

FOREWORD

WHY ADR, AND WHY NOW?

- *John G. Shulman**

Let's say you have a dispute, and you believe you need a lawyer to help you "win" the dispute. Perhaps your dispute is over land. Or maybe it involves an important environmental or human rights issue. Or it could be a business dispute, or a family dispute. Fair enough, sounds like you need a lawyer.

But before we dive into the legal issues that may help determine the outcome of your dispute in the legal system, there are some questions you may want to consider...

For example, do you have a lot of extra money to spare? The legal system is costly, and you will most likely be asked to do your part to pay for your exposure to the legal system.

Also, are you ready to ride waves of emotions, like frustration, outrage and anger? If you think you are angry now, just wait to see what the legal system can do to turn your dispute (and your already bad relationship with the other party) even worse.

You will have plenty of time to absorb these negative emotions since you will most likely have to wait a decade or more to get a "final" decision from the legal system that purports to resolve your dispute – the judicial decision may help you remember what the original dispute was about so many years ago.

Perhaps you will be satisfied by the decision and call it—as the legal system does—"justice."

But as likely, after paying all that money, and waiting all that time, you may lose your case. And the legal system will also call your loss, "justice."

* John G. Shulman is JD, Harvard Law School and President of Alignor. If you would like to collaborate with or correspond with the author, he can be reached at jshulman@alignor.com.

So you gambled a lot of money and got a lot older while your case was pending. But regardless of what the legal system decides with regard to your dispute, will you really be any wiser?

These questions may seem provocative, and even cynical or impertinent, especially coming from a lawyer. But I have been around long enough and seen enough in a career as a human rights lawyer to believe that we as a profession had better start considering these questions and yes, start answering them. If we do not, we will render ourselves obsolete when people decide how best to resolve their disputes.

Before we go further, I will be the first to say we do need lawyers and a functioning legal system. In fact, for the most vulnerable among us, for those courageous enough to challenge the abuses by those with power, the legal system may be our only and best chance for meaningful justice.

Yet the courts should not, indeed cannot, be our only avenue for seeking justice and resolving disputes. We as lawyers must become advisers who help our clients solve problems in innovative, timely, effective ways. For example, rather than take a business dispute to court, why not try to negotiate a resolution first? Or if a family has conflict over land, why not bring in community elders or a mediator to help family members talk and listen to each other? While some forward-thinking lawyers are indeed already doing these things, more of us should begin to think this way.

Simply put, a lawyer's skills should extend beyond writing briefs, arguing in court and reassuring our clients that justice will be done if only they are patient and believe...We as a profession should develop and promote the skills required for resolving conflict, and promoting social justice and human rights.

And before you object that a lawyer's pecuniary and professional interests will be harmed by helping clients solve difficult problems in innovative, timely and effective ways, I can show you scores of lawyers who are making a good living, and more important "living good," employing these skills.

If we are truly to address the conflicts, disputes and injustices – big and small – that plague and bedevil us individually and as societies, then we must find new (and rediscover some old) ways

to listen and understand each other, explore creative solutions, and understand the risks (and opportunities) associated with conflict.

While courts will undoubtedly play a role, it will still take legions of empowered advocates using wide ranging processes of negotiation and informal conflict resolution to address global climate change, social and economic inequality and injustice, racism, sexism and the manifold other conflicts and pressing issues of our time.

In sum, we as lawyers must develop and share the skills required of us *and our clients* to become proficient negotiators and problem solvers. We must partner with and empower our clients to become full participants in the resolution of their conflicts and disputes. Only in the legal profession, do we describe such skills as “alternative” dispute resolution.

The rest of the world calls it “*life*.”