



## **Emerging Trends in ADR – Appreciative Leadership, Transformative Learning and Collaborative Law**

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**Osgoode Law School of York University**

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Good morning and welcome. I have the pleasure of Chairing a Panel of Speakers this morning who will share their thoughts and perspectives on new and emerging trends in the field of dispute resolution.

As students, practitioners and academics we are often too busy trying to manage our current workload to take a step back and “get the big picture” – check the horizon and see what is coming at us. Today, we have an opportunity even if it is just for a short while to view the horizon – to take a strategic approach and to learn from some practitioners about new trends that are and will continue to have a profound impact on the field of dispute resolution.

As mediators, all too often we are called in to fix a problem – to respond to a crisis or to facilitate collaboration on an issue – or a series of issues. For many of us, that work while extremely rewarding, can be largely reactive. For the next thirty minutes or so, we will have an opportunity to listen to our panelists and learn about some new techniques and approaches that they themselves are using in their practices – techniques that may enable us to adopt a more proactive approach to conflict management and dispute resolution.

At this time, I would like to extend a warm welcome to our two panelists, Pat Crowley and Rick Shields.

Pat Crowley is the Vice-President of Human Resources with the Scarborough Hospital, a 650-bed acute care community hospital in east Toronto. Pat has devoted much of her twenty year career to working in the health care field, primarily in the area of human resources and labour relations. Pat received her B.C.L. and an LL.B from the National Programme at the Law Faculty of McGill University in Montreal and her LL.M in ADR from Osgoode Hall Law School in 2001. Pat has a personal and professional interest in the application of conflict resolution techniques to multi-stakeholder conflicts in large organizations and she will focus her presentation on appreciative inquiry.

Rick Shields is an accomplished lawyer, mediator and arbitrator. Since 1976, Rick has focused his law practice on collaborative family law. Rick began his academic ADR journey in 1993, first obtaining a Certificate in Dispute Resolution from Pepperdine University in 1994, a Master of Arts in Conflict Resolution from Antioch University in 1996 and his Master of Laws from Osgoode Hall Law School, York University in 1998. Rick is a Chartered Mediator with the ADR Institute of Canada who teaches extensively. Rick is currently a Ph.D. candidate at the University of Toronto with the Ontario Institute for Studies in Education. He also recently authored a book entitled Collaborative Family Law: Another Way To Resolve Family Disputes, to be published by Carswell in 2003 and we await the appearance of that resource on bookshelves everywhere. Richard will speak about transformative learning and collaborative law.

Before I turn the floor over to Pat, I would like to share some of my observations with respect to emerging trends in the dispute resolution field. Unlike many of you, I have a confession to make – I am not a lawyer. I hold a Masters Degree in Planning and completed my mediation training through the Harvard Mediation Project with Larry Suspend. I worked for the Ontario Public Service for sixteen years and had the privilege of working with Leann Fleischmann and Leslie Macleod to develop and implement the first environmental dispute resolution roster in Ontario designed to manage conflicts that arise in the context of forest management planning. For the past three years, I have operated my own consulting practice specializing in planning and dispute resolution. In one of my past lives, I managed a Strategic Planning Unit for the Ministry of Natural Resources and had responsibility for conducting environmental scanning and long range planning for the Ministry. The work that I conducted in that capacity led me to the conclusion that trends that occur south of our border often take eighteen months to two years to filter across to Ontario and sometimes longer than that to filter out to western Canada.

For that reason, I often look to trends that are occurring stateside as a barometer of what we might expect to see here in Ontario. My observations have led me to make some general conclusions which I would like to share with you:

#### The Current State of the Nation:

There is a broad-based shift occurring toward collaborative approaches.

Interest at the individual level in acquiring mediation and conflict resolution skills continues.

Employers often require employees to have or acquire dispute resolution skills.

Mediation programs exist for institutional disputes – both in the public and private sector.

From the perspective of environmental conflict resolution – the field that I practice in - environmental conflict resolution programs proliferate in virtually every state in the U.S., with the few exceptions (Connecticut, Delaware, Idaho)

In Ontario, a number of Ministries (Environment & Natural Resources most notably) have dispute resolution processes in place.

For the most part however, mediation and/or arbitration processes are used on a case-by-case basis, usually in reaction to an issue that has arisen. Here, we tend with few exceptions, to practice “reactive dispute resolution.”

There is real opportunity to move toward preventive ADR and we are seeing the emergence of that in a number of areas.

1. Increased awareness of the value of using Rosters/Lists on a Program-by-Program basis.
2. Assessment is becoming an increasingly important first step before embarking on multi-party public policy dispute resolution. Greater time is being spent to determine whether or not a particular issue/issues are suited for collaborative process.

The U.S. Institute for Environmental Conflict Resolution has a Roster of 185 mediators (3 Canadians). I sit on that Roster and we are embarking on an on-line dialogue about the value of assessment and the important role of assessment in dispute resolution. (website: [www.ecr.gov](http://www.ecr.gov))

3. Private companies are moving toward “preventive conflict management” by moving away from “stakeholder management” and moving toward “stakeholder engagement” – actually partnering with the stakeholders and constituents on an ongoing basis and not simply when an issue comes forward for resolution.

Work conducted by Ann Svendsen at the Centre for Innovation in Management at Simon Fraser University points to the importance of developing an “integrated stakeholder strategy.” Ann has authored an excellent book entitled *The Stakeholder Strategy* in which she synthesizes theories from community relations, marketing, stakeholder management, organizational change, sustainability and corporate social responsibility.

Ann’s work is supported by Dr. Steve Waddell, Director of the Collaboration Works based in Boston. Steve’s work focuses on societal learning and he uses stakeholder mapping as a technique to visualize linkages between stakeholders. According to his research, corporations and organizations are finding new ways to achieve their goals through collaboration – partnering with others to do what it cannot achieve on its own.

4. There is some ground-breaking work being pioneered by Gregg Walker and Stephen Daniels from Oregon State University. Focusing on collaborative learning, Walker and Daniels have been researching community-based collaboratives – local community-based movements that have evolved from their roots as advocacy groups. Daniels and Walker looked at the emergence of environmental conflicts throughout the 1970s and 1980s and the response by advocacy groups who formed to address a particular need, issue or crisis. (e.g. waste disposal facility, construction of a linear facility, etc.) These groups focused on negotiating rather than on-going collaboration.

For many reasons, Walker and Daniels have noted that some of these groups have evolved into what they term “community-based collaboratives” – not alliances but actual dialogues that evolved as relationships grew built on trust. Their focus is to document and examine community-based collaborative approaches to environmental management. They have a superb website ([www.cbrc.org](http://www.cbrc.org)) that promotes information sharing.