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Creating an appropriate dispute resolution action plan



Toronto arbitrator [Marvin J. Huberman](#) recently spoke at an ADR Institute of Ontario (ADRIO) event, sharing tips and strategies for devising an “Appropriate Dispute Resolution” action plan.

Huberman, who takes a systems approach to dispute resolution, presented the crowd with a hypothetical case study and walked them through how to figure out the appropriate dispute process by creating an action plan.

The action plan is comprised of three main parts: strategy, alignment and implementation.

Strategy, the first component, is defined as how to get someone from A to B. “In other words, how to get from the current situation to the proposed situation within the existing constraints of time, money and other resources,” he says. “Two questions you need to answer are: what is the appropriate dispute resolution process, and how can you succeed or win? I use both words deliberately — it’s not always a win-win situation we’re looking for. Success can be defined in other ways.”

He says that in order to figure out how to get from A to B, you need to define the problem, understand what the client’s goals are, and then look at the costs and benefits of each option.

When it comes to figuring out what the goals or interests of the client are, it’s not enough to ask what they want, he says.

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“Instead of asking what a person wants, it’s asking why do you want what you say you want. Why is that important to you? You have to probe that,” Huberman says. “Once you understand what the problem is and what the goals are, then you can take the third step of figuring out the best option.”

ADR options can include face-to-face negotiation, mediation, combination mediation/arbitration, mediation and last offer arbitration, traditional arbitration or trial.

Once you have determined the appropriate option, the next phase of the plan involves aligning the interests of those involved in the dispute.

“Stereoscopic alignment of interests to me is the key to success in any of the dispute resolution processes. Whether it’s negotiation, mediation, arbitration or trial, the idea is that you have to get the listener to want to do what you are asking,” he says.

“In advocacy and mediation, you have to get the person opposite you to want to do what you want them to do. Once you get the person to want to do what you want them to do, then you’re going to have a stereoscopic alignment of interests and ideally settle on one or more of the issues.”

He then ran the crowd through steps for aligning interests, which includes the art of persuasion, figuring out the barriers to settlement, exploring options for mutual gain, and discussing the best alternative to a negotiated agreement or a plan B.

Lastly, says Huberman, you will implement the action plan.

To watch the presentation in its entirety, [click here](#).

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