

# **BYPASSING THE COURTS: THE ADVANTAGES OF ALTERNATIVE DISPUTE RESOLUTION**

**PUBLISHED IN**

**CORPORATE PLANNING ASSOCIATES – ADVANCING ISSUES**

**FALL 1997**

**PAUL JACOBS, Q.C., C.MED., C.ARB.**

Alternative Dispute Resolution (ADR) is becoming an increasingly popular way to resolve legal disputes. ADR refers to a series of procedures that present an alternative to the traditional court system. It can settle disputes faster and usually with less hostility than the courts, and it can be used to resolve endless types of disputes.

Imagine, for example, that you have a dispute with a major supplier and that it is based on a product or service. The dispute is definitely between your two companies and may even be between individuals. You have been doing business with this company for years and would expect to continue doing business with them were it not for the dispute.

Should you sue? You know how long lawsuits can take – the delays in the courts are infamous. Everyone complains that the cost of lawsuits is too high, and after a lot of frustration and expense, the two sides can become even more entrenched in their positions, and less willing to work out a settlement. The case can go to trial with a Judge who isn't attuned to the industry or the specific problem. The trial is public. After the long struggle businesses experienced during the recession, most people are not interested in getting into another struggle with a lawsuit.

## ***A joint effort***

The alternative to a long, drawn-out trial is one of the forms of ADR, which share in common the willingness of the parties to try to resolve their differences. The case can be scheduled quickly, and since it will be the only case before the mediator or arbitrator at the appointed time, it will proceed when scheduled. The parties usually share the cost. They agree in advance on the issues to be submitted and the terms of reference with which the procedure will be governed, and choose the neutral person who will help in the process.

In other words, with ADR, you make your own rules. You pick a facilitator, mediator or arbitrator who knows the field. The procedure is held in a confidential setting, and the results are private. There are no lengthy rules or court procedures to slow down the process.

ADR is used successfully to resolve a myriad of disputes, including commercial transactions, shareholder disputes, joint ventures, partnerships, disputes between franchisor and franchisee, customer and supplier disputes, and even breakdowns in family business relations.

The range of options offer a number of different processes, including:

- Principled negotiation
- Neutral case evaluation
- Mediation
- Arbitration
- Combination mediation-arbitration
- Mini trials

This list is not exhaustive; other procedures are used, and some of the above can be combined or, in cases when the first type of ADR doesn't work, others may be acted upon.

Some time ago, IBM and Fujitsu submitted for arbitration a case that had been in the courts for years. It was resolved in a matter of months through ADR, even though it involved hundreds of millions of dollars. Both parties were able to get on with their business.

If ADR sounds too good to be true, I assure you, it is not. Mediation, arbitration and other forms of ADR are available to everyone. It is simply a matter of knowing they are available and being willing to use them.