

Culture, Identity and the Skilled Practitioner
Cairo, March 21, 2006

**“Online Dispute Resolution:
Culture, Identity and the Skilled Practitioner”**

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Good afternoon and thank you for the opportunity to address this pre-conference course. I am very pleased to be here today, to share some of my thoughts and experiences with Online Dispute Resolution. I was very pleased to have received the kind invitation to address this course from Ethan Katsh and Mohamed Wahib, and I would like to express my sincere thanks to them for extending me that courtesy.

I would like to make this presentation as interactive and free flowing as possible, so I would encourage you to ask questions, or to challenge me, at any time during my talk.

Online Dispute Resolution is a new, interesting, and exciting field of work. As the Ombudsman who works with the organization which oversees much of the technical organization of the Internet, and in particular, the Domain Name System, I find it to be particularly satisfying to meet and have the opportunity to discuss ODR with so many colleagues. Technology has provided us with a new and excellent vehicle to resolve disputes; to discuss; to complain; and to grow as organizations, legal frameworks, and societies.

ODR provides us, as conflict managers, with the opportunity to work with parties who are in dispute, and who may be in any location across the globe, or as near as in the same office. ODR enables us to link disputants across all hours of day or night, in synchronous or asynchronous discussion. I have often told my Board of Directors that

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just because they can send me an email 24 hours a day; it doesn't mean that I am going to get out of bed to type a reply!

In my own case, I use ODR to complete my work as an Ombudsman, which is a different role than that of a mediator, negotiator, or online judge would undertake. Negotiation, mediation, and the finding of the causes of disputes are all tools that I use to bring resolution to complaints which come to my Office. Probably 99% of the communication I have with parties in a dispute, or who wish to complain about my organization, is done through electronic means. My constituency is spread across the globe, and anyone, anywhere, who is attached to the internet, can make a complaint to me.

As I thought of a topic to bring to this group, I reflected back on my own experiences as an online dispute resolver, and tried to think of those lessons, or issues, which in my mind, set the work that I do apart from my colleagues who conduct Ombudsmanship in more traditional ways.

I think that there were a couple of things that stood out as I did this reflection, and those became the basis for the topic of today's presentation. While I hope that at the end of this presentation you will have found this talk to have been educational, I also hope that by putting my thoughts on paper that I will have enriched my own knowledge about what I do for a living.

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The first reflection is that my work is pretty well unique in the world. After doing this work for well over a year, I am unaware of another Ombudsman whose audience covers all 24 time zones; all languages and cultures of the world; all possible perceptions of conflict and disputes and ways to resolve them; all economic and political systems; and that all of this work is done through email based communication.

To begin, I want to briefly go through the four basic roles that I see ODR practitioners fulfilling. They may act as mediators on the net. People in conflict with another party may come to them and say, "Can you help me to negotiate with the person I am in conflict with?" The mediator is somewhat passive in the process, in that they are uniquely a conduit for the flow of communication between the parties, and not at all a protagonist.

Second, there is the role of conflict manager. This role kicks in when one party says that there is a problem, and requests the neutral third to assist in keeping the issue from escalating. The question posed by the parties to the practitioner might be, "Look, we have a relationship, and there is a problem, and we want you to help us manage it before it gets worse."

Third, there is the role of conflict resolver. The conflict resolver takes on his role when the parties say, "We were not able to manage the conflicts between us, or did not come to you in time to manage those conflicts, and there has now been a meaningful change to our relationship which we need the help of a third party to resolve." This optic may

not be held by both parties simultaneously. For example, your bank because it is a big institution may think it simply needs to *manage* an issue when it overdraws your account, but to you it is a conflict that needs to be *resolved*, rather than be *managed* because there has been a fundamental change in your relationship with the bank.

Fourth, there is the role of the internet based Ombudsman, not the Ombudsman for the Internet, but Ombuds who are practitioners on the net. In this final scenario the parties would come to the Ombudsman and ask the following: "We have a conflict between us because one of us feels unfairly treated by the other. Can you work with us, evaluate this situation, and if one of us was treated unfairly, can you help us work out a solution that we all can work with and that is fair?"

In my role as an ODR practitioner, I work in these latter three areas: those of conflict manager, conflict resolver, and Ombudsman. For you, as ODR practitioners, I hope that those questions, framed in this manner, will have defined what your own role is, or will be.

After saying all of that, it may be worthwhile to spend a minute or two defining what an Ombudsman is, and why it is a different dispute resolution mechanism than negotiation or mediation, as I can imagine that the majority of you will be negotiators or mediators. We can talk about what makes being an online Ombuds different than doing dispute resolution or Ombudsmanship by traditional means, and finally we may talk about the

core of my presentation; the role that identity, culture, and language all take in resolving disputes.

The Canadian Forum of Ombudsman has put forward the following definition:

An ombudsman is an independent, objective investigator of people's complaints against government agencies and other organizations, both public and private sectors. After a fair, thorough review, the ombudsman decides if the complaint is justified and makes recommendations to the organization in order to resolve the problem.¹

That's a pretty accurate definition, but I would have the tendency to also say that an important part of an Ombudsman's work is to also conduct Alternative Dispute Resolution with complaints, and that many issues which are brought to an Ombudsman's attention are dealt with and resolved before any formal recommendations are brought forward.

So if an Ombudsman is an independent reviewer of facts, who uses ADR and investigation as important tools, and who has the power to make recommendations when investigation shows complaints to be founded and when ADR fails; why is an online Ombudsman different?

I would say that the primary difference is the manner in which the work is conducted. Most Ombudsman work with a well defined customer base, which can be linked to

¹ http://www.ombudsmanforum.ca/whatis_e.asp

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geography, such as a state, province, or country Ombudsman; to members of an institution, such as students in a university, or employees in a company; or by customers of particular institutions such as banks. In each of these cases, by either proximity or affiliation, consumers can reach the Ombudsman in the same location or time zone, and they can make arrangements to speak by telephone, or to appear in person for an interview.

With my office, the degree of affiliation is quite broad, and relates narrowly to anyone who owns a domain name, to widely, anyone who has access to the internet. As I am a sole practitioner, it is simply impossible for me to physically meet every complainant from across the globe, nor to give 24 hour service to be able to speak with everyone from every time zone. It is also impossible for me to speak, read, and write every potential language or dialect that a complaint may come in.

The one tie that does bind my consumer base together is its use of the internet. Evidently if you don't use the internet, you won't have much need for its Ombudsman (except, perhaps to complain that you don't have it!).

Therefore, consumers can use the internet as a primary and convenient method of communicating with me.

The second reflection I have, and wish to share with the group, is how does a middle aged white man from Canada make himself available as a fair, independent and

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impartial conflict resolver? How can you, as online dispute practitioners, be effective in dealing with the myriad of cultures, languages, and personalities that dictate how conflict or disputes are dealt with? What are the differences in approaching disputes that really mess things up if you don't consider them?

I am going to self disclose a couple of pieces of information about myself, not only, hopefully to add credibility to the thoughts that I bring forward, but also to bring you some perspective on how I have developed these thoughts, and to what my own lenses are as I view the world.

As you can see, I am a moderately young, white, English speaking man, and I have already told you that I am Canadian. I have an interest in academics, as I have a Masters Degree in Conflict Analysis and Management, and teach an undergraduate course at a Canadian university. I have also worked in the international environment, as a civilian officer on a United Nations Peace Keeping mission. So my thoughts come not only from a theoretical background, but also as a practitioner in the field.

The question becomes whether, and how, I deal with all of my own circumstances of identity to provide fair and relevant service to a global community. I think the starting place for me has been the recognition of my own identity and the development of an understanding of how that identity can be used appropriately in dealing with complaints. I look at the world with my own well developed paradigms. I have certain belief systems that dictate to me what fairness and justice are, and my Board of Directors has seen fit

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to accept those belief systems as a barometer to help them determine if the organization is being fair to its community.

So what are the challenges for me in applying my lenses while dealing with a global community? For a long while there was a notion of what I will call “dominant culture guilt” which had a run at academic thought in this area. Dominant culture can have many appearances and sensations. There are some who would say that at home in Canada, I would be a member of the dominant culture, but as I stand here today, apart from my demographic as a male, I would not consider myself to be a member of the dominant culture. Under this dominant culture guilt a practitioner was expected to suspend their own identity and defer to the other party’s culture.

Under this theory, if I were trying to negotiate with a person from the Orient, I would be expected to adopt an Oriental approach and methodology to resolving our differences.

I think that this was a dangerous way of conducting dispute resolution. For someone like myself, it would be an impossibility to develop a deep enough knowledge and understanding of another culture's beliefs, language and idioms, traditions, and history to be able properly try to resolve disputes. After being in this beautiful part of the world for the past several days, it would be foolish for me to begin to negotiate like an Arab. Likewise, it would be difficult for you to arrive in a small community in Canada, and resolve disputes as a local.

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The fact that differences exist between cultures does not mean that effective dispute resolution cannot take place. What is required is a foundation based on a mutual agreement to respect each other, and to value our differences. If I were to ask you to resolve a dispute with me, as if you were Canadian, you would likely see the process as being cold, unemotional, and boring. If I were asked to resolve a dispute as a participant in another culture, I would likely get lost in the process and become ineffective. However, if we were to negotiate as ourselves and in that process we were to find the common ground between our cultures and our approaches to conflict, then we will be much farther ahead than if one of us gives up our identity.

In a true multi-cultural environment, when the parties meet to resolve disputes, they will not give up their own identities, nor assume those of the other party. What they will do is to seek mutual agreement by recognizing common approaches, common concerns, and best possible outcomes. The Canadian will act as a Canadian does, and the Arab will act as an Arab does; and in that interaction a common and agreeable manner of resolving disputes will emerge. If the Canadian pushes his paradigm as the only way to reach resolution, the process will not likely achieve the best results, with an economy of time. The same would hold true if the Arab enforces his paradigm.

We must recognize that the internet provides us, as practitioners, with an amazing vehicle to enter into true multi-cultural, multi-linguistic, multi-party dispute resolution.

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In online dispute resolution all of the issues that cultural gaps create are made even more pronounced. The first issue is that most communication, as we know, is non-verbal. When we speak with someone face to face we are given a myriad of stimulus beyond the words themselves. We see smiles or frowns; we can see aggressive or protective movements. We can see the other party listening to us, looking for clarification to what we have said.

In a telephone conversation, and in person, we can hear the voice, and intuit meaning to the actual sound of the conversation. We can hear anger or laughter, sarcasm or disbelief, just from the sounds of the voice, even if we don't understand the words.

Dealing with a complainant in a completely email driven environment, with no face to face contact or oral (verbal?) clues, eliminates this important subjective element. With body language and the sound of the voice, we can intuit anger, fear, truth, deception, humour, etc. and thus we can develop our strategies for response. Of course, the advantage is that as a neutral party, you cannot be influenced by these in the negative sense either by over-relying on the implicit, rather than the explicit messaging.

The second issue is the use of language and its interpretation. People have a tendency to speak much more about a subject than they do to write about it. There is a whole science around written statement analysis. The use of language and its meaning changes in context with use and in cultural context. The same set of words from

different writers could have different contexts and meanings, as could the same words from the same writer in different times, and under different circumstances.

For example, in scolding my son, I could tell him that he was going to be in trouble if he didn't do what I wanted him to. This would be a normal part of our routine, and would not likely have great impact upon either one of us. If I read an email from a complainant that said the same thing, "do what I want or you'll be in trouble", I might have a tendency to consider that to be threatening.

We might read the phrase, "I hate you" in correspondence. Does the skilled practitioner know if the writer is being funny, sarcastic, overly familiar, or expressing anger? How does the use of certain words and phrases in our dominant culture impact us when we read them from another culture which may not take the same words to have the same meaning?

Third, there is the question of general literacy levels. While dealing with the wider community, the skilled practitioner must be ever cognizant of the fact that the written language and explanations used have to be understandable and meaningful to the reader. As we know literacy can be a sliding scale in terms of the actual information we receive. We may receive voluminous correspondence from some people about very small matters; and on the other hand, there are some people who because of their writing abilities will only send us the barest amount of information on a serious matter.

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Finally, in the most inclusive sense, an Online Dispute Resolution Practitioner faces a disadvantage if he or she lacks the insight to realize that different cultures approach dispute resolution in different ways. I have seen some very in your face approaches to issues that, by any reasonable standards, were minimal in nature. On the other hand, because of cultural mores, I have also seen other conflicts where there have been much more serious issues to deal with, but where the complainant did not push the substantive issue, and was more interested in developing a relationship of trust with me as a practitioner first.

In different cultures from different complainants, these same issues would likely have been brought to me in different manners. The challenge for the skilled practitioner in respecting a diverse, multicultural world is to understand that those differences exist, and not to impose any “self” related resolution paradigms as a starting point.

As skilled practitioners in Online Dispute Resolution, what advice can I give you to overcome the barriers of non-verbal communication, culture, language, and literacy? The fairest thing I can do after bringing to your attention all of the problems is to give you some benefit of my experience.

I would reflect that the first thing a skilled practitioner would want to do is to develop a good understanding of yourself, and the way that you deal with conflict. Life experience will certainly help with that, and there are a number of self tests such as the Thomas - Kilman and Meyers - Briggs tools which can help you to define your own conflict

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personality. An understanding of your own culture and its conflict paradigms will also help you to define your identity.

Once you have an understanding of your own approach to dealing with conflict then you will be able to see and recognize other's dispute culture.

An important related issue is a warning not to read too much into what may seem to be obvious factors in culture. For example, in my experience, I may see an email complaint for a person from Canada. It may be my instinct to believe that the correspondent will have a similar belief system to me; however, it may be that this person is a new immigrant to Canada with a totally different approach to conflict. On the other hand, I may see another email from Canada, and see that the correspondent has what may be considered an ethnic name and I may therefore believe that this person has a different cultural approach to conflict than I do. However, it may be that this person is a fourth generation Canadian who has exactly the same cultural beliefs.

So the lesson to the skilled practitioner is to allow the people that you are dealing with to approach you with their identities before making any judgements about how they will resolve disputes.

The second bit of advice, after allowing the mutual balance of conflict approaches is to practice active listening in a written form. You may need to rephrase, confirm, and question your participants to accomplish a number of things. You will want to make

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sure that you have clarity in the issues and in the positions. You will want to make sure that you, if possible not only understand the positions, but also the interests of the parties. By conducting this process you will help to ensure clarity in the process. It can be time and energy consuming. I have had files where I have had 80 email exchanges with complainants.

In conducting this interactive process, it is critically important not to read or infer more into the correspondence than the words actually portray. It can be alluring to assume the thoughts and motivations behind the written word, but again, what you will be reading is just a fraction of the whole communication process normally used.

The third suggestion I would have is that you should not be reluctant to allow your own personality to show through. The more that you can exhibit to the parties that you are someone that they can trust and work with, the more they will actually trust you and work with you towards resolution.

The fourth consideration also impacts trust and cooperation. You should be prepared to assist your parties who may be challenged by literacy. This can be accomplished by providing such things as translation services, or by allowing proxy correspondents.

Finally, I encourage you to stay focused on the issues and the process for resolution that you have established. Don't get thrown off by cultural or personal approaches to

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dispute management that may seem aggressive or abrasive. Remember always that the parties have come to you for assistance because of your expertise and ability.

In closing, I want to express my belief that using an online neutral third party as a way of resolving conflict will provide good service to a wide range of community based or consumer centric organizations for years to come. It is practical, fluid, responsive, and cost-effective.

Thank you very much for your kind attention.