

David Sharpe has written an article for Lawyer Monthly

Commercial Dispute Resolution – Promoting Alternative Dispute Resolution

The use of alternative methods to resolve disputes continues to grow in Northern Ireland as businesses and other stakeholders better recognise the benefits of participating in ADR. To find out more, Lawyer Monthly speaks to Dr David Sharpe. Called to the Bar of Northern Ireland in 1999 and subsequently the Bars of England & Wales, and, the Republic of Ireland, David practices within all three jurisdictions, making him more than well-placed to comment. David's legal practice is centred upon the Bar Library in Belfast, Northern Ireland and he is also a member of 12 Kings Bench Walk Chambers, London. He qualified as Mediator in 2005 and his areas of practice include professional negligence, medical law, property and commercial law.

Q: Reports show a widely-held belief that mediation is set to grow significantly, as companies realise its potential for a quick and cost-effective resolution of disputes. What would you say are the main benefits for companies of choosing this method of ADR?

ADR is indeed a rapidly developing area of legal practice. The benefits for commercial organisations are immense and far-reaching. These include:

- (a) Save time – A dispute often can be settled or decided much sooner with ADR; often in a matter of months, even weeks, while bringing a lawsuit to trial can take a year or more.
- (b). Save money – When cases are resolved earlier through ADR, the parties may save some of the money they would have spent on lawyer's fees, court costs, experts' fees, and other litigation expenses.
- (c) Increase control over the process and the outcome – In ADR, parties typically play a greater role in shaping both the process and its outcome. In most ADR processes, parties have more opportunity to tell their side of the story than they do at trial. Some ADR processes, such as mediation, allow the parties to fashion creative resolutions that are not available in a trial. Other ADR processes, such as arbitration, allow the parties to choose an expert in a particular field to decide the dispute.
- (d). Preserve relationships – ADR can be a less adversarial and hostile way to resolve a dispute. For example, an experienced mediator can help the parties effectively communicate their needs and point of view to the other side. This can be an important advantage where the parties have a relationship to preserve.

(e). Increase satisfaction – In a trial, there is typically a winner and a loser. The loser is not likely to be happy, and even the winner may not be completely satisfied with the outcome. ADR can help the parties find win-win solutions and achieve their real goals. This, along with all of ADR's other potential advantages, may increase the parties' overall satisfaction with both the dispute resolution process and the outcome.

(f). Improve Lawyer-Client Relationships- Lawyer's may also benefit from ADR by being seen as problem-solvers rather than combatants. Quick, cost-effective, and satisfying resolutions are likely to produce happier clients and thus generate repeat business from clients and referrals of their friends and associates.

(g). Privacy- Court proceedings are conducted in public. The press is admitted and it is possible for the case to be reported in the local or national newspapers. A clear advantage of ADR is that the methods used are private and again this may be an important factor if commercial reputations are at risk.

Q: How can you promote ADR as a more positive choice than litigation?

ADR must be considered in the context of the long list of benefits they present. Commercial organizations exist to develop their business and to make a profit. Any process which allows the successful resolution of legal disputes with advantages over traditional litigation will be embraced and adopted by those commercial organizations. The promotion of ADR by a legal practitioner therefore logically involves the advocating of the benefits- cost, time, control, preservation of relationships, increased satisfaction and privacy to the clients.

Q: What challenges are raised by ADR?

ADR has clearly identified benefits over traditional litigation in a wide range of legal dispute areas. The main challenge raised by ADR is therefore to deliver those promised benefits to parties engaging within the various ADR processes. This promise requires the Courts to direct and focus upon ADR as part of the litigation process with the possibility of compulsory ADR and/or sanctions for refusal to engage in ADR. The challenge of making ADR the 'norm' and integrating it into the lawyer's toolkit requires much more evangelisation of ADR together with the development of training and practice for those lawyers who wish to focus upon and engage within ADR as a specialist area of legal practice. The third and perhaps critical challenge of ADR is to convince lawyer that as well as providing benefits for the client ADR can actually create benefits for lawyers with improved lawyer-client relations, rapid resolution of legal disputes and increased levels of work (and income).

Q: How can you navigate these challenges to ensure that ADR grows in popularity?

ADR must become integrated into the litigation process, Currently, within the Commercial Court in Northern Ireland, ADR (usually mediation) is suggested at an early stage in all cases and the litigation process will be tailored around such ADR process as required. However, where either party fails to engage without good reason there is currently no system in place to require an ADR process to take place, nor is there any sanction imposed upon a party who has failed to engage. The challenges in relation to the legal profession include the development of training and CPD courses directed at ADR and the continued development of professional practice and standards within the emerging specialty of ADR.

Q: What regulatory changes would you make to the field of ADR if you had the power?

The development of Court Powers to direct ADR as opposed to directing that the parties consider ADR. In the alternative or in addition the development of costs sanctions in respect of a party who unreasonably refuses to engage in ADR. Finally the placing of other forms of ADR on the same statutory footing as Arbitration, and continued development of such law, may further increase the uptake and deployment of ADR within legal disputes.

Q: Is there anything else you would like to add?

This article is focusing upon the use of ADR in commercial dispute resolution within Northern Ireland. It would be inappropriate not to mention the extremely flexible and functional legal system which is currently in place within Northern Ireland in respect of commercial disputes. The Judiciary within this jurisdiction are extremely receptive to ADR and local training courses have been in existence for many years. It is perhaps also an interesting time for commercial law within Northern Ireland as it appears very likely that Corporation Tax will be devolved leading to a

very substantial reduction and the influx of commercial organizations. This will lead to increasing levels of commercial legal disputes and it is imperative that the benefits promised by ADR are delivered to clients in conjunction with and as an alternative to the traditional litigation process. Northern Ireland has developed a reputation for dispute resolution in recent years and it is hoped that this prominence will develop and prosper within the ensuing years.