments and many of the questions raised were either left unresolved or, in some cases, were not discussed by the group as a whole once they were raised. These comments were **not** recorded on the flip chart for the group.*

I have tried to group related comments together. Obviously these groupings are rough and many of the comments could fit under several headings.

Benefits Of Creating Standards

- create recognition in the eyes of the government for mediation
- would assist in the field of mediation being recognized as a profession
- protect ADR reputation
- better define what is mediation
- standards will let new practitioners know what standards need to be met
- to encourage practitioner growth
- create coordination between various groups presently attempting to set standards for members of their organizations
- solve problem of no institutional base to rely on for guidance
- clarify institutional standards
- identify attainable standards
- protect public from untrained or incompetent mediators
- create accountability on part of mediators
- standards would provide consumers with guidelines to assist in choosing and evaluating mediators
- quality control

Concerns About Setting Standards; i.e. Why Standards May Not Be Appropriate

- standards could limit access if appropriate training is not available in all areas or is too expensive.
- need to be careful not to set up barriers that give public the illusion of competency when it is lacking.
- standards could lead consumers to believe they are covered when they are not. That is, a mediator could conceivably meet the standards set but not be a good mediator. Because the mediator could advertise to the public as having "met the standard" the consumer would believe that the mediator was automatically competent. Certified people can be bad too.
- make sure we don't get ahead of the field by setting standards too early-paradox between quality and doing good work vs. not excluding people who developed this field, in part, as reaction to the professionalization of other groups.

- need to protect us from ourselves by limiting field too early in its development. That is, standards may be set right now according to our understanding of what makes a good mediator but that understanding may change and yet the standards would remain fixed.
- don't want standards to be a make-work project for trainers i.e. if "standards" require that a person take 40 hours course to be mediator, work for mediator trainers will increase
- how do we measure competence? If it cannot be measured, how can we presume to set standards.
- are there enough generic skills that we can set standards?

Issues Which May Arise From The Attempt To Set Standards

(That is, if standards are to be set, what are the pitfalls we should try to avoid)

- avoid possibility of ability to mediate being co-opted

(This was the topic of much discussion. Many members of the group, particularly those members from smaller communities or representatives of organizations where mediators were not required to have professional degrees etc., were concerned that by setting standards, many skilled mediators would be excluded. For example, if mediators were required to have professional degrees, many skilled and experienced mediators would be excluded to the detriment of the field. There was also the perception that professionals (such as lawyers) were now attempting to take over the field of mediation to eliminate competition, make the practice of mediation more lucrative, and to give it more conventional respectability in the eyes of the public and other practitioners.)

- standards could limit access if appropriate training is not available in all areas or it too expensive.
- will standards end examination of what we do or should do-how can we ensure some level of competence to protect consumer while allowing sufficient flexibility for expertise in different areas, and protect mediation field from disrepute.
- we must avoid narrowing field and preventing further growth by refusing to set standards in stone right now-must allow for change in future.
- how do we strike a balance between academic and experience as credentials so that both are recognized but not to the exclusion of the other

- don't restrict access to mediation in terms of who may act as a mediator or by setting standards so high that only a few mediators are available and many members of the public cannot access those people
- the more designations that are set out the more confusing and diluted these designations become to the public therefore may be preferable to have one overriding designation or no designation at all
- if people are going to be certified, the certification should mean something and not be so diluted as to be valueless
- certification and qualifications should not be so narrow as to exclude non-professionals

Interests

- need to develop sense of community amongst mediators
- allow for DR growth without restricting access
- need to "start the course" and "move together"
- need to maintain broad base

  vs.

- protect the reputation of the process from "fad" entrants
- diminish politics from the area
- protect public
- consumer - we must listen to the needs and concerns of consumers
- need to give clearer guide to users re: how to pick a mediator
- need to lessen confusion both for users and practitioners
- need collaborative Canadian solution
- need to combine bits and pieces of info out there
- create a statement of the value base for each group doing ADR. That is, recognize that different types of DR. and different types of mediation may require different skills
- need to define what is common and what is unique in each area of mediation and dispute resolution
- create quality, avoid saying who is right or wrong in practice

Discussion

- clarify who sets standards-government, associations, or private
- how would setting standards accommodate needs of specialties-general vs. specific qualities?
- what is the difference between arbitration and mediation with respect to qualifications? What should we not be doing as mediators?
- too many efforts in this area. Discussion is not focused. Scattering of efforts in this area is not good
- what assumptions have previous standards and certification been based on and what are our underlying assumptions?
- issue of ethics inextricably linked with these issues
- enforceability of standards?
- if there are standards for ADR should there be on-going processes for training and development?
- should there be a coordinated, formal process of certification of ADR practitioners? if so, what should be the form of the coordination?

Following the introduction section, people brainstormed about questions and issues that the group would like to discuss as a whole. Again, these topics were raised by individuals and were not agreed to by the group as issues worthy of group discussion.

1. Should there be standards?
   - What could standards do for dispute resolution?
   - What could standards do to harm dispute resolution?
   - If standards could be developed what would certification do for practitioners?
   - If standards could be developed, what would certification do for users?
2. If certification is pursued as a goal for DR. how can we determine
   - What is certified
   - Who is doing the certifying
   - That it remain relevant
   - That it enhances development rather than restricts it
3. How can we ensure some level of competence to protect the consumer while allowing sufficient flexibility for expertise in different areas and protect mediation from disrepute?

4. What is the difference between arbitration and mediation with respect to qualifications? What should we not do as mediators?
5. Should there be a coordinated formal process of certification of ADR practitioners? If so, what should be the form of the coordination?
6. Should dialogue on this issue continue, and , if so, what form should it take? What is important in how this discussion develops?
7. How do we measure competency?
8. Enforceability of standards
9. Are there enough generic skills that we can set standards?
10. How can we inform ourselves of the range and content of ADR certification processes now approved and implemented in Canada, and how can be maintain currency in new and emerging development?
11. How do we co-ordinate efforts and information?
    - with a view to strengthening rather than weakening the field
    - want to maintain and develop Canadian perspective
    - develop plan of action
12. If there are standards for ADR should there be on-going processes for training and development?
13. What assumptions have previous standards and certification been based on and what are our underlying assumptions?

Some discussion then took place around defining standards and the following definition was generally accepted (by that I mean, the group did not state explicitly that there was a consensus on this definition of "standards" but no one voiced an exception to this definition).

Definition Of Standards

"standards of competency: the essential knowledge, skills, abilities and ethical principles needed to act as a mediator"

It was then agreed that the discussion would begin by identifying what the pros and cons were of setting standards. Again, many of these issues were identified by individual members in the initial introduction phase.

1. What Could Standards Do For Dispute Resolution?

(This was the questions as recorded although some comments may have been confined to mediation)

- set definition of what ADR wants to do i.e. is it settlement driven or transformation /empowerment driven
- provide protection against claims of malpractice
- enhance competence
- enhance credibility
- provide clarity around our role as mediators
- guides learners in pursuing an appropriate training program
- allows public to determine whether mediator met basic requirements of competent mediator
- sets definition re: what ADR wants to do
- setting standards encourages on-going examination of existing standards and allows for change
- entry standards would ensure minimum skills were possessed by all mediators
- by articulating standards mediators will be required to define more precisely what they do
- standards will be set regardless. However, by setting standards in an open and regulated way, it becomes clear how they are set and determined
- with standards, the field of mediation can more readily be perceived as a reputable field
- standards help to set principles by which a process may be identified as being mediation
- we cannot wait for the public to demand standards before trying to determine what standards should be
- clear enunciation of standards would increase public demand for ADR
- in situations where consumer has no choice re: mediator, standards should be higher
- having input into standards develops sense of community amongst mediators and this, in turn, increases standards
- having standards provides protection for mediator against claim of improper behavior

- standards ensure consumers are knowledgeable about what they are purchasing and getting what they want

2. What Harm Would Result From Setting Standards?

- excluding qualified people who do not meet the standards
- standard may be used to market, not improve work
- some important knowledge, skills, and abilities can't be covered by a statement of standards
- standards become minimal, and therefore there would be no advancement
- if standards are not high enough, public is not being protected
- safeguards must be included to ensure cultural sensitivity

On Friday evening, Glen and I prepared a handout of topics for discussion which was provided to the participants on Saturday morning. The handout was as follows:

1. If standards of practice are required in the DR field, in general terms, what should those standards address?
   - how can they be measured?
2. If certification is voluntary, what interests of the DR community and users does certification serve?
   - what is important to the certification of competence?
     - practice based?
     - skills based?
     - education based?
3. What is professionalization of the DR field?
   - should it be pursued?
   - what are the objectives of professionalization?
4. How would you hope to see the discussion regarding certification and standards develop?
   - what would be the desirable attributes of an organization that would focus further discussions in this area? OR -if one body cannot lead this debate, how can existing bodies inform each other of the range and content of ADR certification processes in Canada and maintain currency with new developments?

- how should the discussion regarding certification and standards develop?
- is it a role for government, practitioners, existing organizations or otherwise?

On Saturday morning the group elected to break into smaller groups for discussion. It was decided that the small groups would present their notes to the large group briefly before lunch but that people would refrain from commenting on the work of the small group until after lunch. Three people volunteered to return prior to the end of lunch to try to coordinate the work done by the smaller groups for presentation to the large group for comments.

When the large group returned from lunch, two members presented the roughly amalgamated work of the three small groups. I have recorded in **bold** *the initial notes made by the two members after amalgamating the work of the three small groups. I have left my notes in italics and have put in quotations the wording agreed to by the group. I believe that the wording chosen by the group is VERY important in the comments set out below as they were, at times, hotly debated and because they represent the wording the group agreed to by consensus.*

3. How is this achieved?

- **exploring national organization**

(group: "organization" was replaced by term "collective process")

- **forum in which organizations participates**
- **dialogue between representatives of provinces and sectors**
- **interface between national and provinces**
- **provincial round table to select national representative(s)**
- **build on existing work-don't reinvent the wheel)**

(group: *the group finally developed the following wording*

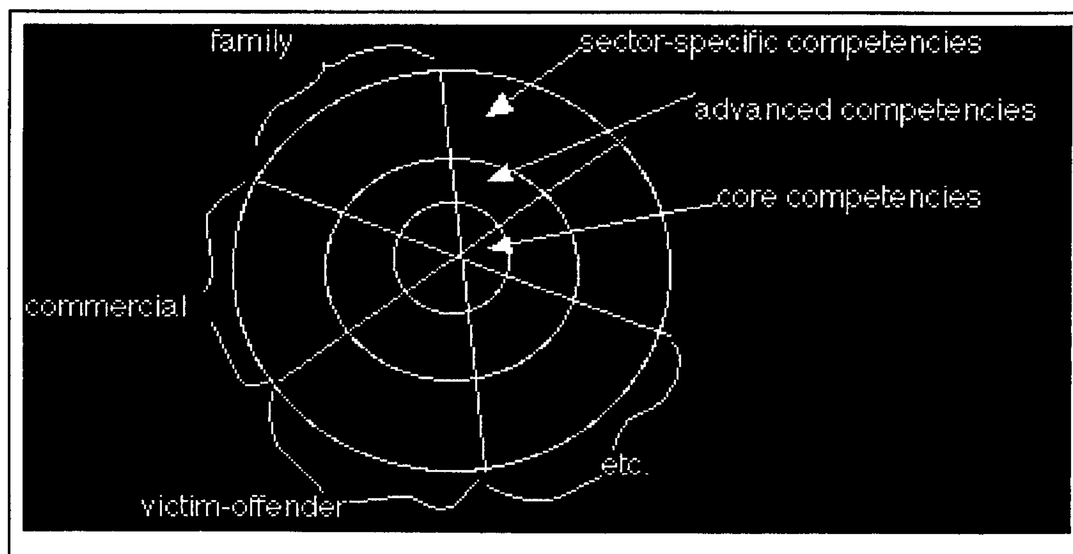
"Advocate exploring the development of a national working group to deal with certification and standards which would build on existing work so as to avoid repetition of work already done. Recommend that working group accomplish this by addressing questions and examining boundaries for ADR and to recognize different practices and sectors within ADR

- to catch new and innovative practices within ADR fields
- gather information presently available to ensure discussion informed by research
- identify general principles (e.g. values, visions, ethics) and core competencies for various ADR disciplines")

It is important to note that many members of the group were very adamant that certification etc. should not be mandatory. Therefore, the group agreed that the discussion around standards would have to be predicated on the idea that there was no consensus with respect to whether having to demonstrate that one possessed these "skills" or was certified should be mandatory. The group then examined the onion diagram developed by one of the small groups (the group which set out the tiered skill levels). The group decided that the onion was VERY important because it demonstrated that the skills were to be non-hierarchical. Also, the group did not like the words "tiers" or "levels" etc. because they all suggest a hierarchy. Some people suggested "sets" as in "skills sets". The group did not reach a consensus on a word to describe the different levels but they agreed on the following wording:

"The national working group should coordinate existing standards for specific practices and assist in establishing such standards if they do not exist. They should ensure that standards are developed in a non-hierarchical fashion. The onion reflects a non-hierarchical approach of shared and sector-specific competencies". The idea of onion is predicated on agreement that there was no consensus that credentials should be mandatory.

Onion diagram



The group also agreed "that consultation should take place between the relevant stakeholders including, among other groups, practitioners and dispute resolution associations."

Some members felt strongly that the consumers should be involved in the consultation while others felt that would be inappropriate. As a result, the group did not reach a consensus as to whether consumers should be included and did not attempt to create an exhaustive list of who the relevant stakeholders should be because they ran out of time.

Concerns Identified By Individual Members Of The Group When Trying To Reach Consensus

- concerns about government involvement-they should not have role of directing discussion-should be directed by practitioner although may have role in facilitating
- issue: should there be national organization, coalition or a short-term committee
- concern: don't want to repeat what we have done today we want to sharpen focus through use of a transitional team
- debate: should discussion move from provincial level to the national level
- concerns that representation will not be obtained by all sectors
- want to ensure that research is used
- discussion whether national body should do research or should only be informed of existing research-Some felt that research should be done by the national group. Others felt that conducting research would be too onerous a task for national group and they should only try to inform themselves of existing research.
- discussion: should mediation consumer be at national discussion or should they only be consulted

Report of Task Group 3

Training of Mediators

Facilitator - Brad McCrae
Rapporteur - Christine Kennedy

1 Outline

1 Outline
2 Meeting One Another
3 Building the Agenda
4 Describing a Mediator's Role
5 Identifying a Mediator's Skills
6 Surveying Available Training
7 Developing Principles for Training
8 Looking to the Future

2 Meeting One Another

The needs and interests of participants in Task Group 3, Training of Mediators, closely corresponded with those behind the questions in the description of the group's work. Five questions framed the group's work:

a) What minimum standards are to be expected of trainers and conflict resolution courses for mediators?

b) Is there any basic course content for generic mediation training and negotiation skills training and process knowledge?

c) What about basic course content for mediation training for particular applications such as family, victim/offender, commercial, community and environmental disputes?

d) Should there be required practicums and internships for mediators?

e) Should credit be given for experience gained prior to mediation training? If so, how would this experience be evaluated?

In their introductions, participants in Task Group 3 spoke about their experiences and expectations, revealing that through the group's work they hoped: *[The order of the interests below reflects the frequency with which they were mentioned.]*

- to discover what training needs exist in different settings, i.e., substantive areas (e.g., family or commercial) and learning environments (e.g., schools, universities, workplaces, etc.)
- to ensure information, resources and training are accessible
- to regularize differences in training across jurisdictions where appropriate
- to feel confident about the quality of mediation training
- to focus on a balanced approach to training by recognizing the strength of experiential, theoretical and skills-based components
- to set out what belongs in generic mediation training
- to reconcile divers internal certification criteria
- to meet the needs of those training to learn and those training to teach
- to talk about how to respond to the large and growing demand for mediation training and "official" certification
- to determine how much training is enough, i.e., when is a mediator trained? What about continuing training? How do training and continuing training relate to certification?
- to learn about training materials and developing good training materials that meet the needs of specific substantive areas and learning environments
- to assess what are appropriate program lengths for different types of mediation training
- to make sure good ideas are communicated widely
- to ensure that consumers' concerns are reflected in curricula
- to prevent compartmentalization of mediation training for specific substantive areas and learning environments so that cross-fertilization among good practices— whatever the setting — is preserved
- to ensure that curricula, training, assessment, certification, etc., are appropriately supervised
- to consider the relation between high standards and professionalization

By developing a set of principles for training, the participants reconciled the framing question about standards and practicums or internships with their needs and interests regarding

(1) the regularity of training across jurisdictions,

(2) the general quality of training,

(3) the congruence of internal and other certification criteria, and

(4) the consideration of consumer expectations.

The set of principles answers the framing question with the respect and sensitivity due to the diversity of practice and the constraints of implementation that affect how training providers manage their resources. Similarly, instead of prescribing the content of basic mediation training, the participants preferred to suggest, as a guide to training providers in their curriculum development, content areas that reflect a balanced approach to teaching mediation.

Those content areas, however, do not include substantive training in specific sectors such as family law, environmental studies or business. While the participants expressed concern about meeting training needs for mediation in specific sectors and meeting those of trainees at different levels, time did not permit the group to focus on the interaction between mediation, dispute resolution and other fields in any meaningful way. Time also limited the participants' discussion of other concerns, especially those about information sharing and activities coordination.

To overcome its lack of opportunity, and in anticipation of the Forum's momentum, the group decided to call for more interaction among training providers, to invite comments about the Forum's proceedings, and to encourage the development of a training materials clearinghouse.

3 Building the Agenda

Participants randomly offered items to the group for discussion; after clustering like items together, and reviewing those clusters, the group approved the following agenda:

The Role of a Mediator
Training Outcome Goals
- The Basics (including the place of negotiation training in mediation)
- Training Models (including those of other cultures)
Training Materials
Assessment/Supervision of Trainees

The agenda reflected the group's belief that knowing what a mediator does must precede exploring what a mediator should learn. In particular, the participants hoped to discover if requirements for mediating (1) in general and (2) in sector specific settings differed, and if so, how. Items under this heading also investigated competency in relation to the nature of mediation: Is it an art or a science? What is competency in either case?

Under *Training Outcome Goals*, especially under *The Basics*, the items on the skills, knowledge, and experience a mediator should acquire through training to fulfil the challenges of his or her role.

In the two other issue areas, *Training Models* and *Mediation/Negotiation*, the items asked if trainers should include negotiation as part of mediation training, and if they should examine culturally-specific training models for more insight into mediation processes.

The third item, *Training Materials*, included concerns about the cost of training for participants, the free flow of information among trainers, the duplication of materials among trainers, and the compartmentalization of materials within and among training organizations. The participants responded to their concerns by proposing the development of an open-ended, or a criteria-based, inventory of available resources — a proposal they wanted carried beyond the *Forum* itself.

Finally, the last item on the agenda, *Assessing/Supervising Trainees*, flowed from the group's interest in assuring the quality of training and in meeting the needs of trainees. While the group did not formally discuss how to assess and supervise trainees, participants listened very attentively to those who later described how the programs with which they worked handled this "tender issue."

4 Describing a Mediator's Role

The participants' efforts to describe a mediator's role fall loosely into three categories: they recognized that

(1) *mediators' roles* span a spectrum of types and levels of involvement; that

(2) some elements must exist — whatever the setting — to enable a mediator and a mediation to work; and that

(3) all mediators work towards resolving the dispute, managing the process and treating the parties equitably.

The participants agreed that mediations occurred in informal and formal settings, i.e., at one end of the spectrum, a mediator could be a friend, and at the other he or she could be someone who uses mediation skills in his or her occupation. No one suggested a narrower spectrum of mediators' roles; the group appreciated that

(1) all mediators' skills levels should match their type and level of involvement, and that

(2) their involvement should be culturally appropriate.

Further, the participants' concerns about sector specific training coincided with their acknowledgment that a mediator's role is more or less content-oriented and process-oriented depending on the mediation's setting.

While the participants agreed that acceptability to the parties is a *key* ingredient in a mediation, and that people skills always help a mediation to progress, they disagreed about a mediator's stance towards the parties. Should a mediator be neutral or disinterested? Should a mediator balance the relative powers of the parties when an imbalance exists? Should a mediator be neutral as to the outcome but engaged as to the process? Also, when and how should a mediator give the process to the parties? How does managing the process relate to designing it and empowering the parties? No consensus was reached about a mediator's stance *vis-à-vis* the parties, but the discussion raised questions about the ethical aspects of mediating.

[There is striking overlap between what the group talked about and what Pierre wrote in his paper -- "Common Threads?"]

All, however, emphasized the strategic elements of mediation when they identified the mediator's challenges: to resolve the dispute, to manage the process and to treat the parties equitably. These challenges were variously described as guiding the parties towards short and long term mutually acceptable solutions; as attending to the process by listening, structuring, and balancing; and as empowering the parties as to their roles, goals, and agreement opportunities. Table 1 below has a complete list of the participants' descriptions of the mediator's challenges.

5 Identifying a Mediator's Skills

The group grappled with several difficult questions as it sought to identify a mediator's skills. Participants asked:

For what do you select?
For what do you train?

- How do you distinguish skills that you can teach from qualities that you can enhance?

How do you teach trainees to coordinate their learned skills sets?

- Do you select and then train, or train and then select? If the latter, then does the market, in effect, select?
- What kind of training is needed at a basic level, an advanced level, and a sector specific level?
- Can you mediate in field where you do not have substantive knowledge? Are basic mediation skills transferable? If you need substantive knowledge, how much is enough, i.e., what is a "workable" knowledge? What about interdisciplinary studies? Does the process of identifying the real issues also reveal who should deal with them?

Asking these questions led the participants to categorize skills they identified into three skills sets, each of which has subgroups that reflect the focus of the skills sets. Table 2 below places the skills sets and their subgroups in a matrix.

The category of skills that *Can Be Taught* closely relates to a mediator's responsibility for the process, whereas the skills that *Can Be Enhanced* seem closest to a mediator's ability to achieve closure by guiding the parties to agreement. The last category stands alone, recognizing the qualities of a good mediator that *Can Be Enhanced and May Be Taught*. Unlike the first two categories, the last focuses more on the mediator than on the process and the outcome.

The subgroups into which the categories are divided suggest some content areas the group later supported in, *Training of Mediators: A Mini-Consensus and Partial Closure*. As well, the subgroups reflect the pattern of content areas that emerged from the group's survey available mediation training.

6 Surveying Available Training

The participants spoke in detail about training courses and programs which they had organized or observed, and in which they had participated. In seeking to order the range of available opportunities for training, the group distinguished between courses and programs, defining a *program* as structured sequence of modules of increasing depth of study. [Some were particular about this definition.] The typical brevity of many programs frustrated some participants, leading them to ask how training providers

could overcome the five-day barrier? While the surveyed training opportunities varied in nature, i.e., some on family mediation, some on small claims, and others on court-related or legislative initiatives, most taught a similar curriculum but used distinct assessment techniques.

The divers curricula usually included

(1) learning communication skills, negotiation skills, listening skills and anger management,

(2) developing cultural sensitivity (including respect for different dispute resolution models), and

(3) studying how to build agreements.

Training providers taught with a variety of methods, including lectures, exercises, role plays, and videos; their resources, however, affected the combinations of methods they used and the time they allotted to the ones they chose. All of the surveyed training opportunities had some experiential components.

The five-day barrier, however, limited the experiential component of many programs. The participants regretted that most trainees had insufficient time to recognizing interests, reframing techniques, and getting people to agreements, and that few training opportunities included initial training, supervised practice and continuing education.

For the participants, the experiential component of mediation training encompassed role plays, practice with coaches, apprenticeships, co-mediations, individual mediation, and practicums. Several participants reported that the experiential approach to training elicits the most positive feedback from trainees. All experiential components, however, typically presented training providers with two dilemmas: suitable supervision and appropriate assessment.

Like its range of teaching methods, a training provider's ability to provide coaches, mentors and supervisors often depended on its resources, including the availability of trained mediators in the community. However trainees were supervised, most training providers assessed them according to an internal standard. The participants acknowledged the efforts of some training providers to develop sets of objective criteria for measuring performance, and recognized the difficulties with which they had struggled.

A competency–based approach to assessment did emerge from the group's survey as the most preferred approach. Generally, it coincided with a decision by training providers not to pre-select trainees based on education or work experience.

In discussing the dilemmas of suitable supervision and appropriate assessment, the participants raised questions about qualifications, certification and credentials of mediators; they did not, however, pursue these questions given the parameters of the work set out for Task Group 2.

Overall, the group's survey of available training provided it with a knowledge base that affirmed its perception of a mediator's role and its identification of a mediator's skills.

7 Developing Principles for Training

Participants felt most comfortable developing principles rather than setting minimum standards for mediation training and designing curricula for generic mediation courses. The principles, which are geared towards at least two audiences –– training providers and consumers, provide a framework within which individual programs can be situated.

[There may be some overlap with Task Group 1 because the participants were concerned about "false advertising." They feared that the demand for mediation training combined with the lack of general standards could lead some consumers to take completion certifications as signs of sufficient training for putting up a shingle. Did Task Group 1 look at the marketing of training?]

The methodical progress of the group's work enabled it to develop these principles.

By discussing a mediator's role and the skills required to fulfil that role, by giving each other the opportunity to share his or her experiences, and by valuing the accumulated knowledge of each other's experiences, the group built a basis upon which it could establish a consensus.

[The group spent quite a bit of time discussing the wording of these principles. I think it would cause a stir to change it.]

Training of Mediators: A Mini-Consensus and Partial Closure

Principles for a Mediation Course

Every mediator should be honest and self-aware.

A training team should have a vision and shared values about mediation training that respects the diversity of practice.

Those who offer courses should clearly set out their expectations for trainers and objectives for the course.

The training programs should have a large experiential component.

Specialized training should be linked to community initiatives so that those who offer mediation courses do not reinvent the wheel.

A comprehensive evaluation that includes self-evaluation should be built into the training program. Assessment, furthermore, is a continuous process.

Those offering courses should learn from the trainees by being open to feedback and by soliciting it.

An opportunity for a practicum should be integrated into the training program; if possible, that opportunity should be broadly constructed, i.e., conceptualized as more than practicing process skills.

A basic training course should include theory, knowledge and skills.

A basic training course is not enough to mediate without supervision; an initial training course should be extended to include follow-up courses, practicums, co-mediation opportunities, etc.

Learned mediation skills should be practiced under a skilled mediator's observation during a training course. Whoever observes, however they observe (a variety of ways are possible), should be able to offer constructive feedback.

A training program should include principled negotiation, and should consider legal aspects to mediating in a given area whenever they are relevant.

The mediator-client relationship should be discussed in a training course, including client expectations, and the educative role of the mediator.

Developing cultural sensitivity (e.g., raising self-awareness and reducing prejudice) should be woven through the whole training program; it should not be tacked on as incidental.

A single model should not be taught as the exclusive or right process. The diversity of practice should be acknowledged.

Role plays should be given sufficient time to unfold, and, they should include adequate debriefing, e.g., in small groups, with the whole group, or both.

Suggested Headings for Content Areas

1. Communication Skills
2. Mediation Processes
3. Mediation Specific Skills
4. Self-Management and Understanding
   a) Self-analysis of Conflict Styles
   b) Characteristics of a Good Mediator
5. Ethics
6. Concepts and Theories of Conflict and Dispute Resolution
7. Mediation on a Dispute Resolution Spectrum
8. Negotiation Skills

Other Questions

Screening. . . . If at all, then

a) When?

b) How?

c) According to what criteria?

Assessing. . . . If at all, then

a) When?

b) How?

c) According to what criteria?

What role does research play?

How long should mediation training be?

Can we create a clearinghouse of available and developing resources for mediation training?

8 Looking to the Future

Task Group 3 briefly turned its attention to how its work could be continued after the *Canadian Forum on Dispute Resolution*. Realizing that it would unlikely meet again as a body, the group decided to encourage the widest possible dissemination of its work, especially to training providers.

The participants also suggested that members of the Steering Committee or Justice Canada invite comments from readers about the final report, thereby transforming that report into a springboard for further discussion. The group also thought that those who offer training should work towards better coordination and sharing -- possibly with the help of a clearinghouse available and developing resources for mediation. Finally, the participants urged that the intrinsic value of its consensus be highlighted.

Table 1. A Mediator's Challenges

Resolving the Dispute	Managing the Process	Treating the Parties Equitably
- to draw out the resolution from the parties	- to facilitate discussing, discovering options, and creating the outcome	- to empower the parties as to their roles, goals, and development of an agreement
- to find new solutions that flow from the parties' interaction	- to attend to the process by listening, structuring, and balancing	- to address power imbalances
- to find mutually acceptable solutions	- to intermediate but not to advise except as to process	
- to find a better solution	- to assist in developing the process	
- to help the parties take ownership of their solution	- to guide but not direct decision-making	
- to guide the parties towards short and long term mutually acceptable solutions	- to move the parties from positions to interests	
	- to resolve the dispute nonviolently	
	- to identify issues (distinguishing positions from interests)	
	- to assess alternatives by doing "reality testing"	
	- to help the parties to recognize each other's interests	
	- to eliminate obstacles to honest communication	
	- to develop trust	
	- to identify reasons for blockage	

Table 2. A Mediator's Skills Sets: Their Teachableness and Foci

	Can Be Taught	Can Be Enhanced	Can Be Taught and May Be Enhanced
Process	- to listen - to reframe - to see underlying issues - to manage the process - to paraphrase - to help the parties develop empathy for one another - questioning skills - explanation skills - to create doubt (to do reality testing) - to write agreements - negotiation skills - to assess risk - conflict resolution skills - conflict management skills - to separate the people from the problems - to stay focused on the issues - to separate positions from interests - to defuse and disarm anger - to expand options	- to develop party confidence	- to develop a rapport with clients
Ethics	- to maintain confidentiality - ethics		
Parties as People	- to empower the parties - to preserve the disputants' autonomy - cultural sensitivity	- sensitivity to emotions	- to deal with strong emotions
Trainee as Himself or Herself	- self-management	- to be mentally agile - to know when to draw on experience - to read the room/verbal-nonverbal cues - to keep your cool	- practical judgment - to have a feel for the situation - to be comfortable with conflict - to be non judgmental
Issues as Issues	- to do cost analysis - to understand substantive issues		

Report of Task Group 4a

Dispute Resolution in the Administration of Justice

Facilitator - Pierre Renaud
Rapporteur - Ginny Wilson

Our discussion reflects both the breadth of the topic Dispute Resolution and the Administration of Justice, and the diversity of contexts and experiences of the participants. There emerged some shared values and principles from which the recommendations flow.

Principles

It is in the public interest that the quality of Canadian Justice be acknowledged and enhanced through the design, development and implementation of innovative, flexible, and accessible conflict resolution processes.

The dignity and fairness to participants in the administration of justice must be recognized and fostered without compromising the concept of judicial independence and the rule of law.

The practice of conflict resolution need not be the purview of any one group.

The need for informed choice is paramount in the pursuit of a simple, cost-effective conflict resolution process.

Identification of Issues

Eighteen issues were proposed which were grouped under the following major headings:

A. Needs Assessment:

1) community and client/consumer interests and

2) the Justice System (How will this be defined - an inclusive definition including police and corrections - or a more specific definition centred around courts?)

B. Principles for selecting or referring or mandating cases for ADR at what stage or stages can/should disputants attempt an alternative method of resolving the matter

C. What structures are needed to facilitate movement between current processes in the Justice System and ADR processes?

D. How can the use of ADR be fostered and promoted both within the Justice System and in the general public? How can knowledge of ADR and attitudes towards its use be enhanced?

(Although we were aware that Task Group 1 was focusing on promotion, this was a recurrent concern in our discussions).

E. How can/should dispute resolution alternatives be funded?

In addition to the five issues above, we touched frequently on issues of regulation, control and evaluation of dispute resolution.

Terminology

There was recognition that the word *mediation* may be defined very differently by people working in different contexts. For example, labour mediation may bear little resemblance in terms of process to family mediation or victim offender mediation. In some jurisdictions commercial mediation training advocates the avoidance of working through the feelings that parties bring to the table. Similarly, dispute *resolution* carries different connotations. Some will equate dispute resolution with *conflict resolution* which addresses the emotional dimensions of the dispute. Others view dispute resolution as *settlement* which may not address emotional issues at all. We agreed to emphasize on the *conflict resolution* connotation of dispute resolution, and to use the term *conflict resolution* broadly in our discussions.

Additional Framework for the Discussion

In recognition that alternatives are currently in place that remove disputes from the court before they *enter the system* (for example, negotiation between the parties themselves or, in the case of an offense, mediation on a pre-charge basis in selected cases), we thought it useful to make the distinction between

pre-judicial contexts and judicial contexts. Once a case enters the system, it still may be diverted from the court to a process either within the system itself (*e.g.* court annexed services, such as family conciliation), or to a service provided outside the system (*e.g.* community-based sentencing circles).

We noted that there are *hybrid* services which relate to the courts at both the pre-judicial and judicial stages.

Discussion of Issues

A. Needs Assessment of Consumers/Clients and the Court System

There has been a virtual explosion of cases in the courts in recent years. It is widely accepted that at least some disputes currently in the court system could ideally be resolved on a pre-judicial basis. Judges can do little to facilitate this but encouraged others around the table to discuss ways in which resolution could take place prior to any involvement in the court system.

Two areas of need were identified with respect to the general public at a pre-judicial point in the dispute. These were:

1. Need for a source or sources to go to for information and advice on how to access ADR.

   Sources will ideally be accessible and community-based; and would serve as clearing houses or referral services. Given the diverse needs and situations of clients there would ideally be many *windows* that could open onto ADR. Referral sources might include organizations such as Legal Aid, police, community counselling services and community centres.

   With respect to the delivery of ADR services on a pre-judicial basis the question arose: What is the role of Government with respect to these services?

   Responses were as follows:

   - in relation to regulation, a neutral body should develop national standards for mediators;
   - that monopolies should be avoided;
   - that disclosure should be regulated - i.e. disclosure of the background, training, and experience of the mediator(s).
   - In terms of funding, it was suggested that non-profit services might receive partial government funding, while not being controlled by Government.

There was recognition that, with the use of volunteers and part-time staff, some community based programs offer considerable potential for providing services at low cost.

2. Need for broad-based public education on several levels:

   - develop conflict resolution skills generally, to be taught in schools beginning in elementary school. That is, no less than a *paradigm shift* towards non-violent responses to conflict in society.

   - begin a national public awareness campaign about the benefits of alternative methods of dispute resolution; use the mass media to promote ADR

A further area of need was identified addressing the education of lawyers and raising awareness of ADR among the judiciary. Several participants expressed frustration at the general lack of knowledge of ADR and lack of support for these processes amongst the legal profession. In discussing the resistance to ADR, the suggestion was made that in order to gain the co-operation of the legal profession, lawyers will need to know much more about the processes, and they will need to be participants in those processes. In this way ADR will gain broad acceptance.

3. Need for law schools to expand coursework in ADR and raise the profile of ADR generally.

4. Need for the judiciary to gain awareness of ADR processes. In situations where judges themselves have opportunities to use mediation, actual training needs to be available.

Finally there was discussion of Government itself as a party in disputes, both at the Provincial and Federal levels.

5. Need for the Government to undertake a self-analysis: how are disputes currently being handled? What costs might be saved through ADR approaches?

Recommendations

It is recommended that a national strategy be developed to provide the public with information on the continuum of conflict resolution options. This could be effected through community organizations, schools, professional bodies and members of the legal system, as well as the media.

Furthermore, it is recommended that a national strategy be developed to provide training in conflict resolution techniques for person who, by nature of their jobs, will be called upon to perform conflict resolution functions.

Furthermore, it is recommended that the National Judicial Institute develop and deliver an awareness program in ADR to its member judges.

It is also recommended that the Provincial and Federal Government lead by example by using ADR processes to resolve disputes.

B. Principles for Referring/Selecting/Mandating cases for ADR

Once again there were clearly a range of contexts and experiences to be taken into account, from criminal cases to labour disputes. Reference to the Principles set forth in the introduction may be helpful.

The parameters of the discussion can be conceptualized as follows, with the possibility of different combinations and sequences of approaches:

Voluntary.......................................Mandatory

Non-binding...................................Binding (court or ADR)

Contexts: a) pre-judicial
b) civil, matrimonial, criminal

1. What are the advantages and appropriate contexts for mandatory use of ADR?

   It was noted that victim offender mediation is predicated upon the voluntary participation of both the victim and offender. It is important to respect the wishes of the victim who ideally has received enough information about mediation to make an informed choice.

   In terms of screening cases for suitability for mediation, the following factors were mentioned:

a) the power relationship between the parties. The more unlikely it is that mediators will be able to address the power imbalance through mediation processes, the greater the likelihood that it will be necessary to protect the weaker party by proceeding through the courts.

b) The type of dispute, the nature of the parties, the skills of the mediator(s)

Advantages of mandatory use of ADR include:

- creation of education, as more and more parties are exposed to the process
- the narrowing of issues making subsequent court proceedings more efficient issues remain unresolved

Dangers of legislated use of ADR include:

- cases unsuitable for these processes having to go through the motions

A concern was raised that mandatory ADR may lead to an additional layer of cost. There needs to be a significant period of piloting ADR to assess the long-term impact on costs, on increasing access to justice. Such studies need to assess the indirect costs of not using ADR such as costs of delay for the parties, the cost of preparing for litigation etc... It was noted that a cost-benefit analysis was made in B.C. where 70% of cases were resolved in Disclosure Court with significant savings in terms of court hours and police overtime.

There was a suggestion that more organizations and government departments include a clause in contracts that specifies that parties will use ADR as an initial attempt to resolve disputes. For example, the New Brunswick Teachers' Association is considering using ADR to settle internal disputes.

C. What Structures are Needed to Facilitate the Movement Between Current Processes in the Justice System and ADR?

We need to look at already existing structures - what are they? Are we getting maximum benefit from them? Can policy be developed that could move cases from the courts back to a pre-judicial forum? What permissive legislation and public policy currently exists that encourages the use of ADR?

The question "What is different between judicial and pre-judicial contexts for ADR?" pointed to the lack of structures for facilitating pre-judicial or community-based initiatives, as well as limited funding.

1. Victim Offender Mediation

   There are increasing efforts on the part of police to refer cases to mediation on a pre-charge basis. Cases that are resolved in this manner never enter the court system at all. Early screening can also facilitate referral to mediation in cases where charges have been laid, before Court of First Appearance, resulting in minimal court involvement. Many participants noted the desirability of the earliest possible intervention in terms of efficiency and cost-savings.

   We need to be mindful of legislation that currently mandates the laying of charges and proceeding through court. An examination needs to be made of legislative changes that would increase the opportunities for parties to make their own decisions about how to proceed.

   It was noted that there are currently research studies that show the quality of results of victim offender mediation programs in Canada, most recently the Umbreit Study *Mediation of Criminal Conflict: An Assessment of Programs in Four Canadian Provinces* (1994).

   The cost factor of drawing on volunteer mediators and community-based staffing was noted.

2. Other Initiatives Involving Police Interventions

   In Ontario, specially trained police officers negotiate with Union Officials during strikes. They are able to refer parties to mediation which can be provided in a four-hour response time.

   A screening question used to encourage Union Officials to mediate is "Have you tried to work it out with police?"

3. Pre-Trials

   Timing is very important. Where pre-trials are being used, they are coming far too late! Is there a possibility for establishing a pre-pre-trail very soon after pleadings? Judges may be unfamiliar with the pre-trial process. A suggestion was made to examine the feasibility of internal training for judges to become more comfortable with the pre-trail.

4. Pre-Arbitration Hearings

   Prior to a Statement of Claim, a pre-arbitration hearing is useful to narrow the issues and establish uncontested facts. A decision to mandate such hearings (*E.g.* personal injury disputes in the Province of Ontario) needs to be based on a consideration of the type of dispute and the point it has reached in the overall process.

From a statement of claim to a pre-trail can take as much as 60 days. Lawyers currently resist early intervention.

Ideally, Judges would be able to screen files more quickly; lawyers would be encouraged to settle prior to a judicial process. More discussion is needed to determine how these changes can be brought about.

5. An Experiment to Fast-Track Cases by Advancing Hearing Dates

   This requires fuller, earlier disclosure and more preparation on the part of lawyers at the pleading stage. These cases settled with the same success rate as regularly scheduled hearings, only much earlier.

6. Family Law

   It was noted that all Provinces have taken steps to address issues related to family law. A chart summarizing the ADR initiatives currently being used would be helpful.

7. Children

   It was noted that current ADR processes do not represent children.

8. General Comments

   We need to know why people use the courts. Is it to seek retribution? Do they derive some benefit from the delay. Is litigation viewed as the only way to solve the problem? A research study on these questions would be timely.

   The public's perception and the lawyer's perception of how much time is actually spent litigating may be different. Perhaps a statement should be issued on the functions of a lawyer.

   There are currently three projects underway to produce International Directories of ADR resources.

Recommendations

1. We recommend that the use of ADR should be encouraged at diverse stages of the civil and criminal litigation process.

2. We recommend that the implementation of ADR systems in the judicial process be predicated upon broad consultation between Provincial and Federal Governments, judges, lawyers and other interested groups.

3. We recommend that Rules of Practice of Civil Procedure include express reference to ADR processes.

4. We recommend that courts should be expressly empowered to delegate tasks to qualified ADR practitioners.

D. How can the use of ADR be fostered and promoted both within the Justice System and in the general public? How can knowledge of ADR and attitudes towards its use be enhanced? and

E. How can/should DR alternatives be funded?

There was insufficient time to do justice to these two remaining topics, though there had been some discussion of both of these in relation to previous topics. Their importance is reflected in the following recommendation:

Recommendation to the Federal Department of Justice

What? A National Multi-Disciplinary Task-Force on Dispute Resolution

Who? with wide representation including representatives of:

- the Federal Government
- the Provincial Governments
- Community-Based Organizations
- the Judiciary
- non-governmental and professional organizations

Why? to put in motion an integrated, National action plan to advance dispute resolution in Canada

Tasks?
- create an inventory of existing ADR programmes and resources
- create and promote uniform terminology for dispute resolution in Canada
- identify areas where ADR can be implemented in Canada

- develop a communication strategy to promote ADR in Canada including:
  a) a public awareness campaign
  b) a networking mechanism
- identify sources and initiatives for the funding of ADR activities:
  a) investigate user-pay approaches to ADR that ensure access to justice while encouraging parties with resources to share the costs
  b) investigate how existing resources can be reallocated to ADR as these processes become more widely used
  c) implementing court service surcharges
  d) community-based sources and private sector

Report of Task Group 4b

Dispute Resolution in the Administration of Justice

Facilitator - Camilla Witt
Rapporteur - Terry Harris

The group agreed to eight points at the end of their deliberations on day 2. The rapporteur's clarifications appear in square brackets. The eight points were:

Recommendations

1. Justice and its application in our legal system, as well as in ADR, be governed by the principles of restorative justice.

2. There should be a committee, which would include those of us who wish to be involved, to evaluate what's in place, *[i.e.. what programs are presently functioning]* with a view to developing dispute resolution models.

   Further, that in developing these models, the Committee define and articulate the underlying principles of ADR, which are compatible with and reflect the principles of restorative justice.

3. There should be a follow-up conference to this Forum.

4. That a depository of information *[concerning programs that have functioned, along with the results of this forum]* should be established, with responsibility for disseminating the information to target groups and that the information be made available in hard copy and electronically, including [on the] internet.

5. The Justice system should make access to ADR mandatory.

6. That there be involvement by the community in ADR and that there be a responsibility to go to the communities, rather that waiting for members of the community to come forward.

   [The intent seemed to be to provide for something beyond the usual forms of public consultation, which were seen to be too susceptible to interest groups and to other problems of representation.]

7. That there should be education of the Judiciary, Bar, Police, Court support staff, ADR providers and the public in ADR.

8. That ADR providers be competent.

[The group generated a number of lists in the two days and chose to have the above eight points stand as their work product. The lists were to stand simply as their working papers. These lists are set out below for any assistance they might offer in interweaving the results of the three Justice groups.

The group first generated a list of issues which needed to be discussed.]

Issues

1. Mandatory vs. voluntary ADR;
2. When to use ADR;
3. Evaluation issues:
   - cost - who pays;
   - assessing outcomes;
   - participant satisfaction;
4. Restorative justice in aboriginal context: - pre and post court process;
5. Changing the culture in the Justice system;
6. Overseeing body to share information re A.D.R.;
7. Affirmation of the victim;
8. Fostering community responsibility [for Justice issues and challenges];
9. Fostering access to other professions;
10. De-formalization of the processes e.g.. court processes;
11. Respondent accountability in a criminal context;
12. Funding issues;
13. Who takes responsibility for legislative changes?
14. How do we build a model for use of ADR options in court system?
    - What ADR options are there?
15. Court annexed vs. outside ADR:
    - How to structure court annexed ADR?
16. Public education
    - who is responsible?
    - what would it look like?

17. What are the base principles on which the Justice system operates?
    - purpose of the system: restorative v. retributive (in criminal and civil contexts);
18. Respecting cultural differences;
19. Should there be uniformity v. diversity in ADR options available across Canada?

[These issues were reworked into three main headings. The group was only able to get through two of these headings in the time available. The first heading was:]

1. What Are The ADR Principles That Need To Be Integrated Into The Court System?

ADR PRINCIPLES FOR INTEGRATION INTO THE JUSTICE SYSTEM

1. System provides ADR to adequately meet the needs of disputants; Parties have control over the process and outcome i.e. self-determination;
2. Parties are encouraged to solve their own disputes throughout the process;
3. Dispute resolution is accessible and affordable;
4. Reconciliation is promoted;
5. Appropriate cases are referred to ADR by way of a selection system;
6. Resolutions are timely, effective and just;
7. Some supervision of ADR processes is provided;
8. More resources are available to the court to assist in decision-making;
9. System is responsive to the needs of the community;
10. Community rights are reconciled with individual rights;
11. The interests of different stakeholders are met by ADR;

[The second question was involved the group in looking at the attributes that an ADR model would need to have. The questions were formulated as follows:]

2. What Do We Need To Include In A Model For ADR Options In The Court System?

- Mandatory vs. voluntary ADR;
- When to use ADR;
- What ADR options are there?
- Court annexed vs. outside ADR;
- How to structure court annexed ADR;
- How does Community Restorative Justice fit into the model?
  - cross-cultural contexts generally;
  - in aboriginal contexts;
  - in criminal matters;
  - pre and post court process;
  - affirming the victim;
  - accused/respondent accountability;
- Evaluation issues:
  - cost - benefit analysis;
  - assessing outcomes;
  - participant satisfaction;
- Who controls the process?

[These questions and issues were answered by developing a list of interests and a list of solutions. These were:]

INTERESTS TO CONSIDER IN DEVELOPING AN ADR MODEL

1. Need for 2 way communication with stakeholders;
2. Concern that community input is representative;
3. Need to have consensus among the core stakeholders;
4. Concern that core stakeholders be representative of their communities so they take responsibility [for the result] and their feeling of ownership in the result is enhanced;
5. Need to respond to specific community needs identified by the stakeholders;
6. Desire to learn from the experience of others - worldwide;
7. Desire to respect cultural differences;
8. Need to evaluate existing court and ADR options;
9. Desire to decrease the formality of dispute resolution processes;
10. Need to educate lawyers as to the benefits of ADR options;
11. Need to educate the public as to ADR options;

12. Concern that changes to existing system be gradual and carefully considered;
13. Concern that power imbalances are dealt with in appropriate processes;

SOLUTIONS

1. Stakeholders evaluate existing and worldwide programs against ADR principles;
2. Use enabling legislation;
3. Ensure a variety of ADR options are available;
4. Compel exposure to ADR options throughout the course of court cases;
5. Judges direct parties to use court annexed ADR;
6. Build in ongoing evaluation and monitoring;
7. Modify legal education to integrate ADR options;

IMPLEMENTATION OF SOLUTIONS

1. Follow up committee to implement solutions.

[The group took the answers to the second question to one further level, by brainstorming solutions to it. Unfortunately, only to first stage of brainstorming was achieved in time. The list of "intangibles" and "hard outputs" stands therefore as a list of solutions, which was not evaluated by the group. Hard outputs are things like policies, programs, and recommendations that are situation specific. Intangibles are things like interests, subjective criteria, and objective measurement criteria.]

Intangibles

1. Standards for ADR processes across Canada;
2. Educate the general public;
3. Include administrative agencies [e.g.. Human Rights Tribunals];
4. Develop a common terminology;
5. Use legislative amendments;
6. Models need to be flexible from community to community;
7. Identify parts of the judicial system that are working well;
8. There should be evaluation [build in from the beginning];
9. Overall evaluation by statistical and user satisfaction levels;

10. Adequate time for settlement provided (specific sessions [e.g.. settlement conferences]);
11. Recognize community building aspects of ADR;
12. Consultation should occur before legislation;
13. Actual diversion to ADR [should be able to occur] before Court process;
14. ADR should not oust the Court system;
15. Include provision for cultural differences in any ADR processes;
16. Flexibility in locations, procedures and cultures;
17. Settlement authority figure must be present [i.e.. the person with actual authority];
18. Keep It Simple, KISS principle to guide any model;
19. Set up of the system to be non adversarial, user friendly, no legalese, non intimidating, with realistic costs;
20. Education of front line people e.g.. court clerks, Police Officers;
21. ADR should be immediately accessible;
22. There should be a balanced emphasis on individual rights and responsibilities;
23. There should be a central think tank/research agency for ADR

Hard Outputs

24. Court annexed ADR;
25. Judicial education and bar education;
26. Mandatory orientation to ADR processes involving lawyers and clients;
27. Early intervention;
28. Self funding e.g.. flat fee with sliding scale;
29. ADR is the primary system, Court to be the last resort. Court to be the gatekeeper. No commencement of Court until the ADR step completed;
30. [There should be a] central storehouse of [information concerning ADR] models;
31. Presumption in criminal processes that parties attend ADR forum before trial;
32. Complaint process for each ADR process;
33. Litigants participate in education re: particular dispute and ADR process;
34. ADR not binding;

35. No litigant can be denies a trial;
36. Consider ADR before appeal;
37. All stakeholders in dispute must have a place in ADR;
38. The A.G. must fund ADR for legal aid clients;
39. ADR providers accountable;
40. [There should be a] choice of private or Court annexed ADR;
41. Cultural interpreters [should be] available in ADR;
42. Time frames [should be] specific for ADR processes;
43. Finite time period for ADR sessions;
44. Each Court must develop with its constituents, ADR services;
45. Enabling legislation [should be forthcoming];
46. National public endowment fund for community initiated ADR;
47. National conference for exchange of education and information;
48. When pleadings closed, information session of lawyers and parties re: private and Court annexed ADR options (uniformly across Canada);
49. Sanctions or costs where parties misuse ADR in some circumstances e.g.. to delay;

[Unfortunately, there was not enough time to consider the third issue. It was as follows:]

3. Implementation - Making The Model Work

- What consistency should there be in ADR options available across Canada?
- How should legislation be used?
- What input should there be to legislation and by whom?
- Making resources available:

  - information for those working in the system;
  - information for the public;
  - fostering involvement of other professions;
  - funding.

- - Public education:
  - who is responsible?
  - what would it look like?

Report of Task Group 4c

Dispute Resolution And The Administration Of Justice

Facilitator - Sylvie Matteau
Rapporteur - Ayumi Bailly

I. Definition and Scope

The group gave much serious consideration to the definition of "dispute resolution and the administration of justice," for this would set the foundation upon which to build recommendations that would form part of a national agenda for dispute resolution in Canada. Two agreements resulted from this part of the discussion. The first agreement was that all further discussions should be phrased in terms of "dispute resolution" rather than "*alternative* dispute resolution." The group believed that dispute resolution ideas and approaches should not be marginalized by the use of the term "alternative."

The second agreement emerged with more difficulty. Establishing the boundaries of the "administration of justice" in our society proved to be a challenge, for there are countless ways in which justice is served, ranging from community (or non-court) justice to civil court to criminal court. After some exploration of the range of ways justice can be administered, the group agreed that the most useful way to frame the remaining discussions in order to accomplish the task of the Forum was as follows:

What Dispute Resolution principles should be used to guide the enhancement of the public administration of justice?

In other words, dispute resolution principles were considered to have tremendous value to *enhance*, but not *replace*, the public administration of justice. The group noted, however, that enhancing our traditional, adversarial court system of justice with dispute resolution values and approaches would actually transform the court system into something quite different from what we know today. At the same time, the group agreed that there will most likely still be an important place for a conventional court forum in any transformed administration system for justice.

The distinction was made between "public" and "private" administration of justice, with "public" administration being those forms which engage the taxpayer, primarily through the court system, but also including such forms as legislative directives. Furthermore, the group believed firmly that justice could be administered through "public" forms outside of a courtroom, and that the fullest range of such forms should be explored.

II. Principles

Having established a working definition for the purposes of the Forum, the group identified a number of principles that could be used to enhance the public administration of justice. A small subgroup volunteered to craft the wording of the principles while the remaining participants continued to brainstorm action suggestions. The results of the subgroup's efforts, endorsed by the full group, are as follows:

1. The dispute resolution process should be viewed as a continuum from private consensual resolution to adjudicated decision-making.

2. One or more dispute resolution mechanisms may be appropriate at one or more stages in the dispute and should be considered by the parties and their advisors throughout the dispute.

3. The dispute resolution alternative that is appropriate depends on the individual and cultural needs of the parties, the public interest and the dynamics of the dispute.

4. The courts should continue their support for pre-trial dispute resolution alternatives and encourage the use of other dispute resolution mechanisms both within and outside the courts.

5. The parties should, to the greatest extent possible, have control over the mechanisms used to resolve their dispute.

6. Dispute resolution processes should be participatory and empowering in nature with the objective of positive relationships between the parties.

7. Dispute resolution processes must be fair and accessible and must seek to achieve a cost-effective, efficient, timely and enforceable resolution of disputes.

8. Dispute resolution alternatives must be continually evaluated in a comprehensive manner (not just by settlement rates or cost efficiency).

9. Providers of dispute resolution services must be competent and independent to inspire the trust of the parties.

10. Governments should actively consider the use of dispute resolution through consideration of non-court dispute resolution alternatives in legislation, government contracts, inter-governmental activities and public policy issues.

11. Education about dispute resolution alternatives is critical for the public and all participants in the administration of justice.

III. *Suggestions to Support the Principles*

The group produced a long list of "action suggestions" to support the above principles. These ideas are presented as "suggestions" rather than as "recommendations" because the group believed that each idea should be discussed much more, and possibly face rejection, than was possible within the time frame of the Forum. The group was also aware that some of the suggestions may already be implemented.

Suggestions Relating to The DR-Court Continuum, Staged Intervention, and Situation-Appropriateness

1. *The dispute resolution process should be viewed as a continuum from private consensual resolution to adjudicated decision-making.*

2. *One or more dispute resolution mechanisms may be appropriate at one or more stages in the dispute and should be considered by the parties and their advisors throughout the dispute.*

3. *The dispute resolution alternative that is appropriate depends on the individual and cultural needs of the parties, the public interest and the dynamics of the dispute.*

4. *The courts should continue their support for pre-trial dispute resolution alternatives and encourage the use of other dispute resolution mechanisms both within and outside the courts.*

In the present system, the courts provide an ultimate sanction for intervention in worst-case scenarios, and this function of the courts should be maintained as DR becomes integrated with the administration of justice. However, this function of the courts should be clearly understood as an "ultimate" sanction, and not to be used until other alternative have been exhausted. In other words, it should be the ultimate "alternative dispute resolution" mechanism. Other bodies, such as administrative tribunals, can also serve this role of "ultimate sanction."

Suggestions Relating to Roles and Relationships

5. The parties should, to the greatest extent possible, have control over the mechanisms used to resolve their dispute.

6. Dispute resolution processes should be participatory and empowering in nature with the objective of positive relationships between the parties.

Note: The suggestions relating to these two principles overlap somewhat with the previous section, such as the recommendation here for greater flexibility for judges to "descend into the arena," and the issues of confidentiality and control of information.

Many questions and suggestions raised by the group related to the definition of roles of the players in a dispute resolution process, and their relationships to each other. The group believed that the "user," or the public, should be integrally involved in creating resolutions, for this would allow the creation of a resolution that also considers the relationship between the disputants.

The group noted the need to recognize the various roles of the participants in a given process, and the different ways of participating in resolving a dispute. In addition, there is a need to make roles flexible by expanding or re-defining them -- e.g. allowing the judge to "descend into the arena" to participate more actively, and therefore more effectively, in creating a resolution. Lawyers' roles could be re-shaped into "judicial resolvers," inquiring into the differences among parties. Lawyers can be very skillful in using the full range of dispute resolution options, but a case may still need the court to insist that the client "be sensible" and accept an approach or resolution. On the other hand, where a lawyer is not so skillful or experienced, a case may need the courts to manage the situation, thus casting the courts into the role of "manager."

The group also believed that "user choice" should prevail, that the selection of a dispute resolution option should be voluntary and consensual, and that the selected dispute resolution option should be consistent with the needs of the parties and the public interest. "Mandatory exposure" would be the only aspect of the dispute resolution process that could be made acceptably "mandatory," for mandatory mediation may actually disempower parties even further.

Power imbalances and empowerment of the disadvantaged are other issues relating to roles and relationships. Equality must be established where there is a power imbalance -- this could be done by ensuring parties are accompanied by counsel throughout the process. However, this raises further questions. Should parties have independent legal representation?

At what point(s), for how long, in what cases? Is legal representation necessary? Furthermore, what decision powers should service providers have? Who should decide whether a case goes to mediation, the caseworker or the parties themselves?

Contextual appropriateness was identified as being an important characteristic of the decision-making exercised by any of the players involved in a dispute resolution process. One culture's ideas should not be imposed on another. The system needs to be speedily responsive to characteristics of and changes in each case.

Suggestions Relating to "Quality Control" – Accountability, Integrity

7. *Dispute resolution processes must be fair and accessible and must seek to achieve a cost-effective, efficient, timely and enforceable resolution of disputes.*

8. *Dispute resolution alternatives must be continually evaluated in a comprehensive manner (not just by settlement rates or cost efficiency).*

9. *Providers of dispute resolution services must be competent and independent to inspire the trust of the parties.*

One issue relating to integrity is that of confidentiality in the application of fairness and justice. How should the system treat confidentiality so that it is not exploited unfairly? There is also the concern of trust that the dispute resolution process will be confidential, and the concern of due process if confidentiality is used against someone in a judicial process. Who (of the parties to a dispute) is bound by confidentiality? How do we ensure confidentiality?

Another issue relating to integrity is that of choice -- who has the power to make it, and what selection is available? Who chooses the mediator, and who pays the mediator? The group believed that user choice should prevail, that choice of a dispute resolution option should be voluntary, constructive, and accessible. The dispute resolution methods should be consistent with the needs of the parties and the public interest. The use of any dispute resolution option should be consensual and contextually appropriate.

Accountability is an issue that affects all parties, not just the mediator or judge. How do we define accountability? Is it "agreement at any price"? What should be the standards of practice? How do we protect the independence of a mediator such as a Sexual Harassment Officer?

While the market may end up controlling quality or competency of mediators, especially where the parties cannot choose the mediator, there is still a concern about coercive mediations, and resulting power imbalances, such as an individual against the government. The nature of the human being means that there will always be good and bad mediator; however, it is still important to establish credibility by designing standards of practice to ensure the integrity and competency of mediators.

As part of ensuring integrity and competency of dispute resolution options, we must continually monitor and evaluate efforts, and evaluation measures should be built into the design of any dispute resolution activities. We need information from evaluations of pilot projects to show that dispute resolution produces better results. However, how do we measure success? Success should *not* be measured by the number of cases settled, but rather by such things as whether the participants experienced empowerment -- success of dispute resolution is defined by the user and whether he/she feels that he/she has gained anything from the process, thus a very subjective definition.

Finally, dispute resolution processes should adhere to manageable time frames, be timely, result in speedy resolutions, and be balanced with flexibility. Resolutions should be enforceable and accountable. Above all, the process should be kept simple.

Suggestions Relating to Alternatives to Court-Administered Justice

10. Governments should actively consider the use of dispute resolution through consideration of non-court dispute resolution alternatives in legislation, government contracts, inter-governmental activities and public policy issues.

The group recognized that institutions set values which can eventually socialize the "rest of the world," so it is important to identify "alternatives" to court-administered justice which can also integrate dispute resolution options. The **suggestions** include:

- Government officials, legislative drafters, and lawyers drafting contracts should be required to consider a wider scope of DR options.
- Revisit/review existing and new legislation to add provisions for DR (similar to the plain-language effort) and to remove disincentives.
- Create a national Ombuds Office for ADR.

- Make Ministers accountable for reporting on the application or integration of DR in their portfolios' activities without allowing the bureaucracy to make the reporting process overly onerous. Ministers could report annually to the "ADR Ombuds" to go beyond mere reporting in the House but still maintaining a degree of accountability.

- The federal government could play a coordinating role, in cooperation with the provinces, to provide recurring forums for dialogue. Sufficient resources would have to be allocated for these events.

- Encourage the federal government to communicate this conference's work to provincial governments and other interested parties (service providers), and encourage them to consider these recommendations.

- Encourage joint ventures, shared responsibilities between provincial and federal governments [the "Governance" Task Group may have already addressed this area of discussion].

- Encourage broader-based networking across all levels and sectors throughout the country.

Suggestions Relating to Education and Information

11. *Education about dispute resolution alternatives is critical for the public and all participants in the administration of justice.*

The suggestions made relating to this principle ranged from raising awareness and understanding of DR options to skills-training. With respect to awareness-raising within the legal profession, it was noted that education is needed to overcome lawyers' lack of understanding of the distinction between discovery and mediation. It was suggested that training be encouraged for both government lawyers <u>and</u> government decision-makers for how to use DR (not necessarily how to be mediators themselves).

With respect to awareness-raising outside of the legal profession, suggestions included:

- Work with marketers to develop publicity programs.

- Determine who should take responsibility for publicity.

- Use video training tools.

- Create a national clearinghouse for information on DR initiatives across the country. Use technology to disseminate information -- strategically deploy information with a user-friendly interface, such as through Internet or Freenet.

- Add DR information to other institutions, e.g. the insurance industry.

Skills-training suggestions related primarily to changing the dominant legal mindset, and include:

- Encourage full disclosure -- if lawyers stop trying to "hide" information, the discovery process goes much faster -- we must change lawyers' mindset to hide information, which is adversarial.

- Lawyers have to change the way they practice law -- what can be done to encourage lawyers to change?

- The judiciary/provinces could make financial commitments for training of lawyers, also available to judges. It would be more appropriate to encourage training rather than making it mandatory.

- Encourage greater awareness and information to judges through judiciary associations (rather than mandatory training).

- Include DR in the first year of all law school programs, throughout all law courses, and Bar Admission courses.

- Include courses on DR in all areas of education -- all levels and all sectors of education and institutions (e.g. insurance offices)

- Institutionalize continuing examination of judiciary/bar practice of DR, provincially and perhaps liaised nationally.

IV. *Recommendations for Immediate Follow-up to the Forum*

Although the contents of the preceding pages were clearly identified to be "suggestions," the group wished to deliver more forceful "recommendations" for what should happen immediately following the Forum. The group decided to place more weight behind the following "recommendations" by flagging them as such because of the significant effort they had invested in this Forum:

- **do NOT disband conference Steering Committee to follow up, create mechanism for continued networking of these conference participants - build on momentum of this conference, maintain continuity - participants want to continue and want to hear back from the Justice Department what action has been taken**

- **commit existing resource of "600 lawyers" in Justice Department, including the ADR Group, to carrying on with these recommendations of this conference - maintain support at the least -- have provinces make similar commitment**

- **have the federal government commit to the task of actually mediating/negotiating -** *e.g.* **Justice Dept. commit to mediating 100 files over the next 12 months as a starting point - "set an example" - need a clear directive from the Minister (both federal and provincial) - encourage governments to DEMONSTRATE COMMITMENT to these PRINCIPLES, show that they are changing their behaviour - set achievable and measurable goals for the federal government to demonstrate commitment to being a user of dispute resolution processes**

- **hold a bi-annual conference with broad participation to continue dialogue, nationally and provincially**

Above all, the group wanted to receive some form of reciprocal commitment from at least the federal government, if not other sectors, to continue the excellent work begun at the 1995 Forum.

Report of Task Group 5

Dispute Resolution and Governance

Facilitator - Christiane Boisjoly
Rapporteur - John Olynyk

Although the name of the group was "dispute resolution and governance", the group ended up deciding that a better name for what it wanted to accomplish was "better governance." The theme that the group emphasized was a vision of "peace, order and good governance."

The members of the group all had a common interest in governance and in ADR, but there were many different views of governance. The term governance covers a wide range of activity, from governance cast in a relatively narrow sense (government regulation of the environment or of natural resources, or governance as it applies to professions through such mechanisms as the Law Society of Upper Canada) to governance in a much broader sense (participation by individuals and groups in the processes of making decisions that affect their lives at a local levels, whether by government or others). This meant that the group first had to come up with a general understanding of what was meant by governance in order to provide the framework for exploring the role of ADR in governance.

The group began by asking itself in general terms what its vision was for governance ten years hence. The group generated a number of such visions, which it divided into two main categories: values and principles, and mechanisms and approaches.

Once these visions had been identified, the group then proceeded to identify barriers and opportunities that had to be considered in making the transition from where we are today to where we want to be in ten years.

Finally, based on the visions, the barriers and the opportunities, the group brain-stormed a series of strategies for achieving the vision. These strategies fell loosely into two categories: strategies dealing with "intangible" outputs and those dealing with "hard" or "concrete" outputs.

This was the stage the group had reached by the end of the first day of the forum. This is reflected in the document entitled *Summary of Discussion -- Group 5* (see Annex I to this report).

On the second day the group divided into six sub-groups which took the results from the first day and applied them to the development of a document outlining the context for achieving better governance, strategies that could be followed in certain areas of governance, and a set of principles proposed to guide future work on achieving better governance through the use of ADR. This is covered in the second document produced by the group, entitled *Better Governance* (see Annex II to this report.)

The information in this section is based upon the two reports and notes of the discussions that led to the creation of the documents. I have not attempted to list the various comments of the group in order of importance. This is because the group itself did not rank importance of things like vision, barriers, or opportunities. (Note that the group asked that the two reports be appended in their current form to the final report of the forum.)

Context statement

A vision of peace, order and good governance must be based on values of mutual respect and sharing. As Canadians work toward their vision of peace, order and good governance, conflicts and disputes are bound to arise. These conflicts and disputes can be positive catalysts for change.

The use of appropriate processes for the management of conflict and resolution of disputes is fundamental to better decision-making. There is a need for an effective approach for advancing the use of these processes throughout our governance system.

The governance system is defined broadly as the totality of government and non-government institutions, including both formal and informal decision-making institutions, whereby we govern ourselves. It includes the following institutions at the national, provincial, regional and local levels, including First Nations at all levels:

Governmental Institutions:

- elected representatives and executives: Parliament, legislatures, councils
- bureaucratic and administrative: agencies, commissions, boards
- judicial: courts, tribunals, Supreme Court, etc.
- markets – economics

Non-Governmental Institutions:

- business
- labour
- environmental

- religious
- educational
- consumer
- professional
- community

The governmental institutions are the ones that are normally thought of when one speaks of governance. However, there are many other ways in which people govern their lives and are governed. These include social, business, religious, professional and other such entities which can control various aspects of individuals' lives. It may be a bit confusing to call these "institutions," as some of them are not associated with that term (such as the environment). This was the term preferred by the group. However, it may be useful to point out that what is intended here is an illustration of the formal and informal ways in which peoples' lives are governed, or in which people govern themselves.

Government is only involved in the formal side, which means that there are many informal aspects of governance as well. It was this type of diverse meaning of the term governance that must be kept in mind in reading through the various parts of the group's report -- the group used the term broadly and did not intend that it be limited necessarily only to formal institutions of governance.

Vision

The group felt that a useful starting point would be to envision how they would like to see disputes being resolved ten years in the future. This was not intended to be an exercise in providing specific changes, but rather one of living general indicators of an improved approach to dispute resolution. The visions identified by the group fell into two main categories: those dealing with values and principles, and those dealing with mechanisms and approaches.

Values and Principles

- responsibility and accountability

  people should have the responsibility to make decisions and should make them in ways that are accountable

- harmony; wellness and wealth for all

  goal of dispute resolution in governance should be to promote harmony by making it easier to resolve disputes with results that have broader public support. However, this does not mean that conflict or differences of opinion are a bad thing that should be avoided -- conflict can be healthy within limits and can serve to provide both the necessary conditions for change and possible direction to follow in the future.

- accept and celebrate differences

  dispute resolution in governance should not try to level out all of the differences between groups and individuals. People have different ways of looking at the world, and those diverse perspectives should be encouraged. Therefore, dispute resolution should accept and "celebrate" such differences instead of viewing that as a problem.

- trust

  Dispute resolutions processes will have to be such that the persons affected by and participating in those processes will be able to trust the processes and the results. This is in contrast to current governance systems where there is a good deal of public mistrust and cynicism.

- spirituality

  This was not meant in a religious sense but rather in the sense that dispute resolution in the future should acknowledge aspects of spirituality as well as other factors considered in arriving at decisions.

- honesty

  Future dispute resolution processes would encourage honest discussion of interests and views; people would feel that full disclosure of their interests would not make them vulnerable but would contribute to better solutions and decisions.

- transparency

  This is related to trust above, in that in the future dispute resolution processes would be more transparent. That is, the decision making process would be more open and it would be easier for the public not only to participate but to see how decisions were being made. This would lead to greater faith or trust in the decisions coming out of those processes.

- participation

  This is one of the most important – in fact, this was perhaps almost taken for granted by the group due to their assumption that individuals should have a greater role in decision-making that affects them. In the future, dispute resolution processes in governance would ensure that there is broad public participation and participation by stakeholders in arriving at consensus solutions. This should not be read as only applying to formal processes of governance (such as government) but also in peoples' everyday lives. This means that people would have to have the skills and resources needed to participate effectively.

- pro-active

  Dispute resolution in governance in the future would try to identify and resolve disputes in a pro-active manner, instead of waiting for a problem to arise and then reacting to it.

Mechanisms and Approaches

- less managerial and more facilitative

  Dispute resolution processes would be less managerial and more facilitative – that is, instead of someone managing the process and making the decision based on the input received from others, the role of the process would be to facilitate stakeholders arriving at a consensus decision among themselves.

- protect vulnerable groups/individuals

  The process would have to be structured in a way that would protect vulnerable groups and individuals -- imbalances of power, resources, and skills in the dispute resolution process would have to be taken into account so that weaker stakeholders were not overwhelmed by other stronger parties.

- training

  More training would be needed to ensure that people could participate effectively and to encourage focusing on maximizing interests etc.

- mechanisms for cooperation;switch from litigation to ADR

  Dispute resolution processes in governance should be seen as ways of encouraging cooperative problem solving and decision making instead of adversarial contests

- more emphasis on and power at community and individual levels

  A goal of DR would be to empower communities and individuals to take greater responsibility and to have greater control over decision making affecting their lives and interests. Decisions would be made at as local a level as possible.

- equitable or fair resources for all

  In order to participate, individuals would have to have the resources needed to be effective. It takes time, knowledge and sometimes money to be able to participate in decision-making processes; this is potentially a source of imbalance in power and influence among participants if no steps are taken to ensure a fair sharing of resources.

- review of corporate cultural values

  Companies would change their approach to governance from one of achieving their short-term positions to one of maximizing their interests over the long term

- integration of science and values; integration of regulatory and economic mechanisms

  The process of DR in governance would be more open to different perspectives and approaches. Values would be considered along with scientific or technical data; alternatives to the current regulatory model would be encouraged so as to allow individual companies to decide how best to meet the standards required in a manner that was most appropriate to the company.

- coordinated networks; use of technology to facilitate changes

  In the future, DR would not be a top-down or hierarchical model. Technology would allow much greater decentralization of activities in the governance sphere while at the same time allowing for the communication necessary to ensure coordination of activities. This would lead to the development of coordinated networks at local levels.

- values and principles orientation

  DR in governance would be focused less on single objectives like maximization of economic benefits and more on the values and principles enunciated in the previous section. To some extent, this refusing would be achieved as a consequence of opening the process up to all stakeholders so that their perspectives and interests were considered in the decision-making process.

- continuous improvement

  The governance process would not be "carved in stone" – it would recognize that it may be necessary for the decision-making /DR processes to change over time as conditions and needs change. The processes would be flexible and responsive instead of fixed and difficult to change. There would be an effort to monitor the effectiveness of the processes to identify quickly when changes were needed with a view to continuously improving them.

- national guidelines for DR

  While there would be a strong emphasis on local processes and local decision-making, there would still be a need for some sort of broader framework within which DR in governance occurs. This could be accomplished by provision of guidelines at the national level for DR.

The fact that these are called national guidelines does not mean that they should be developed by the federal government; it was perhaps assumed that these guidelines would be the result of the coming together of interests in the same manner as the forum.

- leaders as followers

  In the future, leaders of government and of other institutions (community groups, etc.) would be more responsive to changes desired by their constituents. There would be a greater expectation that leaders would be there to facilitate desired changes, not to frustrate or prevent those changes.

Barriers And Opportunities

Once a vision for dispute resolution in governance in the future had been developed, the working group proceeded to identify a number of barriers and opportunities that had to be considered in deciding how to achieve the vision starting from where we are at today. In looking at the lists, it is possible to see that in some cases things that were seen as barriers were also seen as opportunities. This reflects the feeling that in some cases change can only occur where there are problems with the status quo.

Barriers

- fear of change

  Individuals and governments tend to be averse to change, sometimes preferring the status quo with its problems to the unknown of changing the system. This also is reflected in the fear of parties that currently enjoy great power of influence that changes will cause them to lose that power.

- competition due to a mindset of scarcity; conflict due to competition due to lack of sustainable development

  People feel that resources of all kinds are limited today; therefore they feel that if one group gets more resources (for example to help empower local community groups) then it must mean that there will be fewer resources available for other groups. This leads to competition and conflict over resources

- increased diversity in society

It seems today that the world is much more complicated than it used to be; this means that it seems much harder to come up with changes which would be able to accommodate all of the diversity in people, interests, etc. Similarly, people are not comfortable with ambiguity and ambivalence in day-to-day life; people want certainty instead of flexibility.

- belief in one best way

  People still tend look for the one solution to all problems, instead of being open to considering that different contexts may require different solutions.

- lack of vision

  From the top down, there is only limited vision as to what could and should be accomplished with the reform of governance systems. This means that there is no enunciation of a vision which could serve to galvanize desire for changes to the systems.

- inadequate processes

  Current processes are not set up to allow for consensus-based DR. This means that people generally do not have good experiences with current systems of governance and hence may be reluctant to participate.

- lack of trust

  The outputs from current systems are not such as to engender broad trust.

- lack of information and expertise

  In order for people to participate effectively and to feel that they are able to participate effectively, they need to have the information and skills needed. There is currently a great imbalance between the information and skills held by government and industry participants in comparison to local or community groups and individuals. This imbalance makes people reluctant to participate and makes their participation less influential.

- lack of responsibility

  Decision-making responsibility is typically too far up in the hierarchy for people to be able to have a direct influence on decisions.

- lack of willingness to participate in facing up to and resolving conflicts

  It takes a lot of effort to develop consensus solutions to disputes, and often people are unable or unwilling to go to that effort. This may be due to satisfaction with the status quo (if a party has vested interests in maintaining the status quo) or due to feeling of hopelessness or being overwhelmed by the task.

- belief that harmony and peace means no conflict

  People are sometimes reluctant to envision a system that accommodates and encourages diversity, as they feel that allowing diverse interests to exist just allows for more conflicts to arise. There is a feeling that living in harmony requires suppression of differences and of conflict.

- too much individualism

  In some cases people may be unwilling to participate in or support changing the system if their interests are not directly affected. There may be a lack of willingness to participate on a more altruistic level.

- crisis in governance is not serious enough yet

  While there is dissatisfaction with some aspects of governance in Canada, overall Canadians have it pretty good compared to a lot of other places in the world. This is reflected in "quality of life" surveys which show Canada is pretty well off. This means that there is not yet the climate of crisis that is sometimes needed to serve as a catalyst for change. The status quo is not perfect, but it isn't so bad either, so why worry about changing it?

Opportunities

- people are not totally powerless; people have a better understanding of individuals' power and potential for influence

  There is evidence and experience that people and groups can make a difference, and that therefore it is worth trying to change the system.

- past participation has led to some positive experiences

  The private sector has had a good deal of experience with ADR which could be looked at in developing models for public governance.

- crisis atmosphere leading to greater willingness to look critically at how we resolve disputes today; current turbulence creates opportunities for making positive changes as traditional hierarchies break down

  Although it was stated above that one barrier is that the crisis is not serious enough to stimulate change, there is nonetheless dissatisfaction with the current system. (The topic for this working group is perhaps evidence of that.) The current feelings of dissatisfaction mean that people may be more receptive to change than otherwise would be the case.

- greater education means that people are more aware of the issues than previously

Canadians are as a whole better educated and better informed that a few decades ago. This means that they are better equipped to handle increased responsibility for making decisions affecting their own lives/interests.

- current technologies mean that communication can occur virtually instantaneously

  Technologies such as TV, internet, and so on make it possible for information to be disseminated almost instantaneously. This can facilitate greater flow of information. The downside is that the volume of information increases, making it harder to find information of importance. In addition, there may be a greater emphasis on quantity of information rather than on its quality. For example, "raw" information may be disseminated instead of thoughtful analyses.

- government has some self-interest in creating change

  The governments are currently trying to off-load as much cost responsibility as possible. By developing lower-cost means of DR, it may be possible to get government behind the initiatives by showing that they are ways of saving money or achieving other governmental goals.

- people are more willing to recognize and accommodate differences on some levels -- cultural, individual, communities, etc.

  People recognize that Canadian society is no longer homogeneous. There is great cultural diversity that is recognized in official policies such as multiculturalism. There is also greater willingness by individuals to respect such differences.

- greater emphasis on respect for humanity

  People are taking the needs all groups more seriously, including the needs of disadvantaged groups such as the homeless. This spirit of inclusiveness lends itself to developing better DR systems in governance in keeping with the vision outlined above.

- much greater participation being seen at community level

  All across Canada, there is a new trend towards people getting involved in their communities and other local organizations. This is creating a new pool of human resources which can be drawn upon in DR processes. This is in fact the opposite of the expected community burn- out that was anticipated as a result of encouraging greater public involvement in governance.

- people are more open to discussions of values

Although people do not always agree with others' views on values, there is a much greater willingness to acknowledge those other values and to discuss them openly. This sets a climate for consideration of other possible means of resolving disputes based on non-traditional values.

- more vehicles today for communication between groups and individuals

  While technology has contributed greatly to easier communication, there are also other trends such as the development of networks and local community groups which are facilitating personal communication as well.

- Canada is very privileged in comparison to other countries

  We have the luxury of a lifestyle that allows us to reflect on how we want to govern ourselves and our lives. While this privileged state may mean that people see less need to change (see barriers above) it also means that we can take the time to envision a better future and to set in action the steps needed to achieve that vision.

- there is good leadership at various levels and in various sectors of which advantage should be taken in seizing the opportunity to make appropriate changes

  While Canadians love to complain about the leadership of the country, especially in government, in fact there are people in key positions in government and outside government who are receptive to new ways of resolving disputes. This means that there is an opportunity to use their support for change to implement new ways of resolving disputes in governance.

Recommendations

Specific Proposals For Change

The group split into sub-groups to address specific areas of governance. The following suggestions were intended to provide a framework for further work in the future on reforms to dispute resolution in governance.

A. Local Groups and Governance

This sub-group looked at how DR and governance could be viewed in the context of local groups, meaning community level DR processes involving both formal and informal DR. The sub-group proposed a four-step process that would be circular or iterative and ongoing. The steps would consist of preparing the ground for change, building a structure, implementation and evaluation, and sustaining.

Preparing the Ground for Change

The first phase would start immediately and would focus on getting people to buy in to the need for change. It would advocate the overall concept of a return to consensus decision making. Decision making would be carried out on a more inclusive basis. It would emphasize that such an approach would be more efficient in that it would lead to better, more sustainable decisions. The potential costs savings of this approach would also be stressed, both in terms of financial costs and costs on individual participants in the decision making process. The approach would build and enhance relationships, and would thereby seek to reduce stress and conflict. It would be portrayed as a viable alternative to the current frustrating systems of dispute resolution. In addition, the positive PR aspects would be stressed.

The strategy for the first phase would be to conduct preliminary analysis and research. Existing dispute resolution systems would be examined to see where they do not work and to identify opportunities for improvement. Next, potential allies and support networks would be identified as a means of building a community of support for the changes. Then, the concepts generated would be "sold" to target institutions at the local level. This would involve using people with a high profile and good credibility in the DR field as advocates of the changes. This could be supported through the use of specific case studies showing the benefits of ADR.

Building a Structure

The second phase would focus on building the necessary structures, and would take place in the near future. It would involve reallocation of resources to DR. This could involve reallocation of money and human resources to DR. (One possible way to indirectly allocate human resources to DR would be to consider how successfully individuals apply DR in the course of their jobs, which could be done through the job performance appraisal process and criteria.) This second phase would focus on development of responsibility at the local level and on providing the necessary coordination to support the taking on of greater responsibility. At the same time, long and short term objectives for quality control, evaluation methods and standards would be developed during this phase. In order to maximize use of existing resources, there would be an emphasis on the use of existing opportunities and mechanisms at the local level – federations, associations, community groups, etc.

Implementation and Evaluation

The third phase would focus on implementation and evaluation. It would involve the development of appropriate training targeted at the various levels and types of needs at the local level. The training programs and

materials would have to flexible and accessible and transferable to other activities. Finally, the implementation phase would use pilot projects to demonstrate successes, to build commitment to change and to create some momentum for change.

Sustaining the Changes

The fourth phase would focus on sustaining the changes to local dispute resolution. Key aspects would include lobbying for any enabling legislation that may be needed, and expanding activities beyond pilot projects to more mainstream use of the dispute resolution approaches. The overall emphasis would be on sustainable development of dispute resolution at the local level.

The sub-group emphasized that this should not be seen as a linear process. The four phases should be seen as steps in a circular process that would enable constant review, appraisal, modification and improvement of the approaches used to increase the use of ADR at the local level.

B. Federal, Provincial, Territorial Governments and Governance

This sub-group looked specifically at how ADR could be encouraged in government institutions in order to achieve better governance. The sub-group set out as the goal in this area the achievement of routine use of dispute resolution techniques in resolving and developing public policy questions.

The sub-group identified four strategies for achieving this. First, a wide range of ***pilot projects*** could be established to resolve issues of public policy using non-judicial dispute resolution. This could apply both to resolution of specific disputes as well as development of policies, legislation, rules, and so on. The sub-group felt that there was enough evidence today to justify starting pilot projects without waiting for further study. Consultation, however, would be needed in establishing the pilot projects, to ensure openness, adequate resourcing, and representativeness of the projects. These pilot projects could deal with issues within governments, between governments, or even between government and non-government stakeholders (such as the regulated or the public).

Second, work needs to be done to ***change attitudes at the top*** with respect to the credibility of ADR as an alternative to existing methods of governance. The pilot projects could be useful in this regard.

Third, means of ***showing a central commitment by the governing body*** need to be developed. The sub-group gave the example of the special support team that the Saskatchewan Department of Justice makes available to other departments as needed to support mediation activities undertaken by those other departments.

Fourth, ***legislative change*** could be a very effective way of supporting the use of ADR in governance. The sub-group cited the example of federal bill C-62 on mediation. The sub-group stated that there is no reason that the actual DR work could not be done by persons from outside the governance structure, as long as the proper climate for the DR work existed.

As it is important to build a strong case for broader use of ADR techniques in government, the sub-group recommended that the pilot projects be evaluated and at the same time that greater analysis be carried out of the economic, social, time, and human energy costs of current governmental systems. This would provide the information needed to identify where and how ADR could best be used within the governmental framework.

The sub-group also emphasized the need for *training and culture modification for government representatives* who would be involved in public policy DR. There would have to be less imposition of top-down definitions of the public interest and more willingness to allow others to define what is in the public interest (or the interest of the various groups making up the public).

C. Education and Governance

This sub-group focused on education institutions such as public and separate schools, including post-secondary institutions.

One area needing attention is that of *internal relationships within the institutions*. Currently, community consultation exists with respect to policy development within the institutions. However, the sub-group identified the need to develop better communication, including with executive bodies involved, to teach public facilitation skills, and to make available more information on effective DR practices in educational settings.

The continuing role of *standing advisory committees* was seen as important. The committees allow representatives from all interest groups to be involved, which allows for pro-active ongoing advice and participation within the educational system. Specific needs identified in this area include the need for more training of the persons involved in these committees, and the need for reviews of the selection process for picking members of the committees, to ensure that they are representative.

The sub-group recommended that there be an examination of current DR polices and protocols within the educational institutions themselves. This would be aimed at establishing peer mediation at all levels, which has been shown to have very positive effects. In addition, institutions should approach the respective Ministers of Education and Justice for broad policy objectives needed to provide the proper climate to facilitate and encourage change in the internal processes of the institutions themselves.

External relations could be improved by enhancing the involvement of parents and community organizations in decision-making, for example through the implementation of permanent parent advisory committees at each school site. The sub-group also stressed the need for the institutions themselves to reach out to the community in an effort to contribute to community life. The example was given of sponsoring community-based conflict resolution training.

Educational institutions should ensure that ADR skills training is included as a part of all professional and general education programs. While certain programs may have a very obvious need for ADR instruction (such as law and business schools), the sub-group felt that it would not be appropriate to limit efforts only to those groups. This is because the trend is very much toward ensuring that all individuals have dispute resolution skills, not just certain specialists. Therefore, schools have to provide ADR training as part of their general education programs as well.

The sub-group concluded by identifying the importance of support and funding for university- based DR research and training centres.

D. Aboriginal Governance

The sub-group on aboriginal governance decided that it would be inappropriate, given the diversity of perspectives within and between aboriginal peoples and given the state of development of concepts of aboriginal self governance, to try to make specific recommendations for the use of ADR. Instead, the sub-group elected to enunciate the following principle to guide thought in this area: *"The foundations of self governance are respect and sharing."*

E. Further Work Needed

The group recognized that it had only begun to address some of the areas of importance. It did not address other areas which were also very important. In particular, the working group identified business governance, new and emerging interdisciplinary models of governance, and the role of new technologies as requiring further work with respect to the use of ADR in governance.

Forum Follow-up Recommendations

Guiding Principles

One final sub-group proposed a set of principles to guide further developments in the area of DR and governance. The principles were stated as follows:

- There is an urgent need for effective strategies to advance the ADR work coming out of the forum, based on the following principles:

  a) strengthen connections among forum participants (regionally and provincially) using available technology;

  b) use all opportunities to further the recommendations of the forum (e.g., through the use of regional and national conferences);

  c) members of existing national and provincial organizations should promote forum recommendations at those levels.

- The government should facilitate the convening of a conference to explore the feasibility of development of a national DR strategy by individuals and organizations reflecting the full diversity of regions, backgrounds and disciplines. To this end, and to further the work of this forum, the working group recommends that the forum authorize the formation of an *ad hoc* transition team.

- The government should consider the formation of a national round table on dispute resolution.

The members of this working group on governance and dispute resolution recognized the need for government to play an active role in making changes and in facilitating and encouraging change by other actors in governance. However, at the same time, the members felt very strongly that it was not up to government alone. The members felt that there was room for significant advancement in the use of dispute resolution in governance even without government involvement.

To that end, each of the members of the working group signed a copy of the draft document that the group produced at the end of the second day of the forum. This was intended to demonstrate their commitment to carrying forward the work of the forum and to implement the principles and recommendations of the forum to the extent that they could as individuals and as members of their groups and organizations. The members of the working group also decided to continue to maintain a working relationship as a group after the forum, in order to continue to build on the progress they made during the two days of the forum.

Schedule I to Group 5 Report

Summary of Discussion – Group 5

Vision

Values & Principles

- responsibility and accountability
- harmony
- wellness and wealth for all
- quality of life
- accept and celebrate differences
- trust
- respect
- spirituality
- honesty
- transparency
- participation
- pro-active
- ethics
- peace and order

Mechanisms & Approaches

- less managerial; more facilitative
- protect vulnerable groups/individuals
- training
- mechanisms for cooperation
- more emphasis on and power at community and individual levels
- equitable/fair resources for all
- switch from litigation to ADR
- review of corporate cultural values
- integration of science and values
- integration of regulatory and economic mechanisms
- coordinated networks
- new context – values and principles oriented
- continuous improvement
- national guidelines for DR
- diversity and unity
- use of technology to facilitate changes
- leaders as followers – adopt and promote values

Barriers

- fear of change
- competition from scarcity mindset; hopelessness
- increased diversity in society -- world seems more complicated
- belief in "one best way"
- lack of vision -- top-down
- power: abuse of; fear of losing;
- inadequate processes and experiences
- lack of trust
- lack of information and expertise
- lack of responsibility
- lack of willingness to participate; understand; face up to conflict situations
- belief that harmony and peace are only possible where there is no conflict
- too much individualism
- system sets us up for conflict through competition -- lack of sustainable development
- "paradigm paralysis"
- crisis in governance is not serious enough yet
- people are not comfortable with ambiguity and ambivalence

Opportunities

- people are not totally powerless
- past participation has provided some positive experiences
- crisis atmosphere has led to climate where people are re-examining and rationalizing approach to dispute resolution
- people have a better understanding of individuals' power and potential for influence
- greater education means that people are more aware of the issues than they were previously
- current technologies mean that communication can occur virtually instantly but this has both positive and negative aspects
- the private sector has gained a good deal of experience with ADR which may be applied to addressing issues arising in governance
- current turbulence creates opportunities for making positive changes, as traditional hierarchies are breaking down
- government has some motivation (self-interested) in reducing costs through off-loading some programs and costs – presents opportunity for change
- atmosphere of greater volatility in public means that there may be conduciveness to change but at the same time it may be harder to predict where that change may lead
- people are more willing to recognize and accommodate differences on various levels – individual, community, cultural

- more people are rethinking the status quo
- greater emphasis on being respectful for humanity – from street people to CEOs
- there is much greater participation being seen at the community level which is creating or making available a whole new resource for ADR community
- people are more open to discussing values – shared values, value differences
- there are more vehicles today for communication between groups and individuals – including "personal" communication as well as technological
- Canada is very privileged in comparison to other countries
- there is good leadership at various levels and in various sectors currently of which advantage should be taken in making changes

Strategies

"Intangibles"

- power is not only in what government does with this report – even if it gets shelved by government it is there as a resource of information and output from the forum which the participants can take back and implement immediately themselves when they are acting in their own right
- strategy need not be linear
- have to ensure that the various constituencies are involved in developing the "how" of the strategies
- need to expand consideration of various DR methods before fixing on any specific method
- need to recognize how much of this is cost driven and the incentives this provides to government
- have to consider that costs and benefits are social as well as economic/monetary – have to be aware of limitations of methods such as cost-benefit analysis for proving value of ADR
- have to develop strategies allowing individuals in communities to gain skills and knowledge needed to act in DR and participate in governance – "capacity building"
- have to use a systems approach and inter-disciplinary approach to ADR – use case-study approach to document successful inter-disciplinary collaboration in DR
- have to develop support needed to provide necessary community infrastructure to facilitate community playing greater role in DR
- have to develop skills and trust needed for consultation
- have to identify the audience(s) to which the strategies are addressed; and the best ways of selling the proposals to those groups
- three main themes arising: evaluation; education; increasing involvement – also need to consider values
- have to keep in mind the particular mindset of some litigation-based lawyers in government and outside in developing the output – have to recognize that organizations have to buy in fully to the ADR process in order to achieve any benefits from ADR

- have to be careful not to scapegoat any particular group in the field as being responsible for resistance to ADR
- should target many people and organizations, not just the Dept. of Justice
- strategy needs to be clear about how the recommendations should be used

"Hard" Products

- have to have federal government and Department of Justice advance the process through consensus
- could have a review of legislation, regulations etc. with a view to inserting necessary changes to enable conflict resolution processes to play a role
- should encourage Canada to research the costs of various forms of DR
- the strategy should not focus only on the vision for the future – it must also address barriers and how to deal with them so that the report will be of greater practical value to politicians and other decision-makers
- could do something along lines of National Health Check on TV to build public awareness of conflict issues and resolution methods
- could do a before & after study of costs of dispute resolution before and after implementation of ADR methods – could look into experience of ICBC (example given of Law Society of Upper Canada laying out 2/3 of its insurance fund simply on lawyers' fees for litigation – area where ADR could save lots of money)
- could offer to demonstrate potential of ADR by using consensus approaches to develop legislation in a controversial area in a manner that would lead to that legislation having broad multi-stakeholder support
- need to educate politicians about benefits of heading off disputes
- need to emphasize DR in child education – work through school systems and support the teaching profession in their use and teaching of ADR – could also use the Council of Education Ministers
- could consider developing some sort of annual reporting along lines of state of the environment reports to monitor progress in the ADR field from year to year
- should encourage development of evaluative criteria for government managers (and other employees) that consider how effectively the person in the position applies ADR to the job
- have to examine how media report and portray conflict and ways of resolving it – get people within the community to develop appropriate TV scripts – have to be able to deal with the "good news is no news" mentality
- have to get government to the table (and keep it there)
- product should include list of tasks for which government will be held accountable in 12 months as well as list for which participants will be held accountable

Questions to Consider when Discussing the Strategy

1. Does it address the barriers? Which ones?
2. How does it facilitate the integration of ADR in governance?
3. How does it reflect the vision? (values & mechanisms)
4. How actionable is it?
5. How can we monitor progress on implementation?

Schedule II to Group 5 Report

Better Governance

BETTER GOVERNANCE

PART I --CONTEXT STATEMENT

A vision of peace, order and good governance must be based on values of mutual respect and sharing. As Canadians work towards their vision of peace order and good governance, conflicts and disputes are bound to arise. These conflicts and disputes can be positive catalysts for change.

The use of appropriate processes for the management of conflict and resolution of disputes is fundamental to better decision making. There is a need for an effective approach for advancing the use of these processes throughout our governance systems.

The governance system is broadly defined as the totality of governmental and non-governmental institutions, formal and informal decision-making institutions, whereby Canadians govern themselves. It includes the following institutions at the national, provincial, regional and local levels:

Governmental Institutions:

- elected representatives and executives -- Parliament, legislatures, councils
- bureaucratic -- administrative -- Agencies, commissions, boards, etc.
- judicial -- courts: Supreme Court, etc.
- market -- economics:
- First Nations

Non-Governmental Institutions:

- business
- labour
- environment
- religious
- education
- consumer
- professional
- community

PART II -- FRAMEWORK

The following framework is part of that approach:

A. LOCAL GROUPS AND GOVERNANCE

This is a circular and ongoing process which can be conceptualized in four connecting phases:

--phase 1 -- preparing the ground

--phase 2 -- building a structure

--phase 3 -- implementation and evaluation

--phase 4 -- sustaining.

Phase I -- The Buy-in (immediate)

--overall concept of return to consensus decision-making

-- more efficient (better decisions, sustainable decisions)

--more inclusive

-- cost saving -- money and human resources

-- builds and enhances relationships

--reduces stress and conflict

--viable alternative to current frustrating systems

-- better positive public relations

--recommended strategies:

1. conduct a preliminary analysis and research -- analyze existing DR systems to see where they do not work and to provide opportunities and models for improvement

2. identify allies / network of support

3. sell concept to target institutions

4. enlist the DR stars as catalysts and to increase credibility of DR

5. provide specific case studies of DR

Phase II -- Building the structure (Near Future)

1. reallocate resources to DR -- money, human resources, current job descriptions

2. develop focus of responsibility and coordination

3. develop long and short term objectives including quality control and evaluation mechanisms and standards

4. use existing opportunities and mechanisms (internal and external) -- federations, associations, community associations or groups, etc.

Phase III -- Implementation and Evaluation

1. develop flexible/ongoing training targeted at many levels of need

2. develop accessible training materials and tools that are flexible and transferable

3. conduct pilot projects to demonstrate successes and build commitment and create ripple effect

Phase IV -- Sustaining

1. lobby for enabling legislation

2. expand beyond pilot projects

3. focus on sustainable development of DR

B. FEDERAL, PROVINCIAL AND TERRITORIAL GOVERNMENTS AND GOVERNANCE

1. goal: achieve routine use of DR techniques in resolving and developing public policy questions

2A. establish wide range of pilot projects to resolve issues of public policy through dispute resolution (non-judicial)
(i) disputes -- commercial and policy
(ii) policy development -- legislative, rule-making, application of policy
note: (a) enough evidence today to justice pilots; (b) consultation needed on establishment of pilots -- openness, resources, representativeness; (c) diverse parties possible -- within govts, between govts, etc.
2B. change attitudes (at the top -- credibility)
2C. central commitment to change (speical support team Saskatchewan mediation -- team in Justice available to other departments)
2D change legislative framework (e.g. federal bill C-62)
-- no reason that the actual mediation work cannot be done by someone outside of government; but need right attitude within government

3. evaluate pilots and economic, social, time, energy costs of present systems

4. training and culture modification of government representatives (including ABC) who will participate in public policy DR

-- less "top down" application of public interest

C. EDUCATION INSTITUTIONS

-- focus on public and separate schools and post-secondary institutions

--internal relationships

--external relationships

-- relationships to other educational and social institutions

1. Internal Relationships

-- policy development within institutions -- currently community consultationj exists

-- teach public facilitation skills

-- make available information on best practices, what works

-- develop better communication, including with executive bodies throughout the process

2. Standing Advisory Committees

-- representatives from all groups are currently involved which allows proactive ongoing advisory mechanisms within the systems

Needs:

-- training of persons involved

-- reviews of selection process for the committees

3. Developing Internal Process

-- examine current DR policies and protocols within institutions themselves -- looking at coordination functions

-- approaching Ministers of Education and Justice for broad policy objectives to facilitate /encourage change in internal processes

-- establish peer mediation at all levels -- has been have very positive effects

4. External Relationships

-- enhance connection of parents and wider community organizations in decision-making -- e.g. at each school site setting up permanent parent advisory committees

-- movements by institutions themselves to go out to community to contribute to broader community life -- such as sponsoring conflict resolution training in the communities

5. Curriculum

-- include ADR skills training as part of all professional and general education programs

6. Universities

-- support and funding for university-based DR research and training centres

D. ABORIGINAL GOVERNANCE

-- the foundations of self governance are respect and sharing

E. FURTHER WORK NEEDED

1. Business governance
2. new and emerging interdisciplinary models of governance
3. Explore possible role of technologies

PART III -- GUIDING PRINCIPLES

There is an urgent need for effectivde strategies to adbance the ADR work coming out of the forum, based on the following principles:

-- strengthen connections among forum participants (regionally and provincially) using available technology

-- use all opportunities to further the recomendations of the forum (i.e. national and regional conferences)

-- members of existing national and provincial organisations should promote forum recomendations at those levels .

The government should facilitate the convening of a conference to explore the feasibility of a national DR strategy by individuals and organizations reflecting the full diversity of regions, backgrounds and disciplines. Toward this end, and to further the work of this forum, this forum authorizes the formation of an ad hoc transition committee.

The government should consider the creation of a national round table on DR.

Appendix III

List of Forum Participants by Task Group

Task Group 1a

Promotion, Marketing And Public Education about Dispute Resolution

BARTHELEMY-ASNER, Claudette
BEAULIEU, Henri-Claude
BENOIT, Jean
BRISTOW, David
CHORNENKI, Genevieve A.
CRÊTE, François
FOX, Jerry
GAUTHIER, Denis F.
LECKIE, Merrill
MARQUIS, Anne
MILLER, Jack R.
MILLER, Marianne
MORSE, Linda
MURDOCH-MORRIS, Peggi
NOREAU, Martine
PALMER, Susanne
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ROCHE, Evita
SEATON, Walter
STITT, Alan
TURNER, Ted
TWIST, John

Task Group 1b

Promotion, Marketing and Public Education about Dispute Resolution

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BUZZEO, David
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EFFLER, Barry
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HINKLEY, Brian
HLECK, Paul
LODS, Marianne
MILLER, Brian
NORDQUIST, Phyllis
OKAZAKI, Abraham
PATTERSON, Pamela
RIEKMAN, Carol
SHEPHERD, Coleen
SHIELDS, Richard
SNIDER, Owen
SPENCER, Bruce
STEBER, George
THOMAS, David
TUPPER, A. Douglas
WOODRUFF, Kent
WOLFE, Louise

Task Group 2

Qualifications, Certification and Credentials of Mediators

ALBERTYN, Christopher
BOWN, Ann
DUNN, Theresa
EISEN, Resa
ENGLISH, Peggy
EVANCIC, Roman
EVANS, David
FAIR, Joan
FITZGERALD, G.
FRAMPTON, John
GRAHAM, Robert
HALLMAN, Margot
HOFFMAN, Ben
KATZ, Fay-Lynn
KRISTJANSON, Florence
LANDAU, Barbara
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PEACHEY, Dean
PICARD, Cheryl
PORTLOCK, Peter
SACK, Jeffrey
SCHMIDT, Janet P.
SHAMSHER, Mohammed
STARNES, Suki
STORIE, Flaurie
TAIT, Glenn
WALTER, Barbara
YERGEAU, Celine
YOUNG, Paul
BRAMLEY, Alan
WEAVER, Katherine

Task Group 3

Training of Mediators

BALLANTYNE, Wendy
BERNSTEIN, Norman
BIDELL, Joan
BOUCHARD, Mario
BRECKENRIDGE, Jim
CARLSON , Tannis
HAWCO, Gerard
HAWKINS, Alaine
HIGGINS, Janine
HUBER, Marg
MARTIN, Lorraine
PHILLIPS, Donna
RANKIN NEVILLE, Donna
REDEKOP, Paul
ROONEY, Larry
ROY, Serge
SCHIPPER, Mieke
SMITHERAM, Verner
TEPPER, Molly
TONELLATO, John

Task Group 4a

Dispute Resolution and the Administration of Justice

ANDREACHUK, Lori G.
ANTAKI, Nabil
DÉCARY, Robert
ELDRIDGE, Carole
FORGET, François
GLUBE, Constance
KIRVAN, Myles
KRAYENHOFF, Luke
KUEHL, Sandra
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SACHS, Elizabeth
SAUNDERS, Brian
SHERBATY, Lianne

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Dispute Resolution and the Administration of Justice

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FELD, Lisa
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LEVINE, Naomi
LYON, Cecil
MACPHERSON, Lorne
MARESCA, June
MCWHINNEY, Robert
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MILLIKEN, Jim
MOORE, Ken
MOORE, Marlene
MOXLEY, Ross
SIROIS, Jacques
SLOMAN, Inta
SOLKOWSKI, Rick
SYLLIBOY, Dale
VERGIS, Anna Anita
WALTER, Murray

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Dispute Resolution and the Administration of Justice

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BOWLES, Patrick
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EVANS, Christine
GARDINER, Brian
HEWITT, Ron
LUTHER, Donald
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MADDISON, Harry
MC EWAN, Sandra
MCDOUGALL, Don
PIRIE, Andrew
POITRAS, Lawrence A.
REID, Reginald
SOLKOWSKI, Rick
ZUTTER, Deborah Lynn

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Dispute Resolution in Governance

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Arnesen, Wayne
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Benoliel, Barbara
Bowron, Beate
Chataway, Cynthia
Cochrane, Michael
Dorcey, Anthony
Gregory, John
Harris, Bob
Jackman, Richard
Jesty, Frank
Keashly, Lora Leigh
Keirnes Young, Barbara
Kelly, Kathleen
Lawrence, The Hon. Allan F.
Lightwood, Jill
Lowry, Claudia
Marszewski, Eva
Stephen Cheeseman (a.k.a. Judy Ryan)
Sigurdson, Glenn
Sword, Deborah L.
Vechsler, Michael
Wedge, Mark
Weiler, Richard J.

Appendix IV

List of Facilitators and Rapporteurs

Appendix V

Steering Committee Members

Steering Committee

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Appendix VI

Transcript of Opening Speech Given by George Thomson, Deputy Minister of Justice

Thank you Mr. Branson, members of the judiciary, members of the Steering Committee, ladies and gentlemen:

It is a great pleasure to be here with you. This is one of the first opportunities for experts from across disciplines, and from across Canada, to come together to consider the most vital issues in the field of Alternative Dispute Resolution.

You have undertaken a major challenge - to begin discussions that will shape the design, development, and implementation of an action plan for promoting dispute resolution in Canada.

Vous représentez une gamme impressionnante de disciplines: le monde universitaire, les organismes non-gouvernementaux, le gouvernement, la magistrature, les associations professionnelles, la formation et le secteur des affaires. Il ne fait aucun doute que vous apporterez beaucoup de richesse et d'intensité à vos discussions, ce qui ne serait pas possible sans votre contribution.

You represent an impressive variety of disciplines and you come from academia, non-governmental organizations, government, the judiciary, professional associations, trainers, and the business sector. Clearly, this ensures a richness in depth to your discussions that would not otherwise be possible.

The breadth or representation and experience in this room highlights for me three obvious, but important points:

1. First, that ADR is not a single, agreed-upon process or model; it is many different processes that may or may not be appropriate in other circumstances and for other types of disputes.

2. Second, that there is an enormous amount of variation and creativity in this field, all of it motivated by a desire to make the resolution of disputes more efficient, less expensive, and more supportive and positive for the parties involved in those disputes.

3. And third, that there is a great deal we can learn from one another, across disciplines and across different areas of legal dispute. Perhaps the most important aspect of this forum is the fact that it will enable that learning process across boundary lines to occur, not only over these two days but also, I hope, well after the forum is over.

This forum - and it is a forum, not a conference - is an occasion for rolling up your sleeves and working together. Because everyone here is experienced, everyone here has a contribution to make. That is why the organizing committee carried out surveys on which it based the agenda, the workshop topics, and issues for discussion.

I know the organizing committee's hope is that everyone will build on the dynamics of the meeting to achieve results that are worthy of your time and of the issues at hand.

Comme vous, l'expérience m'a appris que le règlement des conflits permet de régler certains problèmes qui entraînent pour les personnes des coûts énormes d'ordre émotionnel, social et économique. Mon appui aux mécanismes de règlement de conflits a débuté lors de mon expérience antérieure à titre de juge d'un tribunal de la famille, expérience qui m'a permis de voir - trop souvent même - les résultats douloureux et coûteux de l'approche strictement contradictoire

Like each of you, I have learned from experience that ADR offers ways of resolving some of the problems that present terrible emotional, social and economic costs to people. My support for ADR began during an earlier career as a family court judge, when I was able to see, much too often, the painful and costly results of the adversarial process.

As many here know, there are potential barriers to using ADR in family matters - for example, when there is a serious power imbalance between the parties themselves. However, based on my experience, I am convinced that family law mediation that comes with appropriate safeguards is an essential tool that must be available for family law disputes. This is one reason why the federal government's support for unified family court expansion in Ontario is tied to the province's assurance that conciliation services, among others, will be available to those who come before these new courts. More recently, while I was with the Ontario government, we supported those who established the Dispute Resolution Centre at the Ontario Court General Division in Toronto. This is an interesting court-based model for resolving civil disputes that should teach us a great deal about this particular application of the process.

The range of issues on your agenda demonstrates that we have still much to learn about the effectiveness of ADR techniques in certain situations, about the skills of those who practise ADR must or should have, about when mediation and other techniques are cost-effective; about the relative effectiveness of court-based models as opposed to those that are not part of or directed by the court, about the kind of training and education that produces public support for ADR; the extent to which ADR should be part of the publicly funded system or privately funded by the parties, and so on.

Je suis impressionné par la volonté de vous tous qui oeuvrez dans ce domaine de soulever, d'examiner et de discuter vigoureusement de ces questions. Je crois qu'il existe une obligation pour nous tous qui appuyons ou qui pratiquons les mécanismes des règlement de conflits, d'apprendre suite à nos expériences, de les évaluer, et de faire avancer collectivement notre compréhension de chacun des points qui seront discutés lors de ce Forum.

I have been impressed with the willingness of people in this field to raise, examine and debate strongly these issues. I think there is an obligation on all of us who support or practise ADR to learn from these experiments, to evaluate them, and collectively to advance our understanding of each of the issues to be discussed during this conference.

At the same time, I think we should always remember that the system by which people litigate did not achieve perfection before society was prepared to make a major commitment to it. By the same token, a given model of ADR does not have to achieve perfection before it can be seen as useful, or it can be defended as a valuable attempt to make the resolution of disputes easier.

As long as we are prepared to learn, for example, by holding and coming to a forum such as this one, and provided we support the research that gives us reliable answers, then there is no reason why we should resist efforts to make ADR a much larger part of the system of dispute resolution.

I mentioned the forum's agenda earlier and I would like to complement those who put it together and to reinforce what a marvellous opportunity for learning is contained within it. Over the next two days, you will be involved in five key groups, each of which is considering important issues:

1. Comment promouvoir et mettre en marché le domaine des règlements des conflits et renseigner le public à ce sujet; par exemple, quel est le rôle de l'éducation du public (à l'école et à l'extérieur) en matière de promotion des règlements de conflits?

1. How to promote, market, and educate the public about dispute resolution: for example, what role does public education (in and out of school) have in promoting dispute resolution?

2. Comment définir les qualifications et l'expérience des médiateurs et comment les accréditer pour effectuer ce travail? Comment devrait-on établir des normes et, le cas échéant, quelles devraient être les normes minimales?

2. How to define mediators' qualifications and credentials and how to certify them for practice: should standards be established and, if so, what should be the minimum standards?

3. How should mediators be trained and what minimum standards should be established for training programs?

4. How does dispute resolution relate to the administration of justice: what could or should governments do to make unconventional dispute resolution processes available to the public?

5. **Comment le domaine des règlements des conflits peut-il être utilisé dans la gestion publique? De quelles façons les méthodes aident-elles à élaborer des politiques dans les domaines où le public a un grand intérêt? Que pouvons-nous tirer des pratiques traditionnelles de règlement des conflits en vigueur chez les peuples des Premières nations?**

5. How dispute resolution can be used in governments: what ways could its methods assist in developing policies in matters of intense public interest? What lessons for self-governance can be adopted from traditional methods of resolving disputes which have long been practiced by first nations?

As we commit ourselves to identifying what works best, we are to ensure that a desire for new, more effective models and the hunger for learning do not overshadow the need to uphold fundamental principles of justice. As former Supreme Court Chief Justice Brian Dickson said recently:

> "I believe those who support ADR are committed to the fundamental principles of justice that must be respected in any dispute resolution system. In fact, many of you developed a commitment to the innovative approaches you are part of because of your concern that the present system was failing to fully reflect and support those principles. This is why I believe it is possible to move forward aggressively to test and expand innovative ADR techniques without fear of losing sight of the shared goals we would all set for the resolution of legal and other disputes."

Given my present role as part of the Department of Justice, I would like to say a few words about those disputes of obvious interest to us where the State or the Crown is one of the litigants.

There are a number of factors that have tended to make the introduction of innovative approaches to resolving disputes more difficult when the government is one of the parties:

1. The perceived power imbalance when government is a party tied very much to the belief that the government as a litigant has the ultimate deep pockets.

2. **La préoccupation que doit avoir le gouvernement en tant que partie à un litige concernant la valeur jurisprudentielle d'un règlement au sein d'un ministère et de son impact sur d'autres litiges semblables impliquant le gouvernement.**

2. The concern government as litigant must have about the precedent which the resolution of one case within one department may set for a host of similar cases across government.

3. The need for government to be transparent in its practices which at a minimum can complicate ADR processes.

4. The legitimate expectation that governments be accountable both financially and operationally. A reasonable settlement in a particular case may not be defensible in the broader politically sensitive court of public opinion.

5. The need to ensure settlements in accord with the established policies of the government which may limit what is possible in any particular case.

6. Finally, the roles of government in themselves can have an enormous impact. An easy example is the existing budgetary rule that says, with some exceptions, that if a department loses in court the award is paid from the central funds of government whereas, if it settles, that money must come from its own budget.

For these and other reasons, there has been a perception that the Crown or State is less able or appropriate for the introduction of innovative approaches to dispute resolution. That, however, is changing for a number of reasons including:

1. Le ferme appui du Ministre de la Justice de promouvoir le développement du domaine des règlements des conflits au sein et à l'extérieur du gouvernement.

1. Our Minister's strong commitment to fostering the development of ADR both inside and outside government.

2. Secondly, the present financial circumstances of government which place it in the position of many other financially precarious litigators and make our clients eager to support lower cost processes and settlements.

3. The growing recognition that comes from an increasing number of individual successes that ADR can be an effective technique even in cases where the State is a party. For me, the successful and growing use of mediation in child protection cases where the State is represented by the child welfare authority as in all powerful parties has been a vivid demonstration that with proper protections ADR can work even in these high risks, obviously unequal environments.

4. Finalement, les efforts qui sont mis de l'avant afin d'éduquer et de former nos avocats concernant l'utilisation des mécanismes de règlement des conflits ainsi que de les sensibiliser aux approches qui auparavant n'étaient pas perçues comme étant utiles aux avocats plaideurs du secteur public commencent à se concrétiser.

4. Finally, the work being done to teach and train our lawyers in the use of ADR techniques and to make them receptive to approaches that were not traditionally seen as part of a public sector litigators tool is beginning to have an impact.

We are trying to build on the commitment our Minister made at an ADR conference in Vancouver about one year ago to support ADR within government. I can give you some examples:

1. The government is involved in thousands of contracts. Some, inevitably, lead to disagreements. We are drafting dispute resolution clauses for inclusion in government contracts. There will be a reporting mechanism to ensure that they are being used.

2. Nous travaillons à l'élimination de l'obstacle aux règlements qui se retrouve au sein de la présente politique gouvernementale dont je viens de vous parler. Il est évident que toutes les politique ainsi que la meilleure formation au monde ne pourront pas réussir si on n'élimine pas les avantages financiers évidents qui permettent de différer un dossier ou d'intenter une action en justice.

2. We are about to remove the barrier to settlement in existing government policy that I spoke of a few minutes ago. All the policy papers and training in the world will not work if we do not eliminate obvious financial incentives to lay a matter or to take it to trial.

3. We are working with specific federal departments and agencies to develop concrete plans to use ADR in some or all of its cases. We are introducing a method of keeping track of <u>all</u> of our clients legal costs (including litigation) and then developing plans with each of them which include specific cost reduction targets tied to the use of ADR and other techniques.

4. We are adding ADR options to new statutes. For example, the recently proclaimed Canadian Environmental Assessment Act which provides for use of mediation to assess environmental effects of a project. It may be used on its own or in support of a panel review, under the Act.

5. Nous permettons l'utilisation de mécanismes de règlement des conflits au sein de notre Ministère, par exemple, dans des dossiers de harcèlement.

5. We are providing for ADR in internal matters, for example, cases of alleged harassment of employees.

6. We are continuing to train our lawyers and to fund research which will help us identify where in the use of these initiatives we can be most effective.

Innovative approaches to dispute resolution is increasingly being recognized as a legitimate part of the criminal justice system, and with there being much to learn from other systems in a small number of Canadian experiments that focus upon restorative justice techniques that bring together defender and the victim in the community. Circle sentencing with the aboriginal communities, early resolution discussions in the effective use of pre-trials, victim offender mediation programs are some examples of the approaches with promise being used in the criminal law field.

Il est évident qu'il reste beaucoup de chemin à parcourir. Notre but commun est de servir le public, individuellement et en tant que groupe, et un grand sentiment d'urgence doit nous animer. Comme le disait le ministre de la Justice lors du colloque de l'Association du Barreau canadien l'année dernière :

Obviously, we have much to learn and much remains to be accomplished. Our common purpose is to serve the public, individually and as a group, and we must act with a strong sense of urgency. As my Minister said at the Canadian Bar Association's symposium last year:

> "The development of mechanisms for alternative dispute resolution are not simply options, they are an imperative."

I assure you that I speak for both the Minister and myself when I say that we look forward to the outcome of this forum and we will be paying close attention to the ideas and plans that emerge from it. I thank you for this opportunity to speak with you and wish you great success in the difficult and very worthwhile work that lies ahead of you today, tomorrow, and thereafter.

Appendix VII

Evaluating the Success of the Forum

CANADIAN FORUM ON DISPUTE RESOLUTION

EVALUATION RESULTS

Overview

The Canadian Forum on Dispute Resolution has presented a unique opportunity for a range of stakeholders in the Dispute Resolution field across Canada to come together to discuss issues of common interest to those practising in the field. While the evaluation results suggest that the Forum was not without its difficulties and that there is room for improvement in all aspects of the Forum, the results also suggest that most participants believed that, in spite of these difficulties, the Forum was a tremendous success. The multitude of suggestions for improvements to the Forum will go a long way in assisting those interested in organizing similar activities in the future.

Introduction

Following is a summary and analysis of the results of the evaluation of the Canadian Forum on Dispute Resolution. The evaluation was designed to gather feedback from the participants about their satisfaction with the Forum. In designing the evaluation, members of the Steering Committee were of the opinion that the feedback received from those who actively participated in the Forum would be useful to organizers of subsequent forums or those who are planning similar activities, as the results provide some interesting insight and suggestions about the "do's and don'ts" and the strengths and weaknesses relating to the planning and implementing of such an activity.

Evaluation Design and Methodology

The evaluation questionnaire was comprised of a series of seventeen questions about various aspects of the Forum. In addition to these questions, space was also provided on the questionnaire for participants to identify the specific task group they belonged to.

All of the questions, except for those relating to next steps and other comments about the Forum, provided individuals with two options for responding - a scale which enabled participants to rate their level of satisfaction (excellent, very good, satisfactory and unsatisfactory) with specific components of the Forum and a space for comments.

The Evaluation Findings

A total of 117 of the approximate 200 participants completed the evaluation questionnaire distributed at the closing plenary to the Canadian Forum on Dispute Resolution. Approximately 20% of evaluation respondents chose not to identify the specific task group to which they belonged.

For ease of presentation, the evaluation results have been grouped into six distinct parts:

(i) participants' views about the organization of the forum ie., the registration process, the location, the meeting rooms, the duration of the Forum;

(ii) specific components of the Forum process ie., the opening plenary, the luncheon dialogue, the closing plenary, the presentation of task groups' summary reports;

(iii) the task groups ie., selected task group topics, concept of facilitator/rapporteur team, process followed in the individual task groups, number of participants;

(iv) other components of the forum such as opportunity for networking and information provided in binders;

(v) perceived next steps, and;

(vi) other comments about the Forum.

(i) Participants' Views about the Organization of the Forum

Participants were asked to complete several questions relating to the organization of the Forum. Results suggest that, for the most part, those responding to the evaluation were satisfied with the location of the Forum - in Toronto; holding the Forum in a major convention hotel - the Royal York; the meeting rooms; the duration of the Forum (2 days) and the process used for registering Forum participants.

LOCATION OF THE FORUM - MAJOR METROPOLITAN CENTRE - TORONTO

Ninety-four per cent of respondents rated the location of the Forum - in a major metropolitan centre - from satisfactory to excellent (E = 55; VG = 38; S = 17;)[1]. Some respondents commented that locating the Forum in a major metropolitan area made it easier to arrange transportation, it was quite accessible, and convenient. Others commented that having the Forum in Toronto provided participants with a range of after hour activities and the opportunity to enjoy what a large city has to offer. However, in spite of their satisfaction with the location of the Forum, some individuals

[1] E - Excellent; VG - Very Good; S - Satisfactory

commented that it would be interesting to hold such a forum in a smaller centre. As well, it was suggested that if follow-up forums are to be held, it would be useful to move these forums to other regions in the country. This would enable participants to develop an appreciation of regional differences in the application of Dispute Resolution.

HOLDING THE FORUM IN A MAJOR CONVENTION HOTEL - THE ROYAL YORK

Ninety-six per cent of participants who responded to the evaluation questionnaire felt that holding the Forum in a major convention hotel was satisfactory to excellent (E = 47; VG = 43; S = 22). One respondent commented that he/she thought holding the Forum in a major convention hotel added a sense of importance and seriousness to the Forum. However, this person further added that the cost of holding the Forum at the Royal York may have been a deterrent to some. Generally, however, most respondents thought the facilities and the services, particularly the communication services, were excellent. Still another person indicated that they thought having it at this facility helped to "keep everyone together". One person commented that while the facilities were very good they still thought the Forum could be held elsewhere just as effectively. A frequent comment made by participants was that the hotel was convenient for those from out of town. A couple of individuals commented that they wondered if a retreat setting/more nature oriented location would have been better.

MEETING ROOMS

Ninety-six percent of respondents rated the meeting rooms at the Royal York as satisfactory to excellent (E = 44; VG = 52; S = 16). On the basis of individual comments, generally it appears that most participants seemed to be content with the meeting rooms. However, there were some individuals who felt that the rooms lacked windows and good lighting, they were stuffy, more space could have been used for hanging up flip chart paper, and in some cases the rooms were too small for the size of the group.

DURATION OF THE FORUM

Approximately eighty per cent of respondents felt that the length of time allocated for the Forum (2 days) was either satisfactory (n = 38), very good (n = 33) or excellent (n = 22)[2]. On the basis of the specific comments provided, however, it became clear that respondents could be divided into two broad categories of thought concerning the duration of the Forum - those who were of the opinion that two days was sufficient, and those who felt that additional time (1 to 2 days) would have been better. The former group qualified their response further by saying that the limited time kept participants on task and focused. Someone further commented that no matter how much time was allocated it would probably have not been enough and another person commented that "the time it takes to complete a task is directly proportional to the time available to do it". Among those who would have preferred to have more time for the Forum, they suggested that holding the forum for a longer period of time (eg., 2 1/2 - 3 days) would have allowed for a broader agenda. Specific comments from this group

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2 17 respondents identified the duration of the Forum as Unsatisfactory.

included "[the time was] too short for the tasks mandate and the number of people participating"; "more could have been accomplished if more time was available"; and "3 days or more needed to properly accomplish conference's goals".

REGISTERING FOR THE FORUM

Ninety-four per cent of respondents rated the registration process for the Forum from satisfactory to excellent (E = 49; VG = 41; S = 20). The most frequent comments made about the registration process was that it was "well organized, efficient, friendly and helpful". One individual commented that this process gave equal opportunity for those interested in attending. However, one person commented that some uncertainty in the registration process made planning difficult.

(ii) Participants' Views about Specific Components of the Forum Process

The Steering Committee was interested in gathering feedback from participants concerning specific components of the Forum. The evaluation results suggest that generally individuals completing the evaluation were satisfied with these component parts of the Forum, however, some parts of the Forum received better ratings than others.

OPENING PLENARY

A majority of respondents (79%) rated the opening plenary of the Forum from satisfactory to excellent (E = 13; VG = 38; S = 41) while a minority (13%) felt it was unsatisfactory.

While most respondents felt the opening plenary was good, many commented that it was too long and wasted too much time and they would have preferred to get right to work. Nevertheless, many still enjoyed the approach taken to getting out some of the issues and agreed that it was generally a good way to open up discussions. Many people commented that the approach taken in the plenary to introducing the facilitators and rapporteurs was very well done. Some respondents felt that the opening plenary, while interesting, cut into the already limited time of the Forum, and that they could have used the time more profitably in the working groups. Another person felt that the opening plenary could have been a good opportunity to outline more clearly the goals of the Forum. Some respondents seemed to feel that the Deputy Minister's speech was good but that other speeches were too long and not as focused or as motivational as they could have been. Several individuals commented that they would have preferred more clarity about the role of the Federal Department of Justice.

THE LUNCHEON DIALOGUE

Slightly less than three-quarters of respondents (69%) rated the luncheon dialogue from satisfactory to excellent (E = 19; VG = 26; S = 34). Approximately 20% of respondents thought that this aspect of the Forum was unsatisfactory (n = 23). Among those who rated the luncheon dialogue positively, they commented that it was well done and that

the presenters accentuated the positive as best they could. Other comments included that the presenters had made some interesting observations and that this component of the Forum may have been better at an earlier point in the Forum.

Among those expressing some level of discontent with the luncheon dialogue individual comments included: the dialogue was "a bit tedious"; " I would have preferred a more informal dialogue or more time for groups or reporting"; "[it was a] waste of time, no content"; "[it] seemed contrived and didn't advance the process"; "[a] serious problem - shades of BIG BROTHER and thought control".

CLOSING PLENARY

Sixty-two per cent of respondents rated the closing plenary satisfactory to excellent (E = 12; VG = 30; S = 32).[3] Generally, participants appreciated the brevity of the closing plenary but would have liked an opportunity for further discussion about the events of the Forum as well as the reports of the specific task groups.

PRESENTATION OF THE TASK GROUP SUMMARY REPORTS

Approximately 72% of respondents rated the presentation of the task group summary reports from satisfactory to excellent (E = 20; VG = 38; S = 24). Less than 5% of respondents thought this presentation was unsatisfactory (n = 7). Individual comments about the task group presentations included "very precise, good work well presented" right length of time for each" "O.K. but a bit too superficial because of time limit" "overnight feedback would be better" "[the] requirement to report gave focus to groups" "[a] difficult task handled well"

(iii) Participants' Views about the Task Groups

TASK GROUP TOPICS

Participants were asked to rate from excellent to unsatisfactory the specific task group topics selected for the Forum. A significant proportion of respondents to the evaluation (96%) expressed some level of satisfaction with the task group topics (E = 30; VG = 45; S = 36; VG - S = 1).

While some respondents felt that there was some overlap of topics between task groups, there was also a sense that perhaps this was unavoidable. One respondent felt that the choice of task group topics represented a "forced circuitous route". Another respondent commented that "you did the best you could for a first round". Still another respondent thought that the topics selected were "very pertinent to those involved in ADR". Finally another person commented that "in retrospect, the two

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[3] Approximately 40% of individuals responding to the evaluation questionnaire did not respond to this particular question.

original topic groups (that were ultimately excluded) should have been included even if small". Several respondents commented that the smaller groups helped make things run more smoothly.

PROCESS FOLLOWED IN INDIVIDUAL TASK GROUPS

In organizing the Forum, the Steering Committee was very sensitive to the need for participants to be given the opportunity to decide among themselves the content and structure of their specific task group discussions. Hence, early in the Forum planning process, it was agreed that a consensus based approach should be followed in each of the task groups.

The evaluation results demonstrate that while most participants (82%) thought the process followed was either satisfactory (n = 43), very good (n = 35) or excellent (n = 17), a small proportion of respondents (12%) felt it was unsatisfactory (n = 14).

Generally participants thought that the process of consensus building went well. While most agreed that the task groups got off to a slow start, they also agreed that it all worked out in the end. Again it was repeated in several of the comments that the time allocated for smaller group participation proved to be more beneficial and productivity increased.

SATISFACTION WITH NUMBER OF PARTICIPANTS IN EACH TASK GROUP

As the Forum report suggests, there was a tremendous interest, on the part of those active in the dispute resolution field across Canada, to participate in the Canadian Forum on Dispute Resolution. However, because of the need to limit financial expenditures and to ensure that the Forum was both manageable and productive, it was necessary to limit the number of participants to the Forum. In spite of efforts to keep the number of participants at a manageable level, there was still an estimated 200 participants in attendance. This resulted in many of the task groups being quite large. As the evaluation results suggest, the size of the task groups, in some instances, contributed to some difficulties in the process. However, in many instances, the task groups were able to overcome these difficulties through the expertise of the facilitators and rapporteurs, or by restructuring the group into smaller groups when necessary, or by both.

Eighty-eight percent of respondents to the evaluation indicated that the number of participants in [their] specific task group was either excellent (n = 37), very good (n = 33), or satisfactory (n = 33). Slightly less than 10% of respondents thought the number of participants in the specific task groups was unsatisfactory (n = 10).

On the basis of the specific comments provided, it is clear that most agreed that there were too many participants in each of the task groups and that many would have preferred the groups to be no larger than 8 to 15 participants.

FACILITATOR/RAPPORTEUR TEAM APPROACH

In organizing the Forum, the Steering Committee agreed that in implementing a consensus based approach in the task groups, it would be important to provide each group with the necessary supporting mechanism(s) to facilitate their work. Therefore, it was decided that each task group should have both a facilitator and rapporteur to both guide and report on group discussions.

As the results of the evaluation indicate most respondents (99%) believed that the "concept" of using a facilitator/rapporteur team was either excellent (n = 68), very good (n = 40) or satisfactory (n = 8). However, a review of the specific comments made by individual respondents reveals that while the concept was considered to be good, this approach worked better in some task groups than in others.

Other

Respondents to the evaluation were also asked to rate and comment on information provided in the binder that was given to Forum participants upon arrival at the Forum as well as to rate and comment on the opportunity for networking at the Forum.

BINDER INFORMATION

Seventy-seven per cent of respondents rated the information contained in the binders as satisfactory to excellent (E = 12; VG = 33; S = 44). Furthermore comments varied on the utility of the information from individuals indicating that they found the materials adequate to those who claimed that the materials provided were both inadequate and inappropriate. The most frequent comment made about the materials in the binders was that it was not received far enough in advance to allow time to review it before the Forum. One individual indicated that the material contained in the binders was dated and was not always identified. One respondent commented that the quality of reproduction was very poor and in some cases articles were not readable. Some indicated that the background data provided on the specific task groups was not sufficient. At least two individuals suggested that it would have been helpful if the report had summarized the current level of activity in each geographic area or it would have been helpful to have an indication of the preliminary position of the federal government in each of the specific areas.

OPPORTUNITY FOR NETWORKING

Seventy per cent of respondents rated the opportunity for networking during the Forum from satisfactory to excellent (E = 6; VG = 24; S = 52). While most thought the opportunity for networking was satisfactory, individuals responses were further qualified by saying that more time would have been nice although it was understandable as to why time for networking was so limited. Many agreed that more time for networking would have been preferable. One person commented "why attract such a diverse group and not facilitate their meeting and sharing non-scripted time". Some suggested that a reception should have been organized to enable networking and

meeting people. Among the comments made on this component of the Forum's organization were the following: " more networking needed" "limited" " hold a small reception to enable networking and meeting people" "needed more open opportunity".

Perceived Next Steps

Respondents were asked to indicate in their views on what, if any, next steps should be taken to support the advancement of their work in the field. The results clearly demonstrate that respondents thought it very important to continue the process that had been started with the Forum. At this point in the evaluation, many participants took the opportunity to either re-emphasize suggested next steps that had been presented by their individual task groups or they voiced their own personal suggestions for next steps to the Forum.

NATIONAL BODY

Many suggested that a "national body", "round table" , "working group" or "task force" should be established to lead and further promote ADR and to continue the work started by the Forum. One individual even commented that such a "body" should be established and funded to continue this work. It was suggested that the focus should be on creating an organization whose mandate is to promote ADR nationwide and to inform the population about the existence of choice for dispute resolution.

One person suggested "a small coordinating group (different in composition from the existing Steering Committee) needs to be established [and] should be representative of the major players/agencies in the field".

FOLLOW-UP FORUM

Respondents were very concerned that the recommendations and the report flowing from the Forum generally and from the task groups specifically should not be left "to grow cobwebs". It was suggested that another Committee should be established to review the report and decide what [recommendations] to implement and how to monitor [these]. Many agree that more focused follow-up is essential to ensure that the initiative does not falter.

Several respondents remarked that the momentum created by the Forum should be maintained. One respondent remarked: "do a follow-up to the forum with a view to maintaining the momentum towards promoting ADR. Many felt that a "follow-up" to this Forum should be held again within a year to eighteen months to show that the Forum itself was not a "waste of time" One person suggested that this follow-up forum could be an opportunity to invite others from the corporate community. Still another suggested that a follow-up conference could be established with specific goals, and identify specific activities and committees established to achieve these goals. It was also suggested that the follow-up forum could consist of provincial or regional gatherings.

Closely linked to this idea of a forum follow-up was the suggestion that there be a feedback mechanism in place that would enable forum participants to receive information about the "fall-out" from the Forum.

PUBLIC EDUCATION AND PROMOTION OF ADR

Several respondents indicated that we need increased public education on ADR to increase awareness about it and promote its use. One respondent indicated that we need to "educate from the bottom-up not only for lawyers but yes specifically for lawyers".

INFORMATION SHARING

Many respondents expressed an interest in further sharing of information about the forum specifically and about ADR generally. It was suggested that a "national network" should be formed. Other suggestions for information sharing included the establishment of a clearing house or a national depository for information on programs, resources etc.

OTHER SUGGESTIONS

There were several other suggestions made by participants concerning potential "next steps" to be followed including the development of a national (not federal) strategy. One respondent suggested that he/she would like to see this linked to other national strategies (eg. Crime Prevention Council, family violence, youth development).

There was a sense that government needs to continue to support ADR through adoption of ADR internally and be a facilitator/catalyst in promoting ADR. One possible means for doing this is the mandatory inserting of ADR clauses in all contracts.

Several respondents remarked the need for the development of a roster of ADR practitioners. Finally, it was suggested that legislation making it mandatory to file a DR advice form as a pre-requisite to filing a statement of claim as well as legislation requiring mandatory DR is needed.

Additional Comments about the Forum

Finally, respondents to the evaluation questionnaire were invited to share any additional comments they may have had on the Forum which may or not have been captured by the previous questions asked in the evaluation.

Many respondents took this opportunity to further emphasize the importance of this Forum saying that it (the Forum) was a "good first step" and that it would be important to keep it going through some type of information sharing mechanism eg. the Internet.

On the Forum itself, there was a comment made that the "terms of reference should have been clearer from the start ie., who did we report to?"

One respondent noted that the labour sector and its contribution to ADR was notably absent from this Forum.

A general comment was made regarding the organization of the Forum in which the respondents noted that he/she felt that the Forum had been well organized and presented. They were particularly appreciative that it was sensitive to the need to provide a pro-rated registration fee.

Again follow-up was emphasized as being important following the Forum. Concern was expressed that some structure be created to see these ideas brought forward to some conclusion.

One respondent remarked that there was a feeling that the Forum did not allow the involvement of the ADR Associations on the planning committee and therefore no ownership in the process caused problems relating to the association position in the ADR community. Another person commented that the "growth of the Forum from a 'roundtable' to a 'consultation' with 200 people was a mistake, it was an insult to those associations who have worked so hard on all the major issues.

On the other hand it was commented that it was an excellent idea to broaden participants beyond the small ADR establishments - hopefully this approach will continue and decisions will be made in the broader forum.

One respondent felt the forum was heavily weighted with the legal profession, and was hoping for much more diversity - especially culturally.

Another respondent commented that the Forum was well organized and very participatory, however they wished that Justice or the appropriate government body would continue to promote and develop the concept and practice of ADR.

One respondent suggested that a draft policy should have been provided. This would have focused the debate and significantly helped the process. This would not have prevented ideas from being presented that were not part of the existing policy."

One person commented that they were much more impressed with the outcome than they had expected to be.

Another respondent suggested that, in the future, participation in the Forum should be multidisciplinary and should evolve a system whereby resolutions could be proposed and passed.

Still another participant commented that the greatest thing accomplished by the Forum was the synergy.

Any additional work should respect and include a wide variety of sectors which can be one of the strengths of making this work happen across Canada.

One person commented that they believed more attention could have been paid to reflection/evaluation of the process we used (above and beyond this evaluation tool)... we could have done more to pinpoint what elements helped consensus develop... I think these included: agreement on agenda that allowed both focus and discussion; early showing of a vision; work in large groups and small groups; taking personal and collective responsibility - other elements would have emerged if discussed.

Conclusion

The feedback received from participants to the Forum provides several helpful suggestions for the future planning, organizing and implementing of events similar to the Forum. The following is a list of "helpful hints" that have been developed and which have their basis in comments from the Forum participants.

- ensure that the location is as convenient for participants (particularly those travelling from other locations) as is possible
- try to ensure that the facility is well equipped, particularly with good communications services
- try to ensure that the facility is efficient, comfortable and relaxing for participants keeping in mind the importance of cost for both participants and organizers
- ensure that participants fully understand, in advance, the goals and expectations of the activity
- no matter what the nature of the activity or the limited time available always try to facilitate and enable an opportunity for networking
- consider holding opening plenary on the evening before and perhaps combine it with a welcoming reception
- ensure that the meeting room spaces have adequate lighting, windows (if possible) are spacious enough to comfortably accommodate the number of participants and meet the needs of the group (eg. enough wall space for hanging up flip charts)
- keep the plenaries (both opening and closing) brief but to the point
- at the closing plenary, provide participants with an opportunity (other than completing an evaluation questionnaire) to discuss together the activities that have occurred during the course of the event
- if appropriate to the nature of the event, it's a good idea to consider using facilitator/rapporteur teams - these teams should be chosen carefully to ensure quality, and
- provide participants, in advance with as much or as little information as is necessary to facilitate their participation.