

**FROM MEDIATION TO  
NON-ADVERSARIAL  
JUSTICE**

**MANDELA CONFERENCE ON COURT  
ANNEXED MEDIATION**

Mediation is changing with the times

Courts are becoming key sites for dispute resolution

There is no single analytical model for mediation

Two and a half central propositions

**Structural and procedural  
factors**

**Attitudinal and behavioural  
factors**

**Two  
dimensions of  
(non)  
adversarialism**

Trend to evaluative mediation and conciliation

Lawyers' normative framework

Judicial involvement

Blended processes

med-arb

arb-med

arb-med-arb

Performance measurement

Changing client expectations

Challenges  
and changes  
in mediation

Pre-filing DR

Judicial case management

Court-referred DR

Conclaves of experts

The less adversarial trial

Judicial DR

Problem-solving and solution-focused  
courts

Courts as  
Sites of  
Dispute  
Resolution

What these and other examples reveal is the growing importance of courts themselves as sites of dispute resolution activities and processes other than customary litigation. In the process the roles of courts and judges is changing, as are their outputs.

Synthesis



**THE  
MULTI-TASKING  
JUDGE**  
COMPARATIVE JUDICIAL  
DISPUTE RESOLUTION

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# **CHALLENGES IN DR**

**STANDARDS AND QUALITY ASSURANCE**

**MANAGING INCONSISTENT PRESSURES**

**APPROPRIATE REGULATORY FRAMEWORKS AND THEIR APPLICATION**

**RESOURCING AND FUNDING**

**EDUCATION OF LAWYERS AND USERS**

**THE CHALLENGES OF OTHER DISCIPLINES**



- **Confirmation bias:** we select evidence that suits our existing view
- **Optimistic bias:** we all think we can do better than the average out there
- **Reactive devaluation:** things we claim become less valuable after obtaining them
- **Attribution bias:** we attribute qualities and attributes to people on first impressions
- **Perception bias:** we lose objectivity in how we perceive different categories of people
- **Knowledge bias:** the greater their knowledge base the narrower is a person's thinking

## Biases in Conflict Management

Justice is a public good and supports the Rule of Law

## Conclusion

Courts supporting NAJ can contribute to the reinforcing the public good

