

Canadians planting seeds of ADR worldwide

BY DEREK HILL
For Law Times

In recent years, Canadian lawyers have made a significant contribution to international legal reform by teaching and training ADR skills all over the world, from the Caribbean to Europe, Asia and Africa — but answering the question, “What, in particular, makes Canadian ADR instructors so desirable?” is harder to pin down.

Even the lawyers doing the training have different views on how Canada’s role as a nation is perceived in international dispute resolution.

“Canada has a superb reputation in dispute resolution internationally, going all the way back to Lester Pearson and the Suez crisis,” says William Horton, a partner with Blake, Cassels & Graydon LLP, who has presented ADR concepts to Chinese judicial officials both at home and abroad.

“Canada has a very good reputation for integrity,” agrees Rob Nelson, of Gowling Lafleur Henderson LLP, who headed two projects to teach ADR skills and concepts in Russia and Albania after the collapse of Communism.

But Allan Stitt, president of the Stitt Field Handy Group, which puts on an estimated 50 international courses in ADR a year, disagrees.

“I think that there really isn’t a national perception,” he says. “It’s

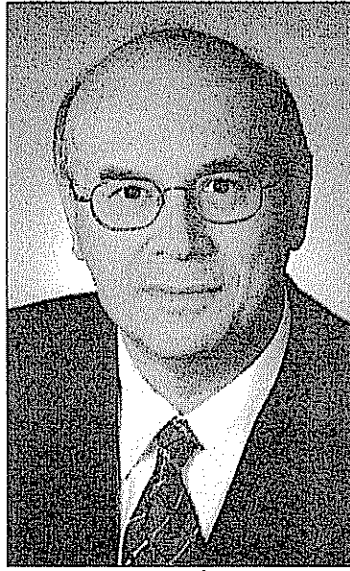
not that there’s a sense that Canadians are neutral, or that we’re peacemakers. It’s just that there were individuals in Canada, the U.S., and Europe who were entrepreneurs, who got in on the ground floor, and who go now out to these places — my own view is that it’s not about the fact that we’re Canadian.”

Plus, it isn’t fair to talk about Canada’s perceived role as a nation internationally, he adds, because Canada’s role in Africa is very different from its role in Australia, the U.K., or the U.S.

For example, Stitt recently returned from a sojourn in Ethiopia, where he was working on a Canadian International Development Agency (CIDA)-funded project to try to set up arbitration and mediation mechanisms for disputes in Ethiopia and Africa in general. He says the experience was indicative of how perceptions about Canada can vary.

“We come in with a bit of a clean slate, without any preconceptions of what we’re going to do, or what agenda we’re going to have. But — and maybe it’s just some of the places I’ve been — I don’t think people in Ethiopia have any idea about what Canada is like.”

When Nelson, who is primarily a litigator, headed the projects to teach ADR skills and concepts in Russia and Albania, he found that Canada’s reputation for integrity and a long history of



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international dispute resolution was bolstered by three factors:

- a sensitivity to the legal systems in both civil and common-law countries due to Canada’s bijuralism;
- the fact that Canada is not a major power in the world; and
- Canada’s uncorrupted judiciary.

Horton, from Blakes, agrees about the effect of Canada’s bijuralism. “Quebec plays a key role in how we’re perceived internationally,” he says. “With virtually all the world operating under either a civil-law or common-law system, Canada is very well placed to deal

with disputes in any country.”

Stitt, however, says this factor did not really come up for his group, as not much of the world possesses a civil-law system.

“Although later in the year we’re going to be doing some training in Germany, and maybe it’ll come up there,” he adds.

In fact, Stitt once again offers his recent work in Africa as an example of how lawyers’ preconceived notions of themselves and the legal systems they are familiar with can be deflated upon arriving at their destination.

“The system is so different there,” he says, of Ethiopia. “In theory it’s a common-law system, but I think most lawyers wouldn’t recognize it.”

As for Nelson’s second reason for how Canada is perceived in the field, it is the one thing that everyone seems to agree on. It’s helpful as an ADR instructor not to be from a major world power such as the United States.

“We have a system that is acceptable to Americans,” says Horton, “but is not American — which positions Canada very well.”

“In some places, there is an advantage to not being American,” agrees Stitt, “because there’s a perception of Americans that is not consistent to ADR that would have been a hurdle to overcome.”

With respect to the third factor, Nelson says his experiences teaching ADR concepts and skills

in the two post-Communist countries helped him develop a great pride in his own country, as he reflected on the importance of Canada’s “uncorrupt, clean, and wonderful” judiciary.

“The countries begin ADR training because there is international pressure to do so,” and to facilitate economic growth and foreign investment, he says. “But then they find out that ADR is much like the canary in the mine shaft. In other words, if you don’t have a society that respects freedom . . . they open up a much bigger issue intellectually than they think.”

“The freedom to pick a private mediator, the freedom to be able to resolve a dispute, the freedom to pick an arbitrator — if you don’t understand freedom, you have some difficulty understanding these concepts.”

And so in the final analysis, perhaps it’s the perception of Canada as a place espousing freedom — which, as Nelson says, is an intrinsic concept in ADR — that influences the increasing role being played by Canadians in teaching and training ADR concepts and skills.

In any event, the world is seeking out Canadian ADR instructors, and they are changing the world’s legal systems.

“We were planting seeds,” says Nelson, of his experiences in Russia, “and those seeds are growing.”