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"One might as well try to ride two horses moving in different directions, as to try to maintain in equal force two opposing or contradictory sets of desires." Robert Collier

Disputes are not uncommon in the business world; they may arise between the employee and employer; where the causes may include complaints of employee of long hours, denied benefits, and unfair treatment. The outcome of such internal disputes - if ignored or mishandled - may produce high employee turnover, reduced productivity, high absenteeism, and eventually lead to high cost¹.

Disputes may also pop up in the relationship between the supplier and the customer. The supplier could be a vendor, consultant, or contractor; and the customer - individual or organization - is the benefiting or recipient of products (material, services, and/or manpower). Causes of such external disputes are numerous; they include customer dissatisfaction with the products, different interpretation of the scope of work, and a new unexpected event that disadvantaged one of the parties. Yet another type of external dispute is between partners; where the causes may include the claim of one party that the other party has fallen short of fulfilling his duties and responsibilities.

Regardless of their type and causes, disputes - by their nature - strain the relationship of the parties involved. And if not properly resolved, they could potentially lead to a negative outcome on both sides; and paradoxically sometimes the negative outcome could be worse for the prevailing party! For example, the *output* of the resolution of an external dispute, say through litigation, favors party A (the local customer) over party B (the international supplier); however, party B who has a wider market potential, feeling soar and mistreated in the litigation proceedings, may decide not to do more business with party A, who has limited market options. A similar positive output/ negative

outcome scenario may be contrived in the internal dispute of employee and employer.

The purpose of this paper is to recommend a proactive and cost effective approach - we call it bright outcome facilitation (BOF) - that potentially leads to a brighter outcome for both sides of the dispute. Although our treatment in this article focuses on external disputes, it could easily be extended and generalized to internal disputes as well.

Traditional Approaches

When two parties engage in a dispute, they either resolve their dispute through litigation or through one of the alternative dispute resolution (ADR) methods. ADR is used to describe a wide variety of dispute resolution mechanisms that are short of or alternative to, full-scale court processes². In general, both litigation and ADR methods lead to the output (immediate outcome) of a prevailing party and a losing party. We argue in this article that the output and (final) outcome are two different things; the output is a winner and a loser, whereas, the outcome is a strained relationship between two business partners. And, as we hypothesized earlier, the outcome for the winner could potentially be worse than that for the loser.

Before we elaborate on the idea for a dispute resolution approach where the outcome on the relationship - involving the two parties - is bright, it is important to point out that, where possible, one should avert the possibility of a dispute; i.e. *dispute prevention*. Figure (1) shows the time and financial cost for each dispute prevention and dispute resolution methods. Figure (2) provides empirical results on the relationship between the times of ADR intervention and the final disposition³.

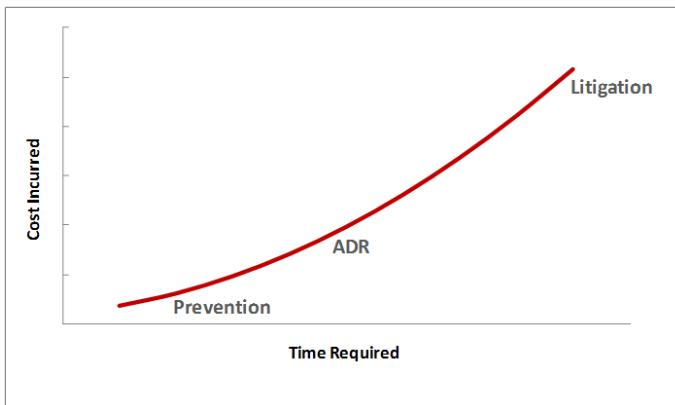


Figure 1: Time and cost associated with dispute prevention and resolution methods.

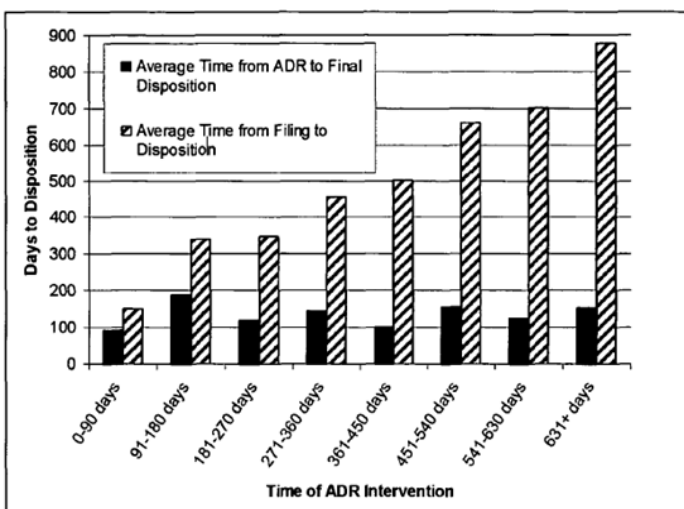


Figure 2: Relationship between the times of ADR intervention and final disposition³.

Dispute Prevention

"Unmanaged conflict is the largest reducible cost in organizations today, and the least recognized." — Dan Dana (quoted 1988 ... 2011)

Prevention is simply defined as managing differences before differences become conflicts, and conflicts become disputes⁴. Disputes may be averted through clarity and specificity of the scope of the work, careful review of the scope of work, and good intention and readiness to workout conflicts.

ADR Methods

Disputes may be resolved either through litigation or through one of the voluntary ADR methods. The following are brief descriptions of the common types:

- **Mediation**

Mediation is a confidential but informal method where a mediator; who is a neutral third party, only facilitates by opening and improving the dialogue between parties to help them reach a mutually agreeable solution to their

- **Conciliation**

Conciliation has no legal standing though a conciliator tries to resolve differences by meeting each party separately and trying to interpret issues, give proposals for settlement, and lower the tension.

- **Arbitration**

Arbitration is a legal technique outside court where the arbitrator determines the outcome of the case. The arbitration decision generally has the force of law behind it, but does not set a legal precedent.

Other ADR methods include *peer reviews* (seeking group or panel of fellow employees and managers for a decision), *case evaluations* (a neutral third party gives an opinion on the strengths and weaknesses of each party's evidence and arguments after presenting their cases), *negotiations*, and others.

Litigation

Litigation is the conduct of a lawsuit where the attorneys representing the plaintiffs and defendants are the litigators.

The BOF Approach

The approach we recommend – the bright outcome facilitation (BOF) – has the denotation of changing disputes to *collaboration* and *decision-making*. BOF is a relatively more friendly process where the output is a "third alternative" with a positive outcome to both parties. It is a hybrid process; i.e. a combination of mitigation and conciliation in terms of technicality and some of the skill set of the facilitator/third party. The major concept that differentiates BOF from ADR is that through BOF, a third alternative is reached; a *better* solution for both parties not merely a solution both parties would agree to feeling that they have both done equal/acceptable compromises. People targeting BOF should have a different mindset, where they are seeking help to find a better solution that they may have overlooked because they were tangled up in the issue on hand. They should be believers in BOF; they wish to improve their relationship, have the capacity to address dispute settlement creatively, understand the value of undertaking a method that saves time and money, and understand the paradox of winning a battle yet losing the war. Table (1) summarizes the general differences between BOF and ADR/Litigation.

Table 1: BOF vs. ADR/Litigation

Comparison Criteria	BOF	ADR/Litigation
Purpose	Create opportunity	Resolve problem
Interest	Long-term	Immediate
Parties' Perspective	Far-sighted	Short-sighted
Relationship impact	Tighter	Soar
Result	Both winners	Loser/winner or compromise



The facilitator in BOF should seek to get the parties in disagreement to detach from their case, and move to understand the other case; so they may elevate into a state of neutral, fair thinking, and empathy; allowing them to engage in a process of working together rather than against each other; i.e. in the words of Stephen Covey a 'shift to interdependent problem solving'.

"One of the deepest needs of the human soul is to be understood. Once that need is met, the personal focus can shift to interdependent problem solving."⁵ – Stephen Covey

We have researched and brainstormed a number of tools that might help detach parties from their problem; they include:

- *Talking stick instrument*; a Japanese method that is used to enable everyone to be heard. The talking stick is passed around from one member to another allowing only the person holding the stick to speak. The one who gets to hold the stick may be allowed to voice his/her opinion only after restating his/her understanding of the previous speaker. This further encourages real listening.
- *Reversing roles debate*; where the first party defends the second party position and vice versa. This reverse role play helps to strengthen empathy and mutual understanding; and possibly develop a lighter and more conducive meeting.
- *Getting off the subject*; where the BOF facilitator requests that parties get off the subject and get into another personal subject; e.g. common hobby, background, experience, advice or philosophy⁶. This method allows participants to loosen up in preparation for a 'fresher' discussion of the matter on hand.
- *Mixing up teams*; where the BOF facilitator asks individuals from the first party to team up with individuals from the second. Pairs should cooperate and brainstorm to come up with a solution that has not been previously suggested. Solutions suggested by pairs shall then be discussed in a general session.
- *Motivating collaboration*; where the BOF facilitator gives the parties another issue to resolve in order to prove their ability to collaborate. The issue should carefully be chosen to reinforce the concept of collaboration.
- *Third Alternative Cases*; where the BOF facilitator shows and demonstrates to parties through real case studies how interest is best served through a solution/opportunity that is different from the positions they currently hold.

Undoubtedly, it is a great challenge to find someone to assume the role of the facilitator of a BOF session. Traits and skills of such a person include trustworthiness, seniority, credibility, calmness, persistence, and emphatic listening.

Conclusion

We conclude this article with Table (2) – adapted from Sander and Goldberg⁷ – which shows the promise of BOF in comparison with competing methods.

Table 2: Comparing BOF, ADR and Court Procedures⁷.

Disputant's Goals	ADR Procedures			Court Procedure
	BOF	Mediation/Conciliation	Arbitration	Adjudication
Minimize Costs	3	3	2	0
Resolve Quickly	3	2	3	0
Maintain Privacy	3	2	2	0
Maintain Relationships	3	3	2	0
Involve constituencies (both parties in dispute are engaged in the resolution process)	3	3	1	0
Link Issues (linking current dispute issues with others that may have triggered current)	3	3	1	0
Get Neutral Opinion	3	0	3	3
Set Precedent	0	0	1	3

Key: 3 = Highly likely to satisfy goal, 2 = Likely to satisfy goal, 1 = Unlikely to satisfy goal, 0 = Highly unlikely to satisfy goal

Sources

1. Sanders, E. and Bordone, R. "Early intervention: how to minimize the cost of conflict," Negotiation, Harvard Business School Publishing, March 2005.
2. Center for Democracy and Governance, "Alternative dispute resolution Practitioners' Guide," Technical Publication Series, Bureau for Global Programs, Field Support, and Research, US Agency for International Development, March 1998.
3. Bingham, L., Nabatchi, T., Jeffrey, Senger, M., Jackman, M. "Dispute resolution and the vanishing trial: comparing federal government litigation and ADR outcomes," Ohio State Journal on Dispute Resolution, Vol. 24:2 2009.
4. Mediation training institute international (<http://www.mediationworks.com/mti/prevention.htm>).
5. Covey, S. "8th Habit - from effectiveness to greatness," Free Press, A Division of Simon and Schuster Inc., 2004.
6. Boyd, S. "Put yourself in someone else's shoes," International Society of Automation, www.isa.org, May 1994.
7. Sander, F. and Goldberg, S. "Fitting the forum to the fuss: a user-friendly guide to selecting an ADR procedure, Negotiation, January 1994, pp. 49-68.

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Quote of the Month

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