

THE LAW TODAY

Things to Know About

ALTERNATIVE DISPUTE RESOLUTION

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Overview

Dissecting the title of the talk.

ALTERNATIVE—to what? Civil Litigation!

What is wrong with civil litigation?

Nothing:

It is the result of 1,000 years of perfecting a formal, public, dispute resolution system.

It is staffed by very good people (federally and provincially appointed judges).

It is designed to rigorously test the facts and apply legal principles to the claims of the disputing parties.

It always produces an outcome (a decision).

Everything:

It takes too long.

It costs too much.

It produces poor outcomes in far too many cases.

In short, it is not well designed to resolve many civil disputes.

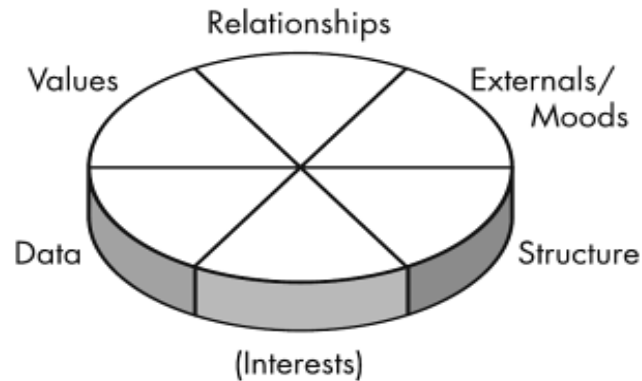
What is the Alternative to civil litigation?

- Negotiation
- Mediation
- Circles
- Other

DISPUTE and its close cousin Conflict

What is the source of conflict?

- Some common answers
- The Circle of Conflict offers a more sophisticated answer:



How does conflict (a normal feature of a complex society) become a dispute that requires resolution? What are the triggers? What turns conflict from latent to manifest?

RESOLUTION

Resolution is the outcome or result of a dispute resolution process. That in turn requires us to examine the advantages and disadvantages of alternative or different processes with a view to aligning the right process to the particular dispute.

The relationship between Disputes, Processes, and Results.

Are there other, more "appropriate" processes?

If not litigation (or its less cumbersome cousin, arbitration), then what?

- Negotiation
- Mediation
- Circles
- Other?

Why are the outcomes of these other consensual processes better than court decisions?