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Understanding basic concepts in ADR

ADR — a generic, holistic concept

Sir Laurence Street[1]

The ADR evolution has progressed in recent decades to the point where the letters 'ADR' have acquired a generic significance. In the early days the letters emerged as an acronym for alternative dispute resolution. Concerns have been expressed that this not only cloaks a looseness of meaning but that it can be positively misleading.

The looseness of meaning has led to the oft-repeated question, 'alternative to what?'. This has produced a number of suggested other 'A' words, aimed at identifying ADR as a dispute resolution concept in its own right and not as an alternative to some other procedures.

Where the letters can be positively misleading is in the suggestion that they appear to refer to procedures that are dispute resolution procedures alternative to that which is implicitly (and erroneously) suggested to be the dispute resolution function of the adjudicative or determinative processes of litigation.

In the final analysis, adjudicative or determinative processes are not dispute resolution processes. Judges do not resolve disputes coming before their courts; they decide disputes or adjudicate on them. Disputes are resolved through consensual interaction between the disputants.

This is no idle play on words. The deciding of a dispute involves a fundamentally different approach by the judge from the approach of a mediator who, in promoting or facilitating resolution of the dispute by the parties themselves, does not purport to decide the issues between them.

The important distinction between deciding and resolving disputes has been masked by the use of the letters ADR and by attempts to render them

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meaningful. I believe that that time has now come when further debate on this topic is profitless.

In the broader community the three letters themselves are increasingly being used to describe a consensus oriented approach to fields of human interaction. For example, in addressing a systemic approach to workplace grievances and other potential problems in the human resource field it is not uncommon to see references to such phrases as 'introducing ADR to the workplace'. A wider scope is gradually being attributed to ADR than merely the end stage of resolving workplace conflicts; it extends back to the avoidance and management of such conflicts.

Again, there are similar developing usages to be found in the field of customer relations; some service and goods providers are openly proclaiming a policy of adopting an ADR approach in their complaints handling systems, extending to avoiding and managing the conflict potentiality of complaints. In 1996 the authors of *Designing Conflict Management Systems*[2] wrote of 'designing preventive ADR methods' for inclusion in 'recommendations for the furtherance of systemic management of conflict'.

In short, as the letters ADR are gaining a wider currency in ordinary usage, so are they gaining a broader connotation extending beyond mere dispute resolution processes. Recognising this, the letters should be seen in their own right as describing an holistic concept of a consensus oriented approach to dealing with potential and actual disputes or conflict. The concept encompasses conflict avoidance, conflict management and conflict resolution.

The overarching element of ADR in addressing these three aspects of conflict is the consensus oriented philosophy that pervades the newly evolving recognition that conflict avoidance, management and resolution are simply three closely related sequential approaches each of which has relevance and application within the broad field of social, commercial and personal interaction. This is inherently the province and function of ADR. ●

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Endnotes

1. This article is an adaptation of the Foreword written for Sourdin T *Alternative Dispute Resolution* Law Book Company Sydney 2002.

2. Constantino and Merchant *Designing Conflict Management Systems* Jossey-Bass Publisher San Francisco p 127.