

Keeping the Train on the Rails: Using Project Management in ADR

Guest Speaker: Daniel Grodinsky, Borden Ladner Gervais

By Mary Korica

The ADR Institute of Ontario (“ADRIO”) presented a live program and webinar on applying Project Management techniques to ADR that was titled “Keeping the Train on the Rails: Using Project Management in ADR” and delivered by Mr. Daniel Grodinsky on Wednesday, March 19, 2014 at the ADRIO office in Toronto.



Daniel Grodinsky is a lawyer with Borden Ladner Gervais in Montréal, Québec. His litigation practice is focused on complex product liability class actions, commercial arbitration and intellectual property. Daniel regularly advises clients on the drafting of arbitration clauses and acts as counsel in commercial arbitrations.

In his presentation, Mr. Grodinsky demonstrated how the application of project management techniques to litigation and alternative dispute resolution can benefit both the client and practitioner by increasing budgetary certainty, providing a clear, ongoing idea of the process, and delivering greater confidence in the practitioner. He described project management as a systematic approach to initiate, plan, execute, control and complete work. It involves consciously replacing the *ad hoc* project management that is generally undertaken unreflectively by practitioners with a well-defined framework that yields a planning document and thereby responds to legitimate client expectations of professionalism.

For the practitioner, this approach improves profitability and effectiveness in future cases by providing a sounder basis for fee estimates and a record of what has or has not worked in the past.

Advocating for a highly collaborative practitioner-client approach from start to finish, Mr. Grodinsky described the four phases of project manage-

ment. Initiation involves the client outlining the problem and the practitioner determining a process and desired endpoint. The Planning phase takes into account the inputs required, including staff, resources, experts and other factors. The Execution phase is the implementation of the plan, and Closing includes not only the final steps to achieve the project goal, but also an assessment of lessons learned through consulting the client and internally.

Mr. Grodinsky emphasized the value of the “triple constraint” concept which presents three variables—the scope of the problem, cost and timing—as interrelated, a change to one affecting at least one of the others. He defined scope as the work to be performed to deliver the specific product or service. A project management approach to establishing the scope requires that the professional commit to discussing the plan with the client on an ongoing basis, including courses of action in case of contingencies. It also involves determining the level of quality of work required to meet client expectations for specific tasks, which may not be in all cases top quality (and top expense). To avoid inadvertent expansion in scope of work, Mr. Grodinsky recommended developing an “A list” of work that is essential to the goal, and a “B list” of all other work,

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carefully managing any changes to this breakdown. Adding to the list's information on who—the practitioner, the practitioner's staff or the client—will carry out each task further reduces duplication and clarifies requirements and expectations.

Active listening should be used to understand clearly from the start the client's definition of success, allowing you, the practitioner, to replace assumptions with a nuanced idea of the client's situation. It is also important to have a clear idea of the stakeholders involved in the problem and to recognize yourself, and potentially even expert witnesses, as stakeholders.

A list of risks is an additional tool to aid project management, and should include an assessment of the likelihood of each risk. This tool improves anticipation of pitfalls and promotes consideration of

backup plans. Mr. Grodinsky provided ten key questions to help address risks, including which steps in the process are most valued by the client, and whether the process could be standardized or streamlined, team communication improved, or tasks differently delegated. Noting that the client can change their mind and that circumstances can change, Mr. Grodinsky emphasized that such questions should be used systematically in an ongoing conversation with the client throughout the process.

Mr. Grodinsky noted that the reality of a situation usually differs somewhat from both our understanding of it and from our ideal, making "current state process mapping" another useful tool in project management since it provides a visual image in a single document of what is underway. Mapping the current state of any process is done by breaking it down into its component tasks, identifying the resources assigned to each task and the time allotted for each. Given the tendency to underestimate the time required for any given task, the best-guess method is improved through recourse to data such as past project management records of similar tasks. In the absence of data, a "three-point best estimate calculation" can be made by using the formula: [Optimistic Estimate + Pessimistic Estimate + (4 x Most Likely Estimate)]. Once current state process mapping is completed, it provides a foundation for scheduling and budgeting both the entire process and individual phases. The practitioner and client can therefore have an improved sense of the possible outcomes and costs.

The role of the project manager as outlined by Mr. Grodinsky is to keep the client informed, resolve conflicts within the team, perform

the legal or ADR work, and manage the project by performing the planning flexibly as the process itself evolves. The Planning phase should consider what tasks are required, what are the practitioner's assumptions, who will be doing the work, what will be the schedule, the costs, and the risks. It should likewise consider whether there is more than one approach for arriving at the desired goal or at an alternative outcome acceptable to the client, and how those options differ in terms of risks, timing and costs.

For Mr. Grodinsky, the Closing phase of any project should include a record by the practitioner, in collaboration with the client, of what went well, what could have been improved, whether the client assesses that they received value for the cost and their expectations were met, and whether the practitioner or firm assesses that they delivered value commensurate with the cost. While the practitioner should be considering these questions throughout in the interest of monitoring and controlling the process, the assessment at Closing constitutes a formalized summary useful for improving the quality of future deliverables, including broad conclusions and also data on the frequency and timing of tasks.

Mr. Grodinsky concluded by noting that the more engagement, collaboration and communication from both client and practitioner, the more effective the process and the better the outcome. Project management supports these results, and reduces the client's fear that they are engaging in a process that is to them a black box. It also allows the practitioner to justify their work, whether it is ultimately successful or not, and to better communicate the service they deliver. ♣

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