DEALING WITH CONFLICT
NCS005

Purpose

The purpose of this module is to provide competency based training to develop skills to deal effectively with conflict in the workplace.

Nominal duration: 20 hours

Learning outcome 1

Identify signs, stages and possible causes of conflict in the workplace

Performance criteria:

- **Signs of the potential or actual conflict are described**
- **Stages of the conflict particularly the progression and escalation of the conflict are described.**
- **Factors within the individual, such as attitudes, values and beliefs which relate to the developing conflict are described.**
- **Factors within the workplace which relate to the developing conflict are described.**

Signs of the potential or actual conflict

Grievances in real estate can occur in a number of relationships, For example:

- **employee - employee**
- **employee - employer**
- **agent - client**
- **agent - another agent**
- **agent (landlord) - tenant**
- **body corporate (agent) - unit holder**
- **agent/employer - stranger or third party.**

Because real estate deals with people in a myriad of relationships there are numerous
possibilities for disputes to arise and therefore, effective dispute management is a most important function of an agent /property manager. He/she should be able to efficiently, equitably and quickly resolve disputes as they arise is an important agent/property management attribute. Of course the main aim and ideal is not have disputes arise at all and the better agent/property manager is one who manages to keep disputes to a minimum.

Workplace disputes - grievances

Conflict in the workplace can arise from grievances perceived or real that an employee has with his/her employer or fellow staff member. A grievance is any complaint of unfair treatment concerning:

- **Wages**
- **Hours of Work**
- **Disciplinary Action**
- **Working Environment**
- **Discrimination**
- **Other matters relating to terms and conditions of employment.**
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The use of flexible work arrangements to reduce workplace disputes

Employees' health and welfare as critically related to their ability to contribute to the company's mission. Flexible work arrangements help employees achieve and maintain balance between work and personal family responsibilities. Companies should identify positions that are suitable for work flexibilities in order to accommodate employees' needs.

Managers should implement the various alternative work schedules, leave options, etc., in such a fashion that they will enhance the work of the office. Actions taken to implement such programs must be well-balanced so as to effectively perform assigned job responsibilities.

All employees, depending on the work requirements of the position, should be given an equal opportunity to use appropriate flexible work arrangements. These flexibilities should be used to motivate employees and increase productivity.

Without a spirit of cooperation and support between manager and employee and a

balancing of the priorities and concerns of both, experienced and productive employees may be more likely to find other opportunities, resign when forced to choose between their families and their work, or demonstrate a loss of morale or commitment to their jobs. Given the changing realities of the composition of the workforce, managers may overlook a valuable management tool if more flexible leave options are not suggested to employees when family needs impact office responsibilities.

Sexual Harassment

Another common source of employee conflict is sexual harassment. Angencies that are successful in the sexual harassment arena are those who adopt zero tolerance for improper sexual behavior on the job. The key to zero tolerance is having in place an effective investigation procedure.

Management must enable procedures that sift out good claims from bad ones and then take appropriate action.

Employee's Guide to Sexual Harassment

The agency should communicate to employees the agency's policy on sexual harassment, methods for reporting harassment and how claims will be investigated.

How to Conduct An Internal Investigation

All employees have a responsibility to prevent and deal with sexual harassment under the Equal Opportunity Act. Failure to investigate accusations of employee misconduct in the workplace can have costly consequences for employers. A poorly handled investigation can be equally costly. Employers should make informed, well documented decisions when misconduct charges arise.

Crucial areas are when to investigate misconduct charges, securing evidence, interviewing witnesses, obtaining written statements, surreptitious investigations, undercover investigations and much, much more.

Employment Related Liability Risk Management

Employment litigation is epidemic in the United States. Any company considering an employee termination also has to consider the possibility of litigation. In litigation there is no such thing as an employer win. Even where an employer prevails, the cost of defending the case is a loss. In addition, the company may face liability for lost wages and emotional and punitive damages.

Workplace violence

Disputes between employees, and agency and employees can escalate into violence if the dispute is not settled in its early stages. For example, a dispute that involves racial discrimination should be settled by the agency quickly and early before it escalates into violence. The victim of such discrimination has a right to have the dispute heard before an Equal Opportunity Tribunal but the employer should not allow the dispute to even reach this stage. The victim of discrimination can take action against the employer for not providing a safe working environment (either under the award or Occupational Health and Safety legislation) or not implementing preventative action. That is, a real estate agency is under a legal obligation to eliminate most forms of discrimination in the workplace.

In addition to the human cost, companies suffer economic losses when they are the victims of workplace disputes including violence. When lost productivity, legal expenses, property damage, diminished public image, increased security and other factors are included, total losses from workplace disputes probably can be measured in the millions of dollars.

The agency should examine the working conditions of employees with the view of providing a safe work environment. The workplace should be inspected as well as an evaluation of the work tasks of employees so as to determine the presence of hazards, conditions, operations and situations which might place workers at risk. This inspection/analysis should be carried out on a periodical basis to observe hazardous work tasks. In a real estate agency there is perhaps less scope for work hazards than say a factory with dangerous machinery. However, the agent should examine at least the following:

- **ergonomic factors of computer workstations**
- **that the photocopier room is well ventilated**
- **the safety of staff that carry cash for banking**
- **the safety of property management personnel on inspections.**

Occupational health and safety

Real estate managers must understand why health and safety is of key importance to them and to the success of their agency. To illustrate a process in setting up an action plan to implement an effective health and safety management system and flags where additional help and information may be obtained in pursuing action plans.

Factors that should be looked at include:

- **Cost of workplace injury and illness**
- **Prevention of workplace injury and illness**
- **Policy, commitment and responsibilities;**
- **How to establish a joint approach to health and safety management;**
- **Developing a training plan;**
- **Identifying and assessing hazards and risks;**
- **Controlling hazards and risks;**
- **Continuous improvement of your health and safety management system.**

Disputes arising from strata unit management are one of the most common sources of disputes for strata/unit title managers. The large number of disputes arise from the fact that strata/unit schemes are a social mix of people of disparate people. The disparity includes different backgrounds, social status, ages, incomes and family

types. The strata scheme is microcosm of society at large and therefore, disputes must arise. For example:

- ***Body corporate/manager of the strata scheme and dissatisfied unit owners*, For example, about corporate levies, how the common property is maintained and managed.**

- ***Unit owners.* For example, between renters and owners, elderly and young persons, car parking, pensioners/retirees and full time workers.**

Examples of strata/unit title conflicts

The tennis court isn't accessible to one resident in a wheelchair, who is also a tennis player. Can the body corporate be forced to make it accessible?

This dispute raises body corporate obligations under the Unit Titles Act (ACT) or the Strata Titles Act (NSW) and general law under Equal Opportunity legislation. Further, there is a general question of equity. The tension that has to be resolved by the strata property manager is the cost of conversion to allow access and the needs of the wheelchair bound tennis player. There may not be a clear-cut answer.

Discrimination would include refusal to make reasonable modifications to a building that is currently inaccessible to the disabled. What is "reasonable modifications" is the crux of the dispute. If the body corporate has to tear up the whole tennis court, it would be unreasonable but if all it takes is widening the gate, they should do it. What appears reasonable to one person may seem unreasonable to another. That is why many discrimination disputes end up being decided by the Tribunal and courts.

A neighbor in the next unit has a baby pig that smells and grunts. Can a body corporate take action to get rid of this nuisance?

Yes, the body corporate must try to both enact and enforce such pet restrictions. The keeping of pets is common source of strata/unit scheme disputes. The strata property manager must resolve the dispute according to the Act, public law (eg Health Act), local law (Council regulations) and the strata/unit scheme *by laws*. The keeping of the pet may also be in breach of a lease agreement if the offender is a lessee.

Stages of the conflict

Factors within the workplace which relate to the developing conflict are described.

Learning outcome 2

Propose strategies to deal with a specified conflict in the workplace

To be competent in the above learning outcome the participant should be able to:

- **provide options for constructive responses to the conflict**
- **enable established work relationships to continue**
- **take account of economic and industrial constraints**
- **be consistent with the organisation's requirements.**

Options for conflict resolution

The options available to resolve the wide range of disputes capable of being generated in the workplace range from the initial informal attempt at resolution at

first instance to mediation and possibly determination by a tribunal or a court if allowed to continue.

Obviously it is in the best interests for all to try to eliminate the dispute early when it first manifests itself. This is why agent must walk the "shop floor". An agent aloof from the day to day workplace will be less likely to notice the early signs of a dispute in the making. Further, he/she should have an "open door" policy that encourages persons affected by a dispute or possible dispute to tell him/her and/or seek his./her advice. Too often agents are only aware of a dispute when it affects the agency's performance and he/she has suffered economic loss. It is much more difficult to rectify a conflict that has reached this stage.

The agent must be able to utilize effective listening techniques, "conflict cooling", win-win negotiating and collaborative problem solving. He/she must be able to focus on resolving conflicts appropriately and in the process, to preserve client and or workplace relationships. He/she should be able to "really listen" and to prove he/she is listening. Let the parties to the conflict know they are being heard. The agent should be able to brainstorm and use brainstorming sessions with results. He/she should be able to effectively engage in collaborative problem solving and to resolve conflicts without mediation.

If the dispute cannot be resolved initially by speaking directly to the parties (usually on a one to one basis), the agent can implement the use of a mediator or be a mediator him/herself. The agent should be able to use communication skills that facilitate constructive responses to conflict in the workplace.

Due diligence - review of the workplace practices

The issue of due diligence is not new. However, there is a need to highlight how vigilant employers must be and why it is critically important to address concerns once they are identified in order to create a successful basis for the defence of due diligence.

Learning outcome 3

Factors affecting timing and environment for communicating are described

To become competent in the above learning outcome the participant should be able to use non verbal and verbal communication effectively including:

- **body language**
- **questioning**
- **language style**
- **active listening**
- **reflecting**

- and to give feedback assertively but is received non defensively

Resolving conflicts in the workplace

The agent is better able to resolve workplace conflicts by:

- **anticipate your listener's response & gain his or her trust**
- **set limits that build mutual respect**
- **use key words & phrases that establish a spirit of cooperation**
- **build win/win relationships.**

Conflicts, conflicts!

Know how to be assertive instead of combative when supporting the agency's point of view. Be able to apply *win/win* philosophy to potential or actual conflict situations. Use techniques to AVOID conflicts.

Conflict management

- **manage conflict constructively**
- **identify potential sources of conflict**
- **bring new energy to your organization.**
- **learn how to implement a positive program to resolve conflict constructively, using real-world examples.**

Conflict resolution skills include:

- **how to use a model in situations requiring "conflict-management"**
- **how to deal with difficult people**
- **how to use conflict to everyone's advantage**
- **how to "really listen" and how to prove you're listening**
- **how to let disputant(s) know they've been heard**
- **how to brainstorm**
- **how to effectively engage in collaborative problem solving**
- **how to resolve conflicts without mediation**
- **how to resolve conflicts with mediation**
- **how to make mediation arrangements**
- **how to deal with willing and unwilling participants**
- **how to use a model for mediation and conflict management**
- **how to control the mediation process**
- **how to produce effective communication between the disputing parties**
- **how to recognize and handle pitfalls, problems and traps that typically arise in mediations.**
- **how to craft voluntary and lasting agreements,**

Conflict resolution

Use the most suitable approach depending on the intensity of the conflict.

Coping with difficult staff

Difficult employees who often end up in conflict are the following:

- **know-it-all experts**
- **stallers**
- **sniper's**
- **tanks**
- **super-agreeables**
- **complainers.**

The agent should:

- **know when to listen**
- **discover the stallers**
- **do not ignore sniper's remarks**
- **how to calm a tank**
- **discover the super-agreeable's hidden objection**
- **focus the complainer on finding a solution.**

Practice skills to deal with the know-all, the aggressive person, the joker, the complainer and the dodger. Dealing with difficult people is one of the most stressful tasks in today's workplace however, skills in conflict resolution are worth pursuing because the agency will increase quality & productivity through better communication & teamwork. Aim to give employees the skills for conflict control & positive results.

FROM "NO" TO "YES"

How can you turn around a difficult and stubborn staff member?

- **listen actively**
- **explain your feelings**
- **seek & build on others' ideas.**

An agent in a conflict situation may feel that he/she is knocking his/her head against a brick wall. However, the fact the conflict has arisen at all means that he/she may have unwittingly helped to build it.

MEDIATION

The mediation system to resolve conflicts is used by:

- **human resources personnel**
- **attorneys**
- **managers**
- **ombudspersons**
- **employees**
- **independent commercial mediators**

- **customer service individuals.**

- who are required to provide mediation or conflict management in all business or workplace environments.

Mediation requires knowledge and skills on how to make mediation arrangements, how to approach complaining and responding parties, how to use step-by-step models for mediation and conflict management, how to control the mediation process.
The successful mediator knows how to produce effective communication between the disputing parties, to recognize and handle pitfalls, problems and traps that typically arise in mediations and how to craft voluntary lasting agreements

Mediation can use the co-mediation model in which two mediators are used instead of one. This model is particularly useful in conflicts, such as in allegations of sexual discrimination or harassment, where both parties in conflict might strongly prefer having a mediator of the same sex with whom to talk. Even though most mediations can be handled by a single mediator, including co-mediation in the training model offers your organization an additional option.

A good mediator can and is:

- **understand and be able to use conflict management models.**
- **comfortable and competent in dealing with conflict in client relations**
- **able to manage conflict (one on one or perform as a neutral for others)**
- **able to preserve workplace relationships (employees-employees, employees-managers, employees-customers).**
- **able to do thorough case preparation (for mediation cases)**
- **able to conduct a mediation to a successful agreement**

Good mediation:

- **focuses on being able to resolve workplace disputes early and equitably**
- **uses effective communication skills and a logical step-by-step model**
- **should be adaptable to the organization's specific workplace requirements.**

Table 1 shows a 4-step mediation method that is very useful in dealing with conflict. Mediation is a building communication method useful for real estate agencies.

All employers including real estate agents are being held increasingly accountable by the courts to educate their managers and employees on a variety of social issues such as disputes that impact on the workplace. The burden to create and produce meaningful programs in response usually falls on the human resources and training departments.

The manager needs to foster productive workplace behaviors. Managers and supervisors should be exposed to an in-depth examination of causes, symptoms, and cures, with special emphasis on the company's potential liabilities and areas of responsibility.

They also learn the extent of management's responsibility to employees and how everyone can help solve problems or prevent them from occurring.

Mediation style

A good mediator should not only be able to employ collaborative problem solving but also focus on preserving workplace relationships, "interest-based" negotiation. The mediator should be able to help disputing parties repair and resolve disputes while repairing relationships. Good communication skills are invaluable so that the next conflict encountered can be resolved on the spot without assistance.

If outcomes are satisfactory to the agency, what about the other side? Future professional relationship; would I be comfortable negotiating with the other person again?

Preservation of workplace relationships is an essential quality of mediation in work environments where employees will continue to work with one another daily, and where conflicts involving the same parties are normal and inevitable.

It is worth noting the views of Edward de Bono on conflicts. De Bono argues that the usual negotiating methods in the West are compromise and consensus. This suggests that both sides give up something in order to gain something. Consensus means staying with that part of the proposal on which every body agrees but this is the lowest common denominator. Instead de Bono puts forward an approach that involves making a map of the conflict 'terrain' and then using lateral thinking to generate alternative solutions.

There are only three roads to conflict resolution:

- **fight/litigate**
- **negotiate/bargain**
- **design a solution.**

The design approach demands looking at the situation from the viewpoint of the third party. The third party is neither judge nor negotiator but a creative designer. This is a refreshing new approach that can be used to settle disputes of any kind. The mediator simply puts de Bono's concept of "triangular thinking" to work.

Table 1

Mediation requires:

1 Negotiation Planning

Authority
Legally relevant facts and applicable law
Party relationship?
Time and cost restraints
Needs and interests

Bottom Line
Alternatives?
Objective Criteria?
Strategy and style

2 Negotiation process

Agenda-setting
Clarification of facts
Stating objectives and opening offers
Evaluating offers and repositioning
Closing

3 Tactics and trouble in negotiation

Tactics and Trouble in Negotiation
Extreme opening demands
Ultimatums
Deadlock
Walking out
Threats
Ability to say "No"
Silence
Lock-in
Double dealing

4 Self evaluation as a negotiator

TABLE 2

Who should deal with conflict?

Lawyers dealing with conflict - Pros

- **decisions based on facts, not guesses**

- **agreements reduced to writing**
- **careful, contextual listening**
- **focus on objective legal standards and facts**
- **agreements reached in stages**
- **complex issues separated into manageable parts**
- **bias towards resolution of conflict through legal processes.**
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Lawyers dealing with conflict - Cons

- **overly formalistic, focus on facts not the larger picture**
- **trouble with relationships, trust**
- **overly competitive**
- **trouble with lateral thinking**
- **lack of knowledge of negotiation theory**
-

Self help exercise

Construct a list of the pros and cons of a real estate agent dealing with conflict within his/her own office.

Self help exercise

You can construct role plays with fellow employees or friends or family. They can be constructed so as to reflect past conflict situations actually experienced in a real estate agency. Of course with names and events altered to make the people and places unrecognizable.

The need to preserve workplace relationships

The successful mediator should not only emphasize collaborative dispute resolution, but also focus on preserving workplace relationships. Preservation of workplace relationships is an essential quality of mediation in work environments where employees will continue to work with one another daily, and where conflicts involving the same parties are natural and can be expected to occur again.

Example where the agent must follow procedures according to law

Resolving rehabilitation disputes - Workcover (NSW)

Rehabilitation disputes which cannot be resolved by mediation in the workplace may be referred to a rehabilitation mediation officer at WorkCover.

Under NSW law employers are required to establish workplace rehabilitation programs containing policies and procedures to assist injured workers to return to work. Small employers (for example, those with no more than 20 workers) may do this by EITHER adopting the standard program above OR preparing their own program which contains at least the commitments and procedures set out in the standard program.

Advice for workers

Every worker shall:

- **take reasonable care in the performance of work so as to prevent injuries to self and others;**
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- **cooperate with the employer to enable rehabilitation obligations imposed by the Workers Compensation Act 1987 to be met;**
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- **cooperate in reasonable workplace changes designed to assist in the rehabilitation of fellow workers; and**
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- **notify the employer of an injury as soon as possible.**
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Each worker who sustains an injury shall have the choice of treating doctor and of accredited rehabilitation provider, and access to an interpreter where necessary. Participation by an injured worker in rehabilitation is voluntary, but non-participation may result in reduced weekly benefits.

Appendix a - case studies

Case study 1 - negotiation

Report on the effectiveness of the process

Briefly describe the process and course of events as you were engaged in it. Relate your experience to the recognised "ideal" elements and steps of the process:

My aim was to follow the "ideal" steps of negotiation. I planned to open by setting an agenda and trying to develop a friendly atmosphere by agreeing on elements we needed to discuss.

My plan was to reach further agreement by clarifying facts in issue. I had hoped that starting with mutual agreement would provide a good basis upon which we could co-operate and use problem-solving methods to settle our dispute.

Everything went according to plan, and we had mutual agreement and a cooperative atmosphere. This existed until we began stating our clients' extremely strong legal positions which turned our negotiation from a problem-solving to competitive style. Our offers, evaluation of offers and counter-offers were then rather competitive and I presume that if the negotiation had been real, the process would take an extremely long period of time.

Describe your reactions (thoughts, feelings) to being engaged in the process

During the first stages of the negotiation when we were setting the agenda and agreeing on facts I felt calm and confident. I believed we would reach an agreement which would benefit both parties and preserve their relationship. When my partner first became aggressive and started stating the strength of our client's case in the event of litigation, my thoughts and feelings changed.

I followed her lead and began to declare that my client had a greater asset pool on which to draw if litigation was necessary and could prolong the process indefinitely which could financially destroy our opponent's small local business. This increase in competitive aggression on my part changed the nature of the process and dampened my hopes of reaching a mutually beneficial settlement.

Looking back, would you have done anything differently while engaging in this process, and if so, why?

I would not have changed to a competitive style. The competitive style my partner and I adopted slowed down our rate of progress and would in turn increase the time and cost to our clients. I also believe the problem-solving and cooperative styles are well
suited to this type of dispute because litigation in this situation will probably result in a *lose/lose* situation. This is because our opponent will probably end up with the clause being declared unreasonable which affects many of their contracts, and our side will be financially drained and have difficulty starting his business.

Give your view of what a lawyer can contribute to the success of this process in resolving disputes:

The negotiator can research their clients I legal position and predict a likely outcome if the dispute had to be litigated. This influences the parties' bottom line. Other negotiators could present their clients' case equally well in all other aspects, but will be unable to predict likely results of litigation and thus their bottom line would be less accurate.

What do you see as the strengths and weaknesses of this process for resolving disputes? Does this mean that the process is better suited to certain kinds of disputes?

Obvious strengths of negotiation include its speed, cost, and ability to maintain the parties' relationship. more importantly, its flexibility is a strength because parties can achieve a range of outcomes which are not available with litigation. In this situation an option such as referring the opposition's counselling clients to our client in return for his placement clients was available. This was available not simply because of the flexibility of negotiation compared with litigation, but also because there is an ability to maintain a professional relationship.

Weaknesses include the fact that the costs will be very high if negotiation fails and litigation must be commenced, weaknesses in your clients' case may be exposed and used in litigation, and that some parties refuse to compromise or reach agreement.

The process is suited to the kinds of disputes where parties must maintain a relationship, or need flexible outcomes which the adversarial court system can't provide. It is also suited to disputes where parties want a fast agreement. Some disputes where the person may wish to "punish" the other person (eg. a divorce settlement) are unsuited to negotiation because bad feeling may exist which could prevent compromise.

Do you have any other observations or comments you would like to make? If so, please use the space below.

Actually participating in the process on a "one on one ' situation without the embarrassment of being watched by the class, enabled me to learn with which style of negotiation I felt more comfortable and produced the best results. it would also be a good idea if we were randomly paired and negotiated against those whom we don't know to simulate negotiation in reality..

Case study 2

Briefly describe the process and course of events as you engaged in it. Relate your experience to the recognised "ideal" elements and steps of the process:

Firstly, the parties firstly introduced themselves to each other.
Secondly, M (the mediator) explained his role, what was expected of the parties, and how the mediation process was going to operate.

He failed to ask each party whether they had authority to settle the dispute. M gave us the opportunity to ask any questions at this stage. I believe M made a good "introduction' as each party knew what to expect and what was expected of them.

Secondly, C, representing the computer company, made his opening presentation. He explained how some problems did exist and how he wanted those resolved. He explained the importance of finding a win-win resolution which would suit the needs of both parties.

From this opening statement I felt fairly confident that a resolution could be made.

Thirdly, I made my presentation. I explained the problems the company had experienced with the computers, and how three issues needed to be resolved, those

being; lost profits, inadequate training and goods not being delivered on time. I re-iterated my intention to mediate the dispute rather than litigate.

Fourthly, M attempted to identify areas of agreement between the parties. The first issue was whether the training required under the contract had been provided. Initially C did not accept that the training had not been provided. However after repeated questioning by M he did. Both parties agreed on a broad outline as to what further training would be provided. C also accepted we may have lost some profits as a result of the computers not working properly.

I accepted that the required payment had not been made.

Fifth, the differences between the parties were communicated. I requested that we be reimbursed for our lost profits from the next payment. This was not accepted by C who demanded the immediate payment required by the contract..

Both parties then made offers as to how to resolve the dispute. (These will be discussed in the next report). Both parties took notes and said they would examine the offers and an appointment for another mediation meeting was made. IN my opinion the meeting had been successful in identifying issues and allowing each party
the opportunity to express how the dispute should be resolved.

The differences between the parties was not that great, and hopefully a resolution can be made at the next meeting.

Describe your reactions (thoughts, feelings) to being engaged in the process:

It is difficult to 'let go' of control. In the negotiation process I was in control, to a great degree, of the process. However, with mediation, I always felt this restriction that being the mediator. I felt I lacked control in terms of what issues were discussed and who spoke when. The process was more 'dignified' and lacked to some extent the emotions which were shown in the negotiation process. I believe that these emotions can sometimes help resolve the dispute.

I experienced some difficulties in trying to explain the issues not to C, but to M, the mediator. BY the time I had discussed the issue with C and then reframed the topic so that M could understand it, I felt as though nothing was achieved. It certainly slowed
down the dispute resolution process.

It was important for me to develop a strategy for the mediation process. However, it was even more important to be able to adapt this strategy depending on C's responses to certain questions - for example whether he wanted to continue the contract or not.

If there was more than one party on my team in a mediation process would not enjoy the experience unless that party gave me the authority to speak. Otherwise one can feel they just sit there contributing nothing.

Having taken part on the mediation process I question whether a mediator can truly be neutral. It was apparent that M's feelings towards a party changed if they were unwilling to give a 'straight' answer to one his questions. For example, when M asked C whether the required training was provided he said 'possibly not'- M was seeking a yes or no answer.

Looking back, would you have done anything differently while engaging in this process, and if so, why?

Try harder to identify areas of agreement. Instead we focused on issues which were in dispute. This affected the approach to the mediation. Mind you it was difficult to get C to acknowledge problems such as training

Spend more time in determining the order in which we were to talk about issues. I should have tried to discuss issues such as lost productivity which they could not realty argue with. instead we started on the issue of training, and wasted time as each party tried to say training was not their problem.

I should have spent more time in determining who really was the decision maker on the other side. I automatically I thought it was C as he made the presentation and talked the most. However once it came to resolving issues, C more often than not took Mick's advice or consulted him before a decision was made. Therefore I should have concentrated more on his reactions in regards to the issues and the proposed solutions.

Once I had decided the two or three possible options for resolving the dispute I failed to consider a number of options put forward by C which may have provided for mutual gain.

In discussing resolutions, I failed to insist on objective criteria - for example what would constitute reasonable training. I should have made C focus on one issue at a time. When discussing lost sales etc, (which was an important issue for me) C said this was 'part of business' and went onto another issue. I should have remained focused.

I should have determined between myself and J who would speak when. We interrupted each other's presentations. This not only looked unprofessional but we also contradicted each other in terms of what solutions we were seeking to the problems - for example I stated that we did not want to continue with the contract whereas Jason said we would accept the contract but without the training requirement.

Spend more time prioritising issues - my main issue was getting out of the contract, Jason's was keeping the contract, but getting out of the training aspect. I do not think my objective was reasonable given our 'weak position'.

When the discussions became bogged down, I should have suggested a break, instead we just kept discussing an issue and becoming more entrenched in our respective positions.

Give your view of what a lawyer can contribute to the success of this process in resolving disputes:

My legal representative contributed to the success of the mediation in the following ways:

Positives

My lawyer discussed with beforehand the principles of mediation - so that once the mediation began I knew what to expect

My lawyer provided support encouragement and advice to me when required. This allowed me to identify my needs, interests and the relevant issues

My lawyer helped to prioritise my objectives
My lawyer helped to prepare my opening statement
My lawyer helped to assess the settlement proposals put forward
My lawyer also helped by suggesting settlement options
My lawyer's actions encouraged me to participate in the negotiation process and ultimately the decision making process

Negatives

My lawyer, when discussing the clauses of the contract, 'hijacked' the process, and turned the discussion from a problem solving approach to a more adversarial style, by questioning the 'motives' of the other party in writing such 'wide' exclusion clauses.

As a result there seemed to be a power struggle between M (the mediator) and My lawyer There could develop a situation where the mediator becomes overawed by the lawyer's approach - M didn't. At one stage My lawyer. when he was supposed to be discussing the contract, began 'cross-examining' C - and the process transformed from that of a problem solving approach to a more adversary type.

What do you see as the strengths and weaknesses of this process for resolving disputes?

Does this mean that the process is better suited to certain kinds of disputes?

Strengths

Time Savings - in the length of I hour the parties have made an opening statement, discussed issues, and put forward a number of possible solutions which the parties will take away to examine. Litigation would be a more time consuming process.

Cost Savings - The only costs for the par-ties is that of a lawyer, and time spent preparing material and appearing at mediation. There is no time spent examining legal precedents (this would be required if a legal argument is going to made or to determine the strength of any argument). Less costs associated with the lawyer's and each parties time compared to litigation.

Self Empowerment - by each party being involved in the decision making process the solution is more likely to be a win win situation'. Furthermore, more likely that the resolution will be 'honoured' by the parties. Furthermore, the process is voluntary, and I knew I could 'walk away' at any time.

Confidentially - In using mediation, both parties will have the option of keeping the resolution confidential. C would impose such a condition as this would ensure that his (potential) customers are unaware or any alleged training and product problems associated with his company.

Culture - mediation is culturally neutral. The process can be integrated into another culture- The most obvious example of this would be in the aboriginal community and native title-Reality Test - encourages parties to consider all consequences of particular options and their best and worst alternatives if an agreement is not reached.

Safety Zone - provides a 'safety zone' in which the parties could consider proposals and to offer proposals without fear of commitment or 'loss of face'

Weaknesses

Commitment - a party may simply use the mediation process as a 'fishing expedition' and have no real desire to resolve the dispute- Such a motive mail not always be clear at the start of the mediation process.

Emotions - the parties may be unable to separate their emotions from the issues and prevent a resolution from being reached Parties - where there are a number of people involved in the mediation process there is the problem of ego's. different personalities
and communication styles. and ultimately different objectives. For example I did not want to continue the contract, whereas my lawyer said we did but without the training.

Mediator - Ultimately the success of the process is not solely dependent on the actions of the parties but also the skill of the mediator. If the mediator either dislikes a party or does not understand the problem. the process may fail.

Mediation is best suited to disputes where the parties:

- **have a good business relationship which they wish to preserve - I needed to preserve the relationship to ensure my staff would be properly trained. whereas C needed to minimise the damage caused to his reputation.**
-
- **want control resolution process - both parties desired this control as there were a number of possible solutions to the dispute.**
-
- **want to minimise costs and lost productivity - this was especially true for me due to the training problems being experienced which led to a number of customer problems**
-
- **want the dispute resolved Confidentially - both parties had already suffered damage to their reputation. but C would not have wanted such a dispute (especially the training problems) to become public have a genuine desire to resolve the dispute without public litigation - both parties had realised they had already suffered**
- **financially and did not want to add to the costs.**
-

I would not use mediation as an ADR process where:

a party is unwilling to honour mediation's basic guidelines (eg listening and not interrupting) if one party is 'deficient' in information which would prevent an equitable agreement a party is only using mediation as a 'Fishing expedition' or the party is unable to separate their emotions from the dispute.

Do you have any other observations or comments you would like to make? If so, please use the space below:

I believe the mediation simulations would be more effective if each person was given not only instructions but a 'personality profile'. For example the lawyer could be told to continually interrupt as he wants to take the dispute to litigation (something similar to how Jerome acted). This would make the simulations more realistic and demonstrate how difficult it is for mediators to control the process.

To answer these questions I believe it is appropriate to briefly discuss what other authors say on an issue (theory) before discussing how it relates to the simulation.

A constant concept I have learnt from these exercises is the need to be able to adapt. One can plan what is going to be said, and what offers will be made and accepted, but once the mediation process begins, it is important to always be ready to adapt. Therefore 'lawyer' skills may not be as important as listening and communication skills.

While the theory of mediation suggests in most instances issues can be resolved, the truth is what is resolved ultimately depends on the attitude or the parties.

Case study 3 - mediation

Briefly describe the process and course of events as you engaged in it. Relate your experience to the recognised "ideal" elements and steps of the process:

Having met with my solicitor the previous week, we arrived at the mediation after having decided there were two origins for the problems: the first being the perceived flaws with the software, the second involving objections and complaints about our respective staff. This dichotomy was helpful in formulating our approach because we found more scope for concessions where trainers and personnel were involved but less options to change and withdraw equipment.

G began by making some introductory comments. He then offered the floor to, us and we outlined how we proposed to remedy the situation, whilst keeping some ideas in reserve in case we needed to make further concessions later.

We suggested firstly that Allied place the overdue $250,000 in a trust fund to demonstrate both liquidity and good faith. This money would remain in the fund until such time as a neutral third party determined that the matters in issue were resolved satisfactorily.

Next we offered more intensive training on a one-to-one basis for so long as was deemed necessary. Whilst we acknowledged that Allied had suffered losses, we were unwilling to concede that they were wholly attributable to us. By way of acknowledging this loss we offered, in addition, to the training of staff, to have our own staff (ie, extra staff) work for Allied as additional employees for a time equivalent to half of the money they claimed they had lost through overtime etc. We thought that this idea was better than. monetary compensation because Allied would benefit from our computer literate staff. Lastly, we recognized that the problems were largely the result of poor communication and we proposed a full time "communications officer"; who would liaise with both Allied and CAS and report any problems.

Allied responded in an almost complete about-face from last time and this, in itself, was quite gratifying. They accepted almost all of our suggestions but added that this "communications-officer"; be an independent third party whose wage was jointly

funded. This seemed a good idea and we accepted this. Allied were, however, unwilling to accept our offer of extra staff alone to compensate for their $150,000 loss and after much bargaining and private negotiations with our respective solicitors we settled on a final sum of $45,000 cash and the equivalent of $50,000 in extra staff/overtime.

This process seemed to follow the "ideal" steps as presented in the model mediation.

Describe your reactions (thoughts, feelings) to being engaged in the process:

I think the practice of splitting the mediation into 2 separate sessions worked particularly well and would probably do so in practice. It was well that we had time to digest the other parties' position and reconsider our approach accordingly. Additionally, at our first mediation Allied's side were high spirited in their delivery and appeared quite intractable in their demands. There seemed little hope of resolving the dispute in this climate, however, this mood had passed by the time of the second mediation and they were most conciliatory in style. So had the mediation been only one extended session then I think this bad vibe would have been reflected in their reluctance to negotiate, which in turn might have meant needless litigation.

Looking back, would you have done anything differently while engaging in this process, and if so, why?

The week spent in caucus with my solicitor and the mediator was helpful and necessary but both A and I were confused as to the role the mediator played in this step. G, our mediator, visited us after having consulted the Allied team. Basically we told him how we proposed to respond to Allied's demands but he could not really offer any constructive comment. He explained that his neutral role left him open to accusations of betrayal of trust and prevented him from responding in any helpful way. So his presence really did not add anything to our preparation. Having said that, I was able to recognize that he must have exercised a some form of "reality testing" with Allied's side because nothing else could account for their dramatic turn-around. I therefore assume that G instilled in them some idea of how unreasonable their initial demands were.

In summary then, in future I would prefer to have a clearer idea of what the mediator's role is during this phase of the mediation so we could capitalise on his presence.

Give your view of what a lawyer can contribute to the success of this process in resolving disputes:

A and I agreed between ourselves that she, as my lawyer, would be best suited to negotiating at this stage of the process. I think it was fitting that I, as CAS's executive, led the initial dialogue because CAS's position, their needs and interests were best related first hand. This first phase seemed to be a more personalized step. In the interim both A and I had had the opportunity to reflect upon Allied I s wants and demands and had given much thought to exactly what we would concede and where we must draw the line. Given that this last step really involved bartering and angling for the best possible resolution, we had agreed that a lawyer is probably more practiced and articulate at this kind of dialogue and less inclined to respond to emotive posturing.

I think that it is precisely because they have no interest at stake that a lawyer's objectivity would be useful during this phase. Whilst this objectivity can equally be an impediment in certain scenarios, it is reasonably safe to say that the lawyer's mind will not be clouded by emotive issues and less inclined to be diverted by side issues.

Therefore a lawyer, who is fully apprised of their parties, needs and interests, can weigh the relative merit of the offer against the risks, costs involved and the strength of the case in the event that it proceeded all the way to trial. This may prove invaluable when formulating a BATNA.

On the other hand, the suitability of a lawyer (as either advocate or mediator) could turn on the nature of the dispute. If the dispute involved family/relationship matters then a family counsellor, psychologist or social worker who is well versed in the dynamics of family disputes may be more sensitive to the needs of clients in mediation. In such disputes the issues, needs and positions are generally emotive ones so other professions may be better, equipped to respond appropriately.

What do you see as the strengths and weaknesses of this process for resolving disputes? Does this mean that the process is better suited to certain kinds of disputes?

(These comments are in addition to what I said on this subject in my last paper)

The mere presence of a party at mediation will not necessarily indicate a willingness to settle. The non-binding nature of mediation, whilst being a perceived strength, may at other times prove to be a disadvantage. There remains the danger that a party is using the mediation as a pseudo-interlocutory step, to discover more about the other side's case and try and gauge their weaknesses

This is not only antithetical to the spirit of mediation, it also frustrates one of the main aims of ADR as being a less expensive way to resolve disputes.

Mediation, like any ADR process, is to a large extent dependent on the idiosyncrasies of the parties themselves. Invariably there will be times when a party is so convinced of their position that they will be unable to accept another point of view. For such people and on such occasions mediation will be a waste of time and money because the dynamics of the dispute are such that it is destined for the litigation process anyway.

It seems to me that mediation is best suited to disputes where there has not been any overt wrong doing by either party and thence no 'stand-out' legal causes of action. Where an issue in dispute can be regarded differently from a range of perspectives then it is unlikely that litigation will add any clarity, and indeed it may subtract.

In disputes where an ongoing relationship is contemplated then litigation should be avoided if possible. There will also be disputes where the issues in contention are not resolvable by the traditional legal remedies of damages, injunction or specific performance. These disputes require lateral thinking and they will not find it in a court room.

Do you have any other observations or comments you would like to make? If so, please use the space below.

As I mentioned in a previous simulation, I would prefer if it was made clear that, there was little latitude to add to the facts given in the scenario. For the sake of narrative completeness the tendency is to embroider the facts. In this instance Allied related certain things as "facts"; which were so clearly at odds I with our facts that they could only be fiction. At such times it is difficult to know how to respond.

APPENDIX B

DISPUTES ARISING THROUGH ETHNIC DIFFERENCES EXAMPLE DEALING WITH JAPANES COMPANIES

Disputes in some form or other seem to be an unavoidable part of most business relationships, and those between Japanese and non-Japanese companies are no exception. In dealing with Japanese companies, however, it is important never to lose sight of the differing attitudes towards disputes. It is also important to avoid letting problems get out of hand to the point of becoming impossible to solve.

When asked to give their insight on the main causes for disputes in all types of business relationships, Japanese and non-Japanese business people generally agree on the main issues to be dealt with. Broadly speaking, they cover:

- **a lack of efficient communications between partners**
- **different objectives for a single venture**
- **benign neglect on the part of one partner.**

Closer examination of these issues highlights the differing perceptions of what is considered to be acceptable and fair.

Communications: A Multi-Level Affair

The structure of many Japanese corporations, in particular the larger public companies, creates an intricate hierarchy that oversees and manages most major decisions. Understanding this hierarchy and working within it is an important key to achieving good communications. Foreign companies tend to think that proper communications at the highest level, for example between company presidents, is enough to ensure the smooth flow of negotiations and business. This disregards the fact that presidents of Japanese companies may wield power quite differently from their counterparts abroad, and that the president's cooperation alone is insufficient.

A thorough understanding of the structure of the Japanese company and an effort to communicate with management at all levels are likely to yield better results.

The gulf between the long-term approach of Japanese companies and the short-term view of many overseas companies is a familiar one, and will not be rehashed here. There is one element of this problem, however, that directly affects the establishment of effective communications between business partners. Many managers in Western countries, in particular the US, are compensated according to fairly short-term time frames for achieving objectives. As a result, there is a tendency for some foreign companies to move their people around if a business relationship is not productive quickly, and the Japanese side is forced to deal with the ever-changing face of its overseas partner.

In order to maximize good communications, making a conscious effort to locate a Japanese partner with a similar corporate culture can be very effective. For instance, a family-owned business with decades or centuries of tradition behind it is likely to

find it easier to communicate with a similar company in Japan. An example is a recent sales agreement between a Canadian family-owned brewery and a Japanese food wholesaler/importer owned by the same family for over 250 years. Despite the geographical and cultural distance between the two, basic values were similar and negotiations to set up the venture went remarkably smoothly. On the other hand, joining an old-fashioned, traditionally minded Japanese company with a brash, young foreign company might be a recipe for trouble.

Aside from the quality of communications, it is also important to consider the frequency of contact. Putting forward a proposal or idea and then not following up promptly may indicate a lack of real interest or commitment. This sort of problem is compounded by physical distance when negotiations are across borders. By keeping a steady stream of communications in the form of memos, materials, miscellaneous information and agendas for up-coming meetings, a foreign company can make clear the extent of its commitment to the success of the negotiations. In turn, any communication from the Japanese side should receive an immediate response to indicate that the matter is being pursued. Rather like the immediate greeting of welcome in a Japanese store even when clerks are busy serving other customers, it is an indication of awareness and impending action.

The importance of this aspect of communications cannot be overstressed. Legal jargon, in particular, often is difficult to understand even for native speakers. In the words of one Japanese executive, who is fluent in English having been to business school in the United States: "Don't ignore the language problem. Even when the other side seems to understand English, you must be very, very careful."

An Eye for Detail

A pleasant personality and manner are important in communications. But another key factor in working with Japanese companies is to understand their liking for thoroughness. The initial process of getting negotiations under way often is laborious since Japanese companies like to have as much information as possible before coming to a decision. In the words of one foreigner with several years' experience in helping Japanese companies in M&A negotiations: "Don't begrudge the time spent in the foothills. There is a mania for information and you are expected to have valid answers, in terms of accurate facts and figures, for every question. But once the momentum has built up, the pace speeds up considerably and hitches, whether small or big, can be dealt with quickly."

A foreign lawyer working in Japan commented that a draft document should not be presented to a Japanese client, and that everything should be checked thoroughly, even for typing errors. "You have to be prepared to explore patiently even unlikely and seemingly irrelevant contingencies in great detail. Although the contracts are vague, the discussions themselves are very detailed."

The Dangers of Hidden Agendas

To say that having strong common goals is one of the most basic requirements in a business relationship is stating the obvious. However, a lack of strong common goals appears to be one of the biggest problems in joint ventures. Being candid about aims, immediate goals and long-term objectives at the negotiating stage ensures that the two partners know exactly what they are looking for.

Different perceptions of time are a particular danger. At the beginning of a relationship, for example, the Japanese partner may declare that achieving set goals will take a certain amount of time. The Japanese company then proceeds, believing it

has obtained the understanding and approval of the foreign partner, only to have the foreign partner walk out after a short time because of the lack of quick financial results. It is vital to be clear on commitments in terms of the time required to achieve goals.

Occasionally, hidden agendas manifest themselves only after years of successful business. One partner may experience dramatic changes within its home market through a changing environment or increased competition, and the policy on the joint venture or business relationship with a Japanese partner may change dramatically. Expectations are revised and may no longer be compatible with original agreements.

A change in ownership or management also can affect the agendas of foreign partners. Even when there are shuffles in management and personnel, Japanese companies often keep the same general direction. But this is not always the case outside Japan. One notorious case of "divorce" between a Japanese and a U.S. company came about following the arrival of a new marketing team at the U.S. partner. The team concluded that the performance level which seemed satisfactory to the Japanese partner made little effort to challenge a potentially huge market. This resulted in a communication breakdown and an eventual walking away from the venture.

If there are genuine concerns on the part of the foreign company that something might go wrong, these concerns should be voiced to the Japanese side so that they can be addressed rather than left to develop into a problem later. At times like these good use can be made of lawyers, who are expected to ask the indiscreet questions.

One reason for hidden agendas, according to foreign business people with long years of experience in Japan, often is the tendency of foreign companies to be overwhelmed by the myth of Japan's economic invincibility. Since the publication of Ezra Vogel's book *Japan as Number One* in the late 1970s, many people have perceived Japan as a country with an almost magical ability to succeed in business, whatever the area. Thus, the Japanese appear to be a nation of unbeatable competitors and terrifying potential partners.

Benign Neglect and Long-Term Objectives

In the food business, there is a well-known, long-standing joint venture between a Japanese and Western company. The joint venture was set up many years ago, and has operated very successfully however, from the beginning, it has been run almost exclusively by the Japanese partner. The foreign company initially provided its technology, signed agreements and then maintained a low profile, supplying no more than one person at any time to manage its interests within the venture. Fifteen years later, it "awoke" to realize that the joint venture had become the true child of its one active parent, and nothing more than a source of dividends for the foreign partner.

This seems to happen relatively often, and many foreign partners in a joint venture with a Japanese company do not send a director, or lower-ranked managerial and technical staff, to Japan on a permanent basis. On the other hand, the large number of Japanese managers at any type of joint venture outside Japan often is a source of amusement (or bemusement) for locals but ensures that everyone knows what is going on. Despite the obvious expense and effort involved, this approach at least ensures that both partners are fully aware of the directions being taken as well as the corporate culture being developed in their "child" company.

Striking the right balance between benign neglect and overinvolvement often is difficult. When a relationship is based in Japan, there is no doubt that the Japanese

partner is more familiar with the territory and local business practices, and should have considerable weight in making the final decisions in areas such as marketing and distribution. This does not mean, however, that the foreign partner should leave it all in the hands of the Japanese partner. Here, too, the quality of communications is important since Japanese companies have a tendency to think that foreigners will have difficulty in understanding local business practice, and so sometimes do not attempt to explain.

As is clear from the above, an imbalance in the relationship - be it in the nature of the two companies involved, their history, management style or goals - is one of the main pitfalls in relationships between Japanese and non-Japanese companies. The problem can be compounded by inadequate preparation and insufficient work in building up efficient communications at every level..

Sociological aspects of the workplace - Japan

The tremendous changes that have occurred in Japan over the past several years have had an effect on some of the more well-known characteristics of the Japanese employment system - including lifetime employment, seniority-based promotion, and annual wage increases. Although these features continue to exist at certain companies, they are being increasingly recognized as no longer viable in the face of new economic and social realities.

Socializing

Japanese society places much more importance on constant and intensive interaction in business relationships than do many other societies. As previously mentioned, most large Japanese companies emphasize long-term business and employment relationships. Reflecting these priorities, the workday of a typical male Japanese white-collar employee, or sarariman (i.e., "salary man"), is on the average much longer than those of his counterparts in other nations. A substantial part of this time is spent cultivating existing relationships and establishing new ties. Developing healthy and stable relationships, then, both within and outside the company is one of the essential ingredients of success.

Employers in Japan are expected to be intimately concerned with the social lives and welfare of their employees. To develop closer personal relationships between managers and subordinates, frequent informal drinking sessions are held after normal working hours. These after-working-hour gatherings, however, are becoming somewhat less common as workers are placing more value on their individual freedom and on spending more time with their families. Parties are held at fixed times of the year, such as New Year's, and for special events, such as a wedding or retirement. Company trips to resorts or even overseas are another common way of promoting good relationships within the workplace.

Japanese business people are also expected to spend a considerable amount of time and money entertaining and being entertained by clients. Unlike in the United States, where a dinner or cocktail party at one's home is the norm, entertainment in Japan invariably takes the form of going out to restaurants, bars, and nightclubs. As a result, a sizable service sector has developed to cater to the entertainment needs of business people. When in Japan on business, one may expect a good deal of late-night socializing with Japanese business people. It should be noted that the spouses of Japanese businessmen do not, for the most part, participate in these activities.

Women in the workplace - Japan

The business world in Japan is the domain of men, reflecting a male/female dichotomy that stills exists throughout Japanese society. Nevertheless, there has been a large-scale movement of women of all ages into the job market in recent years, and the trend toward equality of employment opportunities is gathering momentum. In 1986, the Japanese legislature passed an equal employment opportunity act designed to ensure equality of the sexes in the workplace.

Reflecting changing values in Japan, a rising number of highly educated women in Japan are choosing to develop a professional career. This new type of women, dubbed kyaria women (i.e., "career women") by the Japanese, has begun to flourish, principally in financial and other service industries. Although the large number of foreign companies with operations in Japan has been a major source of employment, these women remain a vastly underdeveloped and potentially valuable source of dedicated and high-quality labor.

A noteworthy trend is the growing number of Japanese women choosing to reenter the work force after they have children. In response to this trend, and to help lessen the burdens associated with raising infants, the Japanese government passed a law in 1992 mandating that companies provide their female employees with a one-year maternity leave.

The Japanese business community has also grown more accustomed to dealing with expatriate female executives. Until recently, Japanese businessmen had very little exposure to women in top-level positions, but with the expansion of Japanese industries overseas and the influx of foreign companies into Japan, such experiences have become more commonplace.

APPENDIX C - CULTURAL EXAMPLE OF ALTERNATIVE DISPUTE RESOLUTION

EAXMPLE - Aboriginal Alternative Dispute Resolution
In Western Australia.

Objective: To reduce the incidence of Aboriginal people's involvement with the Criminal Justice System by providing an effective and culturally appropriate form of dispute resolution which includes addressing complex and sometimes chronic inter-family and interpersonal feuding affecting Aboriginal people.

The service provides a diverse range of processes as alternatives to litigation for the resolution of disputes. These processes include mediation , conciliation, negotiation and arbitration directed toward helping people to reach voluntary agreement or settlements.

OVERVIEW

The Aboriginal Alternative Dispute Resolution Service (AADRS) intends to expand case management services and community awareness, education and training programs.

During 1994/95 the AADRS successfully expanded its service to the Kimberley and Murchison regions of WA. The Service intervened in two serious disputes in the Kimberley region with the co-operation and endorsement of the Court, Community Corrections and the Police Department. The AADRS provided a practical approach to

facilitating peace and decreasing levels of violence between the disputing parties. An indication of the commitment to the AADRS was the provision of air-fares by one community to help meet the cost of intervention, as well as financial assistance from other program areas of Government.

The AADRS continued its on-going case management in the south-west and metropolitan areas and has expanded awareness of the AADRS Service across Western Australia through its community networks.

Throughout the year there have been increased referrals from sources such as the Police , Courts, HomesWest and Community Corrections. Also during the year there has been ongoing consultancy and liaison between the AADRS and the NSW Community Justice Centre Koori Mediation initiative (an Aboriginal focused pilot program with similar objectives). There has also been liaison between the AADRS and
the National Native Title Tribunal in assisting in the development of mediation skills and cultural awareness for their staff.

Assessment
Simulation exercises

These exercises are designed to give students some experience of selected disputing processes. In addition they are intended to encourage students to reflect on their personal reactions to the processes and more generally on their role within the framework of different methods of resolving disputes.

Each group will generally take a different role in the simulated dispute presented and will receive different background information and instructions.

You should:

1 analyse the dispute, the party's position, rights and interests within it and planning to engage in the dispute process being simulated.

You should make notes of these matters.

The objective of the report is to encourage you to reflect critically on the disputing processes observed, to record their perceptions and reactions to those processes and to encourage thinking concerning the proper role of the lawyer in those processes.

Reports will accordingly take the form of answers to the following questions:

- **What are the apparent strengths and weaknesses of this form of dispute processing? You should employ various criteria for judging the process such as speed, cost, responsiveness to parties' needs and ability to secure a just result.**
- **What were my reactions, emotionally and intellectually to the process observed or participated in? You should be candid about their feelings and thoughts which formed as a result of watching or acting in the process.**
- **How do I see my role in the process? How, as a member of staff, might I have acted differently to those I observed or, with hindsight how I myself acted in order to better contribute to the success of the process?**

Students should reflect on how they might best contribute to the process and consider changes in behaviour they might make to accomplish this.

The report should:

- **Use of specific appropriate examples from the process observed in support of statements made.**
- **Demonstration of knowledge of accepted elements of the processes observed and of expected behaviours.**
- **Candidness about reactions to the process and demonstrated openness to change of views or behaviours.**

Disputing process report

Briefly describe the process and course of events as you engaged in it. Relate your experience to the recognised elements and steps of the process:

Describe your reactions (thoughts, feelings) to being engaged in the process.

Looking back, would you have done anything differently while engaging in this process, and if so, why?

Give your view of where you can contribute to the success of this process in resolving disputes.

What do you see as the strengths and weaknesses of this process for resolving disputes? Does this mean that the process is better suited to certain kinds of disputes?