Summary of feedback on DRAFT ADRIC/Affiliate MOU

NIL reply received from: Alasdair. No reply from those not listed below.

MICHELLE: I concur with all of Barrie's comments.

BARRIE: I agree with all of Michelle's comments below. Otherwise I suggest the following revisions:

- 5.1.3 - The final two sentences should read: "All parties to this MOU agree to apply their respective bylaws in a manner that is consistent with this MOU and shall strive to resolve any inconsistencies between their respective bylaws and this MOU".

- In accordance with Michelle's comments the following provision should be added at the beginning of 5.2.2: "Collaborate with the other Affiliates to promote ADR across Canada".

- 14 (Dispute Resolution) - I feel that this provision requires some further discussion and revision. Rather than attempt such a revision at this time a better approach might be to simply say something along the lines of : "The parties to this MOU agree to resolve any dispute by way of a 3 step dispute resolution process (negotiation, mediation, arbitration) and shall collaborate in the adoption of a mutually acceptable process in this regard". There are a number of models our organizations could look at in this regard. However, if the Affiliates are comfortable with the current draft procedure I have no major problems with it.

Regarding 14.8 I would suggest that, rather than tying the departure of one or more Affiliates from the MOU to the failure of parties to resolve a dispute, there should be a provision that enables any party to withdraw from the MOU upon providing notice (say 90 days) in that regard.

Clearly there are a number of areas requiring further review and discussion. There is also some "wordsmithing" necessary. However, overall the MOU captures, to the extent possible at this time, the most essential features of an MOU.

MICHELLE: The wording in the MOU needs to be worked on further in order to create some consistency of use however I will keep to substantive proposed changes in this e-mail:

Paragraph 1 Purpose first bullet. Suggest inserting "members of" after "ADR by" and before "the public".

Paragraph 1 Purpose second bullet maybe change to read "Ensure competency in the practice of ADR".

Under paragraph 3 Guiding Principles under "Transparency". I think that the words "everything we do" is excessive and unnecessary. I think that those words should simply be deleted.

Paragraph 5.1.1 I would suggest deletion of the word "unreasonable" relative to ADRIC Bylaws not imposing any constraints on Affiliates authority.

Personally, relative to the overall discussion of ADRIC/Affiliate by-laws in Section 5 the only sentence I believe needs to be in the MOU is that neither ADRIC nor the Affiliates will allow any by-laws to stand or be enacted which are inconsistent with the terms of the MOU. I don't like the provisions creating paramountcy to ADRIC by-laws. I also don't think that if one affiliate has a by-law that needs to be changed it needs to notify all affiliates-in my view, it should notify ADRIC and any Affiliates who may be affected by the change in the by-law.

Under 5.2.2 I believe that ADRIC's overarching obligation should be to collaborate with the Affiliates in order to promote ADR Across Canada. I don't see that obligation in 5.2.2 anywhere.

I believe that Section 6.5 will create issues down the road should one affiliate require a higher standard of practice relative to achieving a designation. For example, if ADRIA invokes a higher standard what's to stop Alberta residents from becoming a member of the BC affiliate, getting their designation through the BC Affiliate and then joining ADRIA?

Again, lots more wording issues are present but I am trying to stick to the substantive points.

BARBARA: Thanks for circulating this MOU; the content is interesting and well written. I've suggested a few writing style changes on page 10 and 11. They are not content related:

> Section 7 …. ~~It is recognized that~~ Engagement in delivery of education varies between Affiliates and this MOU does not impose any requirements for an Affiliate or ADRIC to provide or refrain from providing education or training.
>
> Section 7.1.1 ~~It is understood~~ The key purpose of ADRIC national courses is to ….
>
> Section 7.2 A national course is one of many courses offered that can qualify members for designations. The Regions and ADRIC agree in principle that consistency is important in the accreditation of courses (and Instructors) who are seeking approval that their courses\qualifications meet the education standards required for designations.

Commented [K1]: Intended to clarify that a national course is not the only route to a designation.

PAUL: Many thanks to Barbara, Barrie & Michelle for their inputs. These will be greatly appreciated by Wendy and the MOU Task Force. My additional comments are:

Section 1 Background: *This section includes the year for all affiliate entries with the exception of Nova Scotia/Atlantic and AMIC Ontario. These should be added to complete the picture.*

Section 2 Purpose: Increase the understanding, acceptance and use of ADR by …

Section 4.4 *I would be more comfortable with a chart that suggests IMAQ will provide French language services and support to any member in any province or territory that does not feel adequately supported as a Francophone in their region, as opposed to limiting this provision to Nunavut.*

Section 5.1.4.2 deal directly with their members in all matters of membership, professional designations, education, maintenance of standards, and discipline (in concert with ADRIC where appropriate or required)

Section 5.1.4.3 engage in any activity which will enable the Affiliate to meet their goals and objectives (without compromising the success of any other Federation member, individually or collectively)

Section 5.1.7 There is an expectation that an Affiliate representative on the ADRIC Board will work for the benefit of the national ~~organization~~ Federation as a whole, while also remaining connected to the Affiliate and advancing any regional perspectives put forward.
["national organization" could be construed as ADRIC, which is not the intent]

Section 5.2.1.9 Provide a pathway to ADRIC membership for Affiliate members who are not ~~full members~~ otherwise eligible for a full Affiliate membership.
[as originally drafted, this clause implied that Alberta & BC would have to offer ADRIC membership to its Associate members, which is not the desired outcome]

Section 5.2.1.10 Work with ADRIC to ensure the mutual success of ADRIC-led programs and operations, including support to national activities, membership benefits, conferences and projects to advance ADR …..

Section 5.2.2.5 Set, review and revise national minimum standards for attaining and retaining professional designations …..

Section 10.3 Any revenue which is generated from either of the above activities on a national level, or across regional boundaries, shall be shared fairly between the Federation members in the regions covered. *[as originally drafted, this would have implied that Affiliates would be required to share their local directory and roster revenues. NTF – I'm not sure that ADRIC wants to share its AMEX revenue, or other such revenue streams that are not currently shared with the Affiliates]*

Section 11.1 *I'm not entirely comfortable with suggesting Regional Codes of Conduct without some form of reference to a national (ADRIC) standard.*

Section 11.2 *Confusing clause, especially following 11.1*

Section 11.3 Each Federation member must have a process for receiving and acting upon complaints about a member, determining the complaint, imposing discipline if warranted, and acting in concert with ADRIC when required. *[Some disciplinary actions involve ADRIC national designations, national courses and/or membership, and ADRIC should be engaged accordingly/appropriately]*

Section 14.8 *The reference to "mediation" in this clause seems misplaced after all the preceding clauses that detail the Arbitration process (that follows mediation).*

Section 14.9 On termination ….. Individual Affiliate members with national designations will be contacted by ADRIC with options such that they can retain their qualifications.

STAN

My comments are as follows. The committee has served us well and presented a comprehensive document. You have captured all the relevant issues. I generally agree with most of the other comments however I do not see any of them as "deal killers".

5.1 Like Michelle, I have difficulties with the idea that the ADRIC bylaws are on an equal footing with this MOU. Of course, I was not present for all the discussions leading up to this wording so I do not have a full perspective. I do recall from PRT discussions that the concept emerged that the MOU should have paramountcy and then it is up to each organization to ensure that their bylaws accord with the MOU. Well there may be some reasons for the ADRIC bylaws having a special status I still do not see that as being equal to the MOU.

11.3 Although this may seem like wordsmithing, I do think the following is an important distinction. In my view, wherever the word discipline is used it should be replaced with the word remedy. There may be a multitude of solutions to a particular issue that do not involve discipline and as a dispute resolution organization we should be looking to move away from discipline and in favour of a remedy.

11.4 I believe this section should include sharing when there is a breach of bylaws that results in the imposition of a remedy, as well as the Code of Conduct.