

# Collaborative Review

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## The Growing ADR Community: Adapting for Culture, Language and Families Around the Globe

Nancy Cameron, LLB

*This article has been adapted from Nancy Cameron's presentation (the Harry Brown Lecture) delivered at Resolution's annual ADR conference on July 4, 2009.*

In the last 14 months, I have had the immense pleasure of speaking to groups about dispute resolution in general and Collaborative Practice in particular, in the USA, Canada, Switzerland, Ireland, Hong Kong and Australia. I was fortunate to be able to attend the inaugural launch of the French Collaborative Practice group.

I have watched our Collaborative group in Vancouver, which is now ten years old, grow and flourish as an interdisciplinary Collaborative organization, and I have watched some of our lawyers build thriving practices in mediation and Collaborative

Practice, and no longer litigate. Yet in Vancouver, which has a high Asian and East Asian population, members of these communities rarely choose Collaborative Practice.

In the United States, and within the membership of IACP, Collaborative Practice appears to have had very little growth in either the African-American communities or Hispanic communities, both of which make up a large portion of the American population.

And in London, the diversity which was so apparent when I traveled on the Tube was less apparent in the Collaborative Practice groups in England. I was struck, as I traveled on the Tube, that at each stop a recorded voice reminds everyone to "mind the gap." This little phrase percolated around in my brain, as I contemplated: "why this gap, in our practice, and what can we do about it?"

When I first joined IACP ten years ago, there were about 50 members, and my law partner and I were the only members outside of the United States. I guess that means that 4% of the membership was outside of the USA, and none was outside of North America.

Today, IACP has over 3800 members. And while those members hail from 20 different countries, only 7% of the membership is from outside of North America.

In my year as president of IACP, I have spent time mulling over these questions: "How do we adapt dispute resolution processes so they can be of some use in other countries, and within other cultural frameworks? Indeed, is this even wise, or is it a new form of peaceful cultural imperialism?"

While I do not have answers to these questions, I do have some thoughts, and many more questions. My hope is that, through dialogue, we can shine some light on this topic. I am going to try to take these two threads—culture and dispute resolution, and ply them together in the hopes of extending our dialogue about both these important topics.

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## **The First Thread: The Importance of Culture**

Recently, I was in London to deliver the Harry Brown Lecture at Resolution's<sup>1</sup> Annual ADR conference. This conference was held on July 4<sup>th</sup>, my husband's birthday.

My husband, Ron, was born in the USA, and when he was young he lived close to Disneyland. Since the 4<sup>th</sup> of July is American Independence Day, the biggest display of fireworks would light up the evening sky on Ron's birthday. His mother told him that everyone was celebrating his birthday.

When he was seven, he moved to Canada. He was shocked and saddened to discover that his birthday passed like everyone else's, without fireworks.

Just as it is through this lens of culture that we make meaning in our lives, culture also shapes our attitudes about, and our experiences of, almost every aspect of human interaction—from how we celebrate and express joy to how we experience conflict.

At the heart of culture is family. It is through family that we are first introduced to those cultural experiences that literally shape our brain and create the way that we emerge into the greater human family.

When I say that culture literally shapes our brain, the new discoveries about brain plasticity (the way the neuro-connections in the brain change in response to experience) have taught us that our ability to perceive through our senses is honed and winnowed by what we are exposed to. Our brains are actually modified, both physically and functionally, as we learn and practice new skills. Culture is one of the factors that help determine what we can and cannot perceive.

I want to give a simple example of how brain plasticity works. My oldest son is a computer animator. He has been in this field now for about fifteen years.



Because of brain plasticity, the connections within his brain have developed differently from mine. He can see things I can't. If we are looking at an animated work together, he can see minute changes that I can't detect. These changes happen too swiftly for my brain to be able to discern them. However, since he has worked in these small visual increments for so many years, he has developed neural pathways in his brain that allow him to perceive visual images that are outside of my perceptual range.

An auditory example of brain plasticity can be illustrated with a study of Japanese infants. This study showed that, at six months, Japanese babies could distinguish between the letters "l" and "r". Yet, by their first birthday, since there is no "l" sound in the Japanese language, these toddlers had lost the ability to distinguish between "l" and "r". The way the neurons in their brains fired changed because of the particular sounds they were repeatedly exposed to.

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In thinking about the relationship between family and culture, I think about family as similar to the tiny dots of colour used in pointillism and about culture as being akin to an entire Seurat painting. It is within family that our brains are first, quite literally, prepared for our subsequent interactions within our home culture. Then, as we move into a larger orbit outside of our immediate family, our culture continues to shape our brain and our understanding of, including our ways of interaction with, other members of our culturally-specific family. In this way, culture continues to determine what we can and cannot perceive.

Of course, culture is only a part of who and what we are within the human family. The vast majority of our humanity is composed of universal human activities and traits that we all share. It is, however, the signature activities of a culture—those activities that require training and cultural experience—that lead to the development of a new and specialized brain.

I am going to give a few examples here, from my early travels outside of my home culture.

When I was 16, my mother and father decided it would be a good experience for their children to live in another culture. So they packed us up, and we all boarded a slow boat to Japan. The boat took sixteen days to cross the Pacific, during which time we mastered such fundamentals as how to count in Japanese, say "please" and "thank you," and use chopsticks. This in no way prepared me, however, for the culture shock that I would descend into as I tried to settle into our new home in the Japanese Alps and adjust to being the first blonde to ever attend Iiyama Kita Ko. In fact, brain researchers would refer to this not as culture shock, but as brain shock. I believe it was a combination of both culture shock and brain shock. While my mind had its own cultural imperatives that it quite stridently attempted to hold onto, my brain also had developed neural pathways that were consistent with surviving not in a small community in the Japanese Alps, but in a suburban community outside of San Francisco.

When I think about the purely physical, there were ways of being in Japan that, as a foreigner, I seemed incapable of. I could not sit, kneeling back on my feet, as though I were wearing a kimono, for more than five minutes without my feet cramping into numbness and my brain signaling intense pain. And yet, my Japanese friends could sit in this position for hours. Japanese bedding, at the time in this remote country village, consisted of a futon covered by a sheet, seemingly not much bigger than a dishtowel. No fitted sheets there. Accustomed to a certain amount of tossing and turning as I slept, I would invariably end up with the sheet completely tangled about me. The first time I spent the night at a girlfriend's home, I remember watching in awe as she slept motionless, and in the morning her sheet was still smoothly covering the futon.

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This wiring of the brain for certain kinds of movement is fascinating. My first husband was African-American. When, in my early twenties, I was visiting his family, my sister-in-law laughed and told me I danced like a white girl. And though she tried her best to teach me otherwise, the culturally-specific connections deep within my brain of hip-swaying movement and music would never develop in the same way they had for my sister-in-law. I still dance like a white girl.



Although I did not know it at the time, my sorobon (which is a Japanese abacus) instructor in Japan was trying to help me develop new neural pathways as he taught me to use the sorobon. I am certain he did not know this is what he was doing, but he was a good teacher, and he knew what worked and what didn't. My strategy did not work for learning sorobon. Put simply, my strategy was to cheat. He would give me an equation to perform, and instead of moving the beads on the sorobon to figure out the equation, I would quickly do the equation in my head, and move the beads to display the answer. He would slap my hand. He knew, although he would not articulate it in this way, that he was trying to train my brain to calculate in a new way. By creating new neural pathways, the ability to move the beads in a certain way would eventually lead me to be able to perform complex equations I could not do in my head. The fact that I did not successfully master the sorobon was not a reflection on him as a teacher. Rather, it is a sad fact about brain plasticity that the older you get, the less plastic your brain becomes, and so the more difficult it is to create these new neural pathways. In fact, our brain starts pruning away neural connections from birth in order to help us become specialists in those matters most important to us. In adolescence, a massive pruning begins when neurons and synaptic connections that have not been frequently used die.<sup>3</sup> Sorobon was not high on my list, and I did not have the discipline required to create new neural pathways.

This—the cultural specifics imbedded deep within the neural pathways of our brain—is the first ply of this thread: culture and the dispute resolution community.

## The Second Thread: Dispute Resolution

Before I try to ply these two together, I want to speak a bit about my pondering of this question—what is Alternate Dispute Resolution, and why are we still calling it this?

I was listening recently to a discussion on the CBC about a suit that had been brought in a Canadian court. The suit related to a condominium project that was being built by a Canadian company. The condominiums were for a new Israeli settlement in the West Bank. A Canadian academic, responding to a question about whether or not he thought a Canadian court would rule on a dispute framed as a “crime against humanity” commenced in a Canadian court but which was really a dispute, at its heart, between Israel and Palestine, said: “I would prefer they fight it out in court, than lobbing missiles at each other.”

This frame—“fight it out in court rather than lob missiles at each other”—is a basic structural principle behind the rule of law. The rule of law is one of our fundamental organizing concepts. We view the courts as a civilizing influence, as civilization's remedy to escalating strife, armed combat, and indeed to warfare.

And yet, all of us who have been, as they say, in the trenches of the courtroom know that court extends the warfare analogy. Look at any classic legal argument or text, and you will find the warfare lexicon. An example from the forward of our annotated *Rules of Civil Procedure* in British Columbia is this quote from an English Barrister, Sir Jack I.H. Jacob, Q.C., who described court rules as an

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...indispensable guide to wielding the weaponry of civil procedure law. It enables the parties to face each other as adversaries with confidence, to avoid procedural pitfalls, to achieve victory in the clash of the forensic battle...

In thinking about this equation, as radically as court compares to warfare, and I do believe it is a radical improvement over warfare, ADR is similarly radically different from the adversarial process prepared for, and played out within, the court.

The word “alternative,” however, seems to say, “this is just another choice.”

At the risk of being too honest, I will say: I don't believe that the kind of dispute resolution we are endeavouring to engage in is merely an alternative choice.

I believe that, at the heart of our work, we are engaged in deconstructing the polarization of a warfare analysis of conflict.

## The Amygdala, Fear, and the Fight or Flight Response

I am going to detour back to the brain. The amygdala is an almond-shaped portion of the brain that is specialized to react to stimuli and trigger a psychological response. This is often referred to as the fear or “fight-or-flight” response.

When I was 13, my family went backpacking for a week through the mountains and valleys of California. Once we descended into the valleys, my father warned us that we were in rattlesnake territory, and that if we came across one, we needed to be very careful not to move too quickly or suddenly.

I was in the lead, the sun hot on my face. The trail wound

through scrub, low bushes and rocks. It was dry, with that lazy heat that causes the atmosphere to shimmer. I can't remember if I heard the rattlesnake first or saw it first. I do remember that it was curled, with its head held high, ready to strike, its rattles shaking furiously. I immediately turned and ran in the opposite direction as fast as I could. My amygdala had me in action before I could process my father's advice to not make any sudden move.

When we perceive something through our senses, this perception is routed in two ways—straight to the amygdala, but also through the sensory cortex, which evaluates the perception, applies a meaning to it (is this a real or only a perceived threat?), and then resends the modified message to the amygdala. However, the amygdala is not very sophisticated. It has some basic templates (gun, snake, bear) and it reacts more quickly than the sensory cortex. When it reacts, it triggers a physiological response. When we advise people to “take a breath” or “chill” rather than acting immediately, this physically gives time for the sensory cortex to process, and send the moderating messages to the amygdala.

All brains are wired this way, regardless of culture. What we know from what the brain research tells us is that “neurons which fire together, wire together.” The more experience one has with building the neuron connections between the sensory thalamus (which initially receives the sensory input) and the sensory cortex (which interprets, and sends a more nuanced message to the amygdala), the less the amygdala will hijack our reactions. This is why we don't all act like two-year-olds.

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The very fight-or-flight response of the amygdala, this automatic, lower-brain activity, as useful as it is for saving our lives in the face of imminent danger, is not so useful for defining the constructs of conflict resolution. The litigation framework defines conflict from an amygdala perspective. What has been termed alternate dispute resolution, is, I suggest, actually more akin to defining conflict from the perspective of the higher functioning cortexes of the human brain. The higher up in the brain you go, the more complex the functioning becomes. Analyzed from this perspective, “alternative” dispute resolution is more complex and less automatic than the litigation construct. It is through the prefrontal cortex of the brain that

we can create choice and change in life. This is, I believe, the essential premise of the type of dispute resolution we practice.

## **Plying the Threads Together: Culture and Dispute Resolution**

Once we have deconstructed this warfare or fight-or-flight view of conflict, our task is to bring our intensely human attributes to the creation of peace.

We all work with families, assisting them in resolving the most significant conflicts they face. Given that family is the central building block of community, and it is these communities that build into our global community, the work that we do is paramount.

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And yet, when we begin to look at all the particulars that converge into the landscape we work in, there are significant cultural differences. A few of these are language, religion, the legal jurisprudential framework and legal culture itself. Then, when we begin to think about cultural norms, things become much more complicated. Cultural norms differ around emotional expression, attitudes towards independence and interdependence, hierarchies governed by gender, position in the family, race, and the structure of society. Concepts about property, who gets it, who doesn't, how wealth is shared, and how economies are structured are deeply imbedded within the framework of culture. The very centre of our work—conflict—is highly informed by cultural norms.

In those places where Collaborative Practice is flourishing, we have managed to create some depth within each of our communities. This is what I see in my home community, where I receive calls and emails daily from new clients specifically wanting to embrace a supportive, problem-solving model of dispute resolution rather than one which is framed within a clash of adversaries.



When I look at the membership within IACP, I know that curiosity about our dispute resolution processes is growing around the globe, and there is a certain hunger to integrate the basic structures of Collaborative Practice into the cultural fluency of many different communities. How we do this cannot be culture-specific. Rather, it must be done in a way that bridges culture, and that has universal specificity. Our challenge now, as Collaborative Practice spreads into other countries, is to share what we have in common, while at the same time allowing for the practice to be informed by the cultural specifics of each community.

Despite cultural differences, we share many common attributes that shape our humanity, which can contribute to our development as peacebuilding practitioners. I have chosen five, which I believe transcend cultural boundaries.

The brain plasticity research tells us that every sustained activity ever mapped changes the brain. What this means to me, as a dispute resolution practitioner, is that my sustained attention to the detail of this work actually has the potential to change my brain. So as difficult as this work is (even, I suspect, more difficult than learning the proper use of the sorobon), the more dedicated we are to our practice, the more skilled we can become. I use the word “practice” specifically, because it is the daily practice of these skills that create the physical changes in our brain that in turn expand peacebuilding into our lives. We are fortunate indeed to have paid work that has the potential to bring, however incrementally, peace into the world.

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### Five Cornerstones for Building Our Practices

Here are five cornerstones for building our practices, which I believe can be applied in any cultural context.

#### 1. Stay curious

This is my one imperative. Stay curious. Just because I have made it an imperative does not mean I always remember. Curiosity is

the heartbeat of this work we do. It is the attribute that allows us to transcend our cultural differences, as well the gendered lens through which we perceive the world.

Curiosity allows us to check our assumptions, to discover the personal values that inform our clients’ decisions, and that influence everyone’s needs and interests.

When we forget to be curious, we rush to assumption or react too quickly. We may hurry to fill a conversational void that has grown in the room, rather than sit back, quietly curious, and watch what emerges if we remain silent. Curiosity is our friend and ally in this work.

#### 2. Create Safety in the Negotiating Room

The unique attribute Collaborative Practice has to offer clients is the dual promise of a safe negotiating room coupled with lawyer advocacy. Perhaps the most challenging aspect of Collaborative Practice for lawyers is to deliver on this promise.

This is our challenge: clients often come into the negotiating room steeped in fear and anxiety, and ready to step quickly into old, disruptive, patterns of communication. Our job, as Collaborative Practitioners, is to create safety for both parties within the negotiation room.

At the same time, we are obliged to move away from old modes of advocacy and advocate for our clients in a way that does not disrupt the safety of the negotiating room for the other client.

Going back to what we know about the amygdala, part of this work involves being vigilant about not stimulating anyone’s reptilian, fight-or-flight responses. What I mean by being vigilant is that I must be careful not to trigger the other client, my client, the other lawyer, and I need to have enough impulse control not to get triggered myself.

Although this may sound easy, all of us who have done Collaborative cases know it is not as simple as it sounds. In fact, many of our first cases are spent learning that we have no idea what it is that may trigger someone.

There are a few simple rules. Respect. Courtesy. If either client needs to hear bad news, this needs to be delivered by his or her lawyer, not by the spouse’s lawyer. Make certain you prepare well before the four-way meeting with the other lawyer. Try to find out as much as you can, prior to the four-way, about the emotional climate that is likely to come into the room, and about the relative conflict styles of both spouses. Build a good working relationship with the other lawyers with whom you do this work. And by all means, make certain that your client is prepared for the four-way. Follow the four-way meeting with a good debrief, both with your client and with the other lawyer.

These are skills that can be learned. And my next cornerstone, to the extent we can master it, will also help build a safe negotiating room.



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### **3. Be Present**

My new mantra, to help me remember to be present, is: "step away from the amygdala."

This links back to creating safety in the room. Obviously, if I can't moderate the working of my own amygdala, I will not be able to create a safe place in the room for anyone. "Be present" begins with the mediation mandate to "be authentic." I suppose that this dictate, to be authentic, arose because so many of us who learned a mediation model often fell into rote behaviour as we asked such questions as, "tell me more about..." Certainly, if we have to resort to faking authenticity (while inside my head I am secretly fretting about the fact that I have not called my mother in two weeks, or wondering just what my husband meant as he rolled his eyes at me this morning), then faking being authentic is probably a distant second to being present. Yet I suspect clients can tell the difference.

Being present also links back to "neurons that fire together, wire together".

If I am not present, this is what happens when a lawyer I am working with says something I perceive to be positional: I react. But the more I do this work, the more I can take a breath, step away from my amygdala, and remember to be curious, the more opportunity I have to be present. And then the atmosphere in the room begins to shift. The added bonus for me is that this conscious and constant practice actually begins to create change in my brain. This is the beauty of brain plasticity; though it requires more effort as we get older, it is still possible. The more we practice a skill, the easier it becomes, with time. Piece by piece, the change is imperceptible. Yet year by year, I notice.

### **4. Create a Bridge Linking the Holistic and the Analytical**

I am going to detour back to our brains for a moment. The right and left hemispheres of the cerebral cortex process information differently. The left hemisphere processes in a linear manner, from the parts to the whole. The right hemisphere processes holistically, from the whole to the parts. The left hemisphere is

logical; this is the hemisphere that governs language and speech. The right hemisphere is the "big picture" hemisphere; it is more visual. The right hemisphere sends and receives eye-contact, facial gestures, timing, while the left hemisphere is blind to these. The left hemisphere processes sequentially; the right hemisphere processes simultaneously or holistically.

By training, lawyers are analytical. We are trained to analyze a problem by stripping the problem down to the legal issues involved, and then apply the law to these issues.

Mental health professionals, although not lacking in analytical skill, have a more holistic view. Marriage and family therapists are trained in family systems, and this training helps them to look at the whole as well as the parts.

Our training aside, we tend to gravitate towards professions which fit comfortably with our view of the world, and with a cognitive style that fits best with our style of learning. Our education then sharpens particular capacities, and these are in turn further honed by the practice of our profession.

The more we can encourage the linking of the two hemispheres, the more possibility we have of maximizing the capacities for our entire cerebral cortex. Poetry, for instance, is one activity that involves both the right and left hemispheres, and so assists in integration of these hemispheres.

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Interdisciplinary Collaborative Practice is an ideal *milieu* to create an environment that links both the holistic and the analytic. Lawyers generally tend to err on the side of the analytic, which can lead us to close off some more creative opportunities for generating options. Mental health professionals assist us to shift to a more holistic view of the families we work with. In Vancouver, where we have worked in an interdisciplinary practice group for ten years, we tend to say that the lawyers are from Mars and that the mental health professionals are from Venus, and the more of this work we do the more the lawyers start looking like mental health professionals and the more the mental health professionals start to look like lawyers. We are careful not to cross professional boundaries; we welcome the opportunity to integrate our ways of thinking.

It is interesting that research looking at the different perspectives between eastern and western cultures has also shown different cultural preferences. The brain studies have indicated that easterners tend to perceive through what can be described as a wide-angle lens, a more holistic view, and westerners through a sharper focus, or a more analytical view.

What this means is that we have personal, professional and cultural preferences that dictate how we view and process information. This does not mean that our clients view and process information in the same manner. The more fluent we can become in exercising both hemispheres of our brain, the more we develop integration, the more agile we will become in doing this work.

## 5. Participate in a Peacebuilding Community

### Five Cornerstones for Building

#### Our Practices:

- Stay Curious
- Create Safety
- Be Present
- Create a Bridge
- Participate in Peacebuilding

Interdisciplinary Practice Groups provide a unique opportunity to organize into truly egalitarian groups informed by different professionals. We have watched in North America as those groups that brought on mental health professionals and financial specialists as associate members have struggled with building strong interdisciplinary practice groups. No one wants to be considered a less than equal member, regardless of the reasons that may necessitate this kind of structure.

Fully participating in an interdisciplinary practice group allows us to broaden our cognitive perspectives, to embrace systems thinking, and to learn about conflict from a different professional perspective. It also allows lawyers to explore more thoroughly those issues that are central to marital transition, which we have been taught to “prune away” because they are not legally relevant.

What we do when we create a community is to structure a place to share our learning, debrief our challenging cases, and create

educational opportunities specific to developing new skills. By creating a practice group community, we are creating another peacebuilding family.

The more peacebuilding families we have, the greater opportunity we have for peacebuilding in the global community. I say this not because I have an inflated idea of what we can do; I say it because I know what we do is important work. I believe most people, everywhere, regardless of culture, would agree that peace is an important value, and the more that we can do to create peace in the world, the better. Yet if we choose to continue to analyze conflict and conflict resolution with the lexicon of warfare, we cannot build peace.

This is why I believe we are not **Alternative** Dispute Resolution practitioners, but the Future of Dispute Resolution. If we are to be the Future of Dispute Resolution, we have to have the courage to learn from our mistakes, share what we learn, and build on our successes. No one person can do that alone. If it takes a village to raise a child, it takes a collection of villages to bring peace into the world. So go ahead, create your own practice village. Reinforce the work you are doing daily. Share ideas. Create a safe place for debriefing your cases. Fire those neurons together!

Have fun. Enjoy this work. Together, we will build the Future of Dispute Resolution. As Gandhi said, “Be the change you want to see in the world.”

#### Endnotes

<sup>1</sup>Block, Peter *Community, the Structure of Belonging*, Berrett-Koehler Publishers (2008) at p. 30

<sup>2</sup>Doidge, MD, Norman *The Brain that Changes Itself*, Penguin Books (2007) p. 42

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*Nancy Cameron Q.C. is a lawyer (with a practice in mediation and Collaborative Practice), writer, and educator. She is past president of the International Academy of Collaborative Professionals. She has led and designed training in Collaborative process, and has been a speaker and trainer in the area of Collaborative Law and dispute resolution to groups across Canada and the United States. She has been an adjunct professor teaching a course in Collaborative Practice at the University of British Columbia Law School. She has written a book on interdisciplinary Collaborative Practice, titled Collaborative Practice: Deepening the Dialogue. Contact Nancy at [ncameron@idmail.com](mailto:ncameron@idmail.com).*