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From Disputes to Value: How Corporate Counsel Can Reimagine Conflict Management Through Process Design and Outcome-Focused Funding

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Abstract

Corporate counsel today are expected to go beyond managing legal risk and reducing costs. They are being called upon to contribute actively and directly to business value creation. This shift requires a fundamental rethinking of traditional dispute management strategies, as litigation and arbitration-focused approaches are often too slow, costly, uncertain, and damaging to relationships. External law firms, while focused on helping their clients to win their disputes, may not be sufficiently familiar with their broader commercial objectives or internal dynamics. Their emphasis on legal positioning and victory can inadvertently lead to conflict escalation and overlook opportunities for collaborative resolution. This article proposes that modern legal departments can generate greater value through early conflict diagnostics and tailored dispute resolution design, using a new generation of Appropriate Dispute Resolution (ADR) professionals and mixed-mode processes, including combinations of mediation, conciliation, expert evaluation, and arbitration. These processes should not be viewed as alternatives to one another, but as complementary tools that can be used sequentially, in parallel or in an integrated manner to enable collaboration and accelerate resolution timelines. These approaches can be supported by using innovative funding mechanisms to help manage disputes more efficiently and strategically, not through traditional litigation funding, but ADR funding, which facilitates early convening, helps assess procedural needs, and supports the design of bespoke processes to reach mutually acceptable outcomes within 3 to 6 months, and at a fraction of the cost of litigation or arbitration. This article explores how in-house counsel can turn potential disputes and business risks into business opportunities, enhancing brand value, improving financial metrics such as Internal Rate of Return (IRR) and Working Cost of Capital (WCC), and advancing compliance with Environmental, Social and Governance (ESG) principles and the United Nations' Sustainable Development Goals (SDG). In doing so, legal departments can shift from being perceived as cost centres to strategic partners, contributing to long-term value creation and organisational stability for both shareholders and staff.

1. Introduction: Legal Departments Under Pressure to Evolve

Across industries, corporate legal departments are facing a fundamental transformation in how they are expected to operate. Once tasked primarily with managing legal risk and ensuring compliance, in-house counsel are now being called upon to act as strategic partners, entities that help their organisations navigate complexity, foster resilience, and create measurable business value. This evolution reflects broader trends in corporate governance, where success is increasingly defined not only by financial performance, but by transparency, predictability and stakeholder satisfaction.

As business environments grow more interconnected, regulated, and reputation-sensitive, the traditional toolkit of dispute management -- focused on litigation and arbitration -- no longer suffices. These adversarial methods, while still appropriate in certain cases, are

frequently too slow, too costly, and too rigid to meet modern commercial needs. Worse, they often intensify rather than resolve conflict, leading to broken relationships, brand harm, and lost opportunities.

Legal teams today must do more than win cases; they must prevent and solve problems, reduce friction, and preserve the social capital of the enterprise. This means working across functional boundaries, engaging stakeholders early, and deploying dispute resolution mechanisms that are as agile and strategic as the business itself.

A growing body of international research and practice, including unique data from the Global Pound Conference (GPC) Series in 2018, and the Singapore International Dispute Resolution Academy (SIDRA) in 2024, and others, confirms that the business community is seeking dispute resolution services that are faster, more collaborative, and more tailored to the context of the dispute. New paradigms are emerging that offer not only better process design but also new forms of outcome-focused funding that reduce capital risk while increasing the likelihood of resolution, even in extremely complex commercial disputes.

This article examines how in-house legal teams can lead this transformation. It explores how corporate counsel can leverage early conflict diagnostics, design dispute processes to meet business priorities, and access a new generation of Appropriate Dispute Resolution (ADR) tools and funding models. By doing so, legal departments can shift from being cost centres to becoming trusted creators of enterprise value.

2. Understanding What Business Clients Want: Insights from Global Surveys

Legal teams do not operate in a vacuum. The strategies they employ and the dispute resolution processes they choose should reflect the evolving expectations of the clients they serve: internal stakeholders, cross-functional business leaders, and external commercial partners. A number of recent empirical studies provide insight into what these users actually want.

a. The Global Pound Conference Series (2016–2018)

The GPC Series, one of the largest international consultations ever conducted on dispute resolution preferences, gathered input from over five thousand dispute resolution professionals, including corporate counsel, from more than 24 countries.[1] It found that business users consistently prioritised:

- **Time and Cost Efficiency**: Speed of resolution and predictable legal spend were valued over formalistic processes or maximising legal rights.
- **Party Control and Flexibility**: Users wanted greater input into how disputes were handled, not just what the outcome would be.
- **Preservation of Business Relationships**: Maintaining partnerships and goodwill was frequently more important than winning a dispute.
- **Collaborative Approaches**: There was strong interest in consensual processes, with counsel working more collaboratively, particularly when deployed early and involving skilled neutrals.

Crucially, the study highlighted a "disconnect" between users and providers. While business clients leaned toward earlier and more collaborative approaches, traditional lawyers often defaulted to litigation or arbitration, frequently too late in the dispute lifecycle to be effective.

[1] See: https://imimediation.org/research/gpc/. The final report entitled "*Global Data Trends and Regional Differences*" can be found online at https://imimediation.org/download/909/reports/35507/global-data-trends-and-regional-differences.pdf.

b. SIDRA 2024 International Dispute Resolution Survey

The most recent SIDRA Survey, published in 2024, reinforced and extended the findings of the GPC Series.[2] It showed:

- **Highest Satisfaction with Mediation**: Users rated mediation more highly than arbitration or litigation across almost all criteria, including enforceability, procedural efficiency, cost-effectiveness, and satisfaction with the outcome.
- **Emergence of Mixed-Mode Processes**: Hybrid dispute resolution models, such as mediation-arbitration (Med-Arb), mediation and conciliation (Med-Con) or mediation accompanied by expert evaluation (Med-ExEval), received strong support.
- **Demand for Process Design**: Clients increasingly want to tailor processes to suit the dispute, rather than accept one-size-fits-all procedures.
- **Commercial Awareness and Cultural Competence**: Business users placed high value on neutrals who understood the commercial context and could navigate cultural nuances.

Taken together, these findings indicate a growing sophistication among dispute resolution users. Businesses no longer accept that conflict must follow a fixed procedural script. Instead, they expect legal departments to act as trusted strategic advisors who can recommend and implement resolution pathways that reflect commercial needs, stakeholder relationships, and long-term value.

This shift in expectations opens the door for in-house counsel to lead, not merely manage or oversee, the organisation's dispute prevention and resolution strategies. The following sections explore how this can be achieved, starting with a critical re-examination of the prevailing adversarial mindset.

3. Rethinking Dispute Resolution: From Win-Lose to Value-Driven Outcomes

Legal success has traditionally been measured in binary terms: a case is either won or lost. Yet this adversarial framing often ignores the commercial and human realities of disputes. Many conflicts, particularly in the corporate and cross-border context, are not about who is right, but about how to restore trust, reallocate risk, manage brand reputation, or salvage valuable business relationships. The traditional tools of litigation and arbitration, while important, are often ill-suited to these tasks.

a. When Winning Means Losing

Court victories may come at a high price: financial strain, public exposure, damaged partnerships, and prolonged uncertainty. Even arbitration, despite its greater confidentiality and procedural flexibility, can become overly legalistic and combative. These processes, by design, aim to resolve disputes by applying legal rules to past facts. What they often fail to do is resolve the deeper commercial tension or relational breakdown that led to the dispute in the first place.

Several recent publications highlight a growing recognition that dispute resolution must be measured against broader success criteria, such as protecting reputation, ensuring business continuity, and maintaining trust with stakeholders. This is particularly evident in cases involving joint ventures, long-term supply chains, publicly listed companies, family-owned businesses, and regulated sectors where public and investor perception is crucial.

What may appear to be a "win" in legal terms can represent a strategic or reputational loss if it alienates a key business partner, generates negative press, or consumes months of leadership attention.

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[2] See: https://sidra.smu.edu.sg/research-program/appropriate-dispute-resolution-empirical-research/sidra-survey-2024.

b. Outcomes Beyond Legal Remedies

A value-driven approach to disputes involves identifying solutions that address not only the legal claims but also the underlying interests and longer-term priorities of the parties involved. For example:

- Reputational protection may be more valuable than monetary damages.
- Speed and certainty of closure can outweigh a higher recovery obtained after years of litigation.
- Relationship repair or redefinition may support broader strategic goals.
- Confidential, collaborative settlements may align better with the company's values and brand.

This shift in priorities is increasingly reflected in how corporate boards and ESG and SDG-conscious investors evaluate disputes. Sustainable businesses are expected to demonstrate not only legal compliance, but responsible conflict engagement, particularly where issues of governance, labour, or stakeholder voice are involved.

c. Adapting Legal Roles to Match Business Realities

In light of these developments, corporate legal teams need to re-evaluate their role. Rather than acting solely as defenders of legal positions, they need to serve as instigators and facilitators of problem-solving. This includes:

- Helping business units define what a successful resolution looks like from a commercial perspective.
- Advising on the emotional, cultural and relational dynamics of disputes.
- Identifying process options beyond litigation and arbitration, including direct negotiation, mediation, conciliation, early neutral evaluation, or hybrid "mixed mode" procedures.
- Engaging with internal stakeholders early to assess procedural preferences and risk appetites.

This role demands not only legal acumen but a high degree of commercial awareness, process literacy, and strategic foresight.

d. The Strategic Use of Mediation and Mixed-Mode Models

Mediation, particularly when introduced early and framed appropriately in conjunction with other dispute resolution processes, can offer a structured but flexible space for parties to explore outcomes not available through adjudication, faster and more cost-effectively. Rather than deciding who is right, mediation helps clarify what matters most to each side and how those interests might be better aligned.

Recent innovations in mixed-mode dispute resolution, such as processes that combine mediation with conciliation, expert evaluation and/or arbitration, offer additional pathways.[3] These models allow parties to co-design a process that reflects both the complexity of the issues and the importance of resolution. In many cases, they offer faster, more cost-effective, more confidential, and more sustainable results than traditional litigation or arbitration proceedings on their own.

Moving from a litigation mindset to a value-driven conflict resolution strategy enables legal departments to deliver better outcomes, not only for their companies, but for all parties and stakeholders involved (including internal and external counsel). This shift begins with how disputes are understood and diagnosed, as discussed in the section 4 below.

[3] See: https://imimediation.org/about/who-are-imi/mixed-mode-task-force/.

e. Cultural and Emotional Intelligence as Core Competencies

The SIDRA 2024 findings further underscore the importance of emotional intelligence and cultural fluency. Business users are increasingly rating dispute resolution professionals, and by extension, corporate counsel, based on their ability to manage emotional, social, reputational, and intercultural dimensions of disputes. In an increasingly global business environment, where conflicts often arise between partners from different jurisdictions and cultural norms, these skills are no longer soft -- they are strategic.

Rethinking dispute resolution involves more than expanding the available toolbox. It requires a fundamental mindset shift, from winning arguments to designing and generating value, converting business threats into business opportunities. The next section explores how that value design process begins: using earlier and multidimensional conflict diagnostics.

4. Early Conflict Diagnostics: A New Skillset for Corporate Counsel

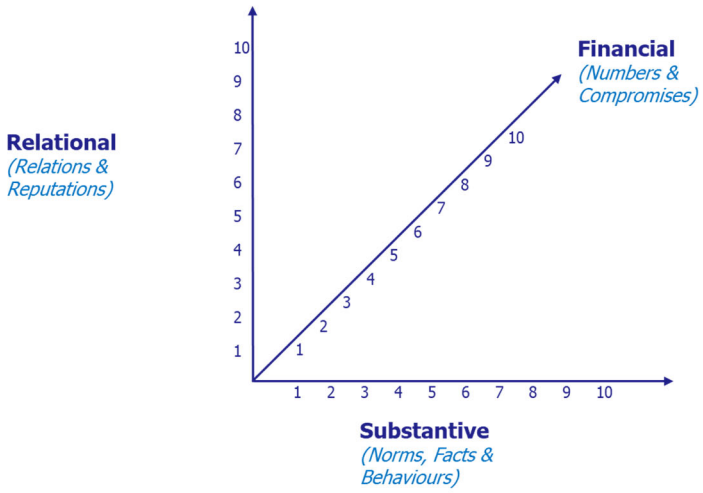
To manage conflict effectively in a modern business environment, legal teams must move beyond reactive assessments of legal rights and wrongs. What is needed is an anticipatory and holistic approach, one that identifies the dynamics, risks, and opportunities within a dispute before positions harden or costs escalate. This requires a different kind of skillset, grounded not only in law but also in behavioural science, systems thinking, and strategic process design.

a. From Early Case Assessment to Multi-Dimensional Diagnostics

Traditional Early Case Assessment (ECA) tends to focus on legal merits, liability exposure, jurisdictional risks, and possible remedies. While useful, this narrow lens often misses the broader drivers of conflict and overlooks opportunities for early and creative intervention. It often fails to capture the deeper dynamics that influence how disputes arise and evolve. These include misalignments in expectations, relational breakdowns, and financial pressures that once identified and understood can better shape both process choices and possible outcomes. Conflict diagnostics expands the analytical frame to include multiple dimensions that influence both the origins and potential outcomes of a dispute.

To address these limitations, new diagnostic models have emerged, which expand the analytical frame to include relational, substantive, and financial dimensions simultaneously. *Figure 1* below simply illustrates such a framework that can be applied to identify the nature of the conflict and guide process design.

Figure 1: A Three-Dimensional Approach to Diagnostics and Process Design



1. **Relational Axis**: This focuses on the identity, expectations, and interdependence of the disputants involved. Key questions include:
    - What is the history and nature of the relationships?
    - Are reputational, cultural or emotional factors at play?
    - Could resolution lead to renewed or continued mutually beneficial cooperation?
2. **Substantive Axis**: This concerns examination of facts, behaviours, intentions, technical uncertainties, and norms, and the possible need for clarification through dialogue, evidence or expertise. Questions to consider:
    - Are there possible misunderstandings or information gaps?
    - What motivated past behaviours or decisions, and would it be helpful to better understand intentions?
    - Can an independent expert help clarify what happened, identify causational issues or assess performance?
    - Is there a shared interest in learning from the past to prevent recurrence?
3. **Financial Axis**: This explores the direct and indirect economic consequences of the dispute. It asks:
    - What are the short- and long-term financial stakes?
    - Are there creative ways to resolve the issue through structured settlements, creative trade-offs or other forms of collaboration?
    - How might time-to-resolution affect cash flow or investment priorities?

This framework encourages legal teams to identify which aspects of the conflict are most volatile, and which may lend themselves to resolution through dialogue, information exchange, technical collaboration, or restructuring. By assessing these axes distinctly, counsel can better identify what kind of resolution process is most appropriate and what type of third-party neutrals to involve, especially if this can also be discussed and agreed to upfront with counsel for another party.

b. Diagnostic Tools and Techniques

Applying this three-axis model is not just a theoretical exercise. Several tools have been developed and tested in commercial and cross-border settings that allow legal teams to translate diagnostics into actionable strategy:

- **Conflict Mapping**: Visually lays out the key stakeholders, issues, and possible pathways.
- **Timeline Analysis**: Helps contextualise key events and identify trigger points or decision-making breakdowns.
- **Stakeholder Interviews**: Provide insights into motivations, concerns, and desired outcomes.
- **Decision Trees**: Model various procedural and financial scenarios based on process choices.
- **Joint Expert Engagements**: Allow the parties to develop a shared understanding of complex facts or the application of norms before adversarial procedures begin.

While many of these tools have traditionally been applied manually, emerging technologies are making them more accessible. AI-assisted platforms and diagnostic software can now support mapping, scenario planning, and stakeholder analysis with greater speed and insight. These tools allow legal teams to run simulations, visualise complexity, and generate strategy options based on selected variables. However, the value of the model lies

not in the tools themselves but in the mindset they encourage. Whether using advanced software or simply sketching ideas on paper, the process of stepping back to view a dispute through multiple dimensions is what enables more effective and tailored intervention. Many in-house teams still underuse these approaches, often citing lack of time or training. Yet adopting even a basic version of this model, asking structured questions across all three axes, can significantly improve the quality of process design and reduce the likelihood of escalation.

c. Making the Business Case for Early Intervention

Early diagnostics can deliver significant returns. Resolving disputes before they escalate into formal legal proceedings can reduce not only legal fees but also executive distraction, operational disruption, and the erosion of stakeholder confidence, including among customers, staff, and investors. Yet the value of early resolution is frequently underestimated, in part because traditional metrics focus on legal spend or probability of outcome at trial, while overlooking hidden costs such as opportunity loss, talent attrition, and reputational impact.

Consider a commercial dispute in the pharmaceutical sector, where all communication had been channelled exclusively through external counsel. As a result, senior executives on both sides had lost direct contact and were unaware of shared strategic objectives and complementary innovation pipelines. Once early conflict diagnostics were conducted, it became apparent that renewed dialogue could help mitigate legal risks while opening the door to future collaboration. What began as a patent dispute ultimately evolved into a cross-licensing agreement and strategic alliance.

In another instance, a governance conflict in a multi-generational family enterprise, initially framed as a disagreement over shareholder rights, was revealed through early intervention to stem from differing perceptions of fairness and leadership succession. By engaging in facilitated dialogue and neutral coaching, the parties were able to realign their governance structures and avoid litigation. The cost of intervention was modest compared to projected legal fees, and, more importantly, the process preserved both business continuity and family cohesion.

d. Institutionalising Diagnostics Inside Legal Teams

To realise the benefits of this approach, corporate legal departments must build diagnostic capacity internally. This includes:

- Training legal and business staff to spot early warning signs of conflict.
- Creating intake procedures that include stakeholder mapping and forensic assessments.
- Allocating budget for early engagement with neutral facilitators or experts.
- Partnering with funders or external platforms that support early-stage process design.

Over time, diagnostics can become a core business function, not unlike compliance or risk management, embedded into project launch protocols, contract reviews, and cross-border transactions.

Conflict will never be eliminated from business, but it can be managed more intelligently. The next step in this transformation, having conducted a broader diagnostic of the disputants' needs and interests, is designing the right dispute resolution architecture to match the problem.

5. Designing Smarter Pathways: Mixed-Mode and Adaptive Process Architecture

Once a dispute has been accurately diagnosed, the next challenge for in-house counsel is to select or design a resolution pathway that reflects the nature of the conflict and the interests of the parties involved. If attempts to negotiate have failed, rather than defaulting

to arbitration or litigation (which often delay resolution and heighten polarisation), legal teams can explore a growing range of adaptive, hybrid, and mixed-mode procedural options, assuming their clients have a common interest in reaching faster, more cost-effective and better outcomes. These models offer both procedural flexibility and the ability to address multi-dimensional conflicts effectively.

a. From Escalation Clauses to Process Architecture

Many commercial contracts contain escalation clauses: provisions that require parties to negotiate or mediate before pursuing formal adjudication through litigation or arbitration. While well-intentioned, these clauses may be too rigid or unclear to be useful in practice. They may specify a process without considering the conflict's evolving dynamics or the parties' actual needs.

In contrast, a process architecture approach goes further. It invites parties and their counsel to co-design a tailored sequence of steps, potentially combining elements of facilitation, expert analysis, conciliation, and arbitration, that can adapt to changing conditions and stakeholder expectations.

This approach is grounded in the recognition that no single procedure fits all disputes. The process should be as bespoke as the problem it seeks to resolve.

b. Mixed-Mode Models: Combining Strengths Across Processes

Mixed-mode dispute resolution refers to procedures that intentionally combine different forms of dispute resolution (e.g., facilitative, advisory, evaluative, transformative or adjudicative) within a single, coordinated framework. These models are particularly suited to complex, multi-stakeholder disputes where the issues are technical, relational, and commercial all at once.

Some commonly used formats include:

- **Med-Arb**: The parties attempt mediation and arbitration, possibly sequentially or in parallel. If the parties so agree, the mediator may even become an arbitrator and issues a binding award, subject to signed waivers and proper handling of information learned in caucuses. This can be efficient but may raise due process concerns if role-switching undermines enforceability.
- **Arb-Med**: The arbitrator hears the case but withholds the award, giving the parties an opportunity to mediate after the evidence is presented, whether with another neutral or themselves.
- **MEDALOA**: If the parties are unable to resolve their dispute using mediation by a certain agreed date and time, the parties each make a final binding offer to the other, which is shared with the mediator, who can "swap hats" but only choose between one of the parties' final offers, which becomes a binding arbitral award.
- **Med//ExEval**: After mediation, if no agreement is reached, a neutral provides a non-binding expert evaluation to help set a zone of possible agreement and work with the guide settlement discussions or form a baseline for negotiation.

Each of these models carries trade-offs. Selecting the right combination depends on timing, legal context, cultural expectations, and the type of dispute.

c. The MED-CON Model: A Dual-Neutral Approach Integrating Norms and Needs

The MED-CON (mediation and conciliation combined) model offers a distinctive and dynamic approach to dispute resolution that combines two professionals, a mediator and a

conciliator working together in real time.[4] Each operates from a different but complementary orientation, providing parties with a broader spectrum of support throughout the process.

The key to MED-CON lies not in fusing styles or techniques into a single role, but in maintaining two distinct and concurrent roles, each grounded in a different framework of understanding and intervention:

- The conciliator works in the world of norms. Their orientation is toward legal standards, industry practices, contractual frameworks, and pragmatic realities. The conciliator can be evaluative, offering robust reality testing (usually in caucus), proposing ways forward, and helping parties assess the implications of different interpretations of facts and law. This role is particularly valuable when parties need help understanding the strengths and weaknesses of their respective positions or envisioning how a court, arbitrator, or regulator might view their case.
- The mediator, by contrast, remains focused on subjective needs and interests, often unspoken or future-oriented. The mediator helps foster a safe space for dialogue, identifies emotional and relational dynamics, and supports the parties in articulating what really matters to them, especially if the conciliator's thoughts evoke strong reactions. This work is especially important for rebuilding trust, clarifying motivations, or enabling creative problem-solving that goes beyond legal entitlements, and helping to avoid evaluative feedback becoming a source of further division and conflict escalation.

In a MED-CON process, both neutrals are often jointly present and engaged throughout, interacting with the parties together. They coordinate their interventions, sometimes alternating, sometimes working in tandem, based on the stage of the discussion, the needs of the parties, and the nature of the dispute. Importantly, the approach remains non-adjudicative and fully consensual: neither neutral imposes a decision or binding recommendation.

This dual-neutral structure offers several strategic advantages:

- It allows for greater responsiveness to the evolving needs of the parties, shifting between exploratory dialogue and evaluative input as required.
- It enhances cultural adaptability, as different legal systems and professional traditions may expect different roles from a neutral.
- It avoids the common pitfall of asking a single mediator to carry out tasks that may be in tension, such as facilitating emotion-laden dialogue while also pressing for settlement or offering legal assessments.

MED-CON is particularly effective in cases involving complex personal relationships, technical issues, cross-border proceedings, and multi-party negotiations, where parties may simultaneously need help navigating both interpersonal dynamics and substantive legal or commercial uncertainties. By engaging both perspectives (the world of norms and the world of subjective needs and interests) the MED-CON model provides a uniquely flexible and comprehensive platform for achieving resolution. When used it is claimed to have an almost 100% settlement rate and satisfaction rating. The costs of the extra neutral are negligible in comparison to the savings in time and money compared to traditional

[4] For more information on this mixed mode ADR model, see : https://innovadr.com/wp-content/uploads/2025/02/2025-02-01-The-Benefits-of-MED-CON-a-Mixed-Mode-Process-J.-Lack.pdf.

litigation, and in the unlikely case the dispute does not resolve, the process can greatly help to enhance and streamline parallel litigation or arbitration proceedings.

d. Embedding Mixed-Mode Thinking in Contractual Design

To make the most of adaptive dispute resolution models, companies should consider incorporating flexible and staged dispute resolution clauses or dispute resolution rules into their commercial contracts. These might include:

- Multi-tiered provisions that outline negotiation, mediation, expert determination, and arbitration as sequential steps, possibly continuing in parallel.
- Triggers for process switches, such as a blocked mediation triggering an evaluative phase with the help of a jointly-appointed neutral.
- Protocols for neutral appointment, allowing parties to choose professionals with cross-functional expertise (e.g., engineering, law, business) and procedural or relationship management expertise.
- Time-bound milestones, which keep momentum and avoid procedural drift.

Such clauses not only provide structure when conflict arises but also signal the company's preference for pragmatic, business-oriented conflict management. This can influence counterparty behaviour and support early resolution efforts.

By embracing process design as a core legal capability, in-house teams can reduce friction, increase resolution rates, and align legal strategy with broader business priorities.

6. Strategic Conflict Management: Aligning Legal Strategy with Brand, ESG, and IRR

Conflicts are often viewed as liabilities -- disruptions to be contained or litigated away. But when managed intelligently, they can become strategic opportunities to strengthen relationships, improve internal systems, and reinforce core business values. For in-house counsel seeking to align legal strategy with broader organisational goals, dispute resolution is no longer just about risk mitigation. It is also about brand integrity, sustainability, and capital efficiency.

a. Protecting and Enhancing Brand Value

How a company handles its disputes sends strong signals to employees, investors, partners, and the public. A business that relies on aggressive litigation strategies may appear adversarial or opaque, whereas a company that resolves conflicts constructively, through dialogue, principled engagement, and transparency, can reinforce its reputation as a fair and responsible actor.

Dispute resolution methods such as mediation, conciliation, and mixed-mode processes, when combined with or as alternatives to litigation or arbitration, offer confidentiality, dignity, and proportionality. They protect against reputational harm, particularly in sensitive disputes involving:

- High-profile counterparties or public interest issues
- Allegations related to discrimination, misconduct, or abuse of power, or
- Breakdowns in long-term partnerships, alliances, or supply chains.

Strategically, this is about more than legal outcomes. It is about demonstrating how the company lives its values under pressure. As stakeholders increasingly demand ethical and relational accountability from businesses, dispute resolution processes that protect goodwill and signal integrity become assets, not just safeguards.

b. Meeting ESG and SDG Commitments Through Fair Process

Environmental, social, and governance (ESG) metrics are becoming central to investor decisions and regulatory oversight. One often overlooked component of the "S" (social)

and "G" (governance) pillars is how a company manages conflict. Transparent, respectful, and inclusive resolution processes are not only more sustainable, they also support the delivery of the United Nations' Sustainable Development Goal (SDG) 16: promoting peace, justice, and strong institutions.

In particular, effective dispute management contributes to ESG performance by:

- Reducing the risk of prolonged or public legal disputes that expose poor governance
- Promoting responsible contractor and supplier relationships, particularly in complex or global value chains
- Strengthening internal reporting, listening, and conflict-handling systems, and
- Supporting diversity, equity, and inclusion through dialogue and appropriate processes.

For businesses with stated commitments to human rights, community engagement, or ethical leadership, using appropriate dispute resolution mechanisms helps to operationalise those values. It ensures the company is not just compliant but proactive in demonstrating responsible conduct, even when facing internal criticism or external legal challenges.

c. Improving IRR and Reducing Working Cost of Capital

Beyond company or personal values, effective conflict resolution delivers measurable financial benefits. When disputes are resolved early and collaboratively, the organisation experiences significant gains in several capital-related metrics, including:

- **Internal Rate of Return (IRR)**: Faster closure of commercial disputes frees up resources and accelerates capital redeployment. A lengthy litigation strategy, by contrast, locks up value for years.
- **Working Cost of Capital (WCC)**: Delays in resolving payment disputes, contract terminations, or regulatory matters increase uncertainty and capital inefficiencies. Reducing dispute duration lowers the cost of managing uncertainty.
- **Avoided legal fees and executive time**: High-conflict matters draw in leadership, distract teams, and increase indirect costs that do not appear in legal budgets but materially affect business performance, especially if litigation becomes a source of stress, burnout, or loss of team productivity.

One notable advantage of early diagnostics and appropriate process design is the ability to avoid escalation into "mega-litigation" -- cases that consume outsized resources, generate internal fatigue, and damage external relationships. By applying structured ADR models at the right time, legal departments can resolve even high-value, multi-jurisdictional disputes in months rather than years, at a fraction of the cost.

d. Strengthening Internal Culture and Stakeholder Engagement

Finally, how conflicts are addressed internally influences workplace culture and employee engagement. In organisations that rely heavily on blame, silence, or external litigation, employees may be reluctant to raise concerns or propose alternatives. By contrast, companies that model inclusive dialogue, structured feedback, and transparent resolution processes foster a culture of:

- Psychological safety, where employees can voice concerns without fear
- Accountability, where mistakes are addressed constructively rather than defensively
- Learning and adaptation, where disputes are mined for insight, not just resolved for expedience

This internal culture directly supports retention, innovation, and performance. It also reduces the likelihood of small issues growing into major crises, saving both legal and reputational capital over time.

In sum, dispute resolution is not just about protecting the enterprise from downside exposure. It is about reinforcing the systems, values, and outcomes that drive long-term success. When coupled with appropriate outcome-aligned funding, this can help convene the disputants earlier on, support each party's strategic goals and expand the capacity of each party to act early and resolve the conflict more collaboratively and effectively.

7. Outcome-Focused Funding: ADR Funding vs. Litigation Funding

One of the most significant recent developments in dispute resolution strategy is the emergence of a new form of third-party financing, ADR funding, which enables parties to convene earlier on to access skilled neutrals and customised process design without committing to the costs and risks of litigation or arbitration. This approach differs fundamentally from traditional litigation funding, which typically supports claimants in pursuing adversarial proceedings in exchange for a share of the outcome.

As corporate counsel take on greater responsibility for aligning dispute management with capital efficiency and value creation, funding models that support early convening of the parties, discussion about process design and non-adversarial resolution are becoming not just attractive, but essential.

a. Litigation Funding: A Useful but Limited Tool

Litigation funding is now well established in many jurisdictions. It provides non-recourse capital to claimants (and occasionally respondents) to pursue high-value legal claims. While this model increases access to justice and risk-sharing, it comes with certain structural constraints:

- It is typically available only after a case has been formally initiated, once a detailed case theory, legal team, and documentary evidence are in place.
- It requires a binary win/lose framework, meaning the funder's return depends on a decisive and successful legal outcome.
- The funder's interests are usually aligned with only one party -- not with resolution per se.

As a result, litigation funding tends to lock parties into formal processes and tends to incentivize long-haul legal strategy over early settlement.

b. ADR Funding: A New Model for Resolution-Oriented Strategy

By contrast, ADR funding provides financing for settlement processes rather than outcomes. The objective is not to win a case, but to resolve a conflict intelligently and efficiently, whether through facilitated negotiation, mediation, stakeholder consultation, expert evaluation, or mixed-mode design. This includes:

- Funding early conflict diagnostics, including stakeholder interviews, issue mapping, and process architecture.
- Supporting the cost of independent neutrals, such as mediators, conciliators, and evaluators.
- Covering coaching, convening, and procedural coordination, particularly where multiple parties or jurisdictions are involved.
- Encouraging rapid resolution with timelines often set between 3 to 6 months or even less, depending on case complexity.

The financing structure is cost-savings-based, with payments capped at a fraction (e.g., 1/3rd maximum) of the anticipated costs of going to trial rather than the value of the claim or legal outcomes, and it operates on a "no settlement, no fee" basis. This creates greater flexibility and aligns the funder's interests with that of all parties, not just one disputant.

c. Strategic Advantages for In-House Counsel

ADR funding enables corporate legal departments to:

- Act early without needing to justify large upfront expenditures for uncertain outcomes.
- Share risk with external partners without escalating the dispute or appearing aggressive.
- Access specialised neutrals or convenors who can support stakeholder alignment and multi-layered process design.
- Track financial return on investment (ROI) based on new metrics (e.g., avoided costs, time to resolution, internal rate of return (IRR) and working cost of capital (WCC) improvements), rather than just recovered damages.

This can be particularly valuable in industries with compressed timelines, high reputational exposure, or capital allocation constraints.

d. Comparing Litigation Funding and ADR Funding: Key Distinctions

Aspect	Litigation Funding	ADR Funding
Trigger	Typically post-filing	Can be pre-dispute or early-stage
Focus	Supporting a claim to win	Supporting all parties to convene and settle their dispute collaboratively.
Funding Basis	Binary outcome: win = return. Pays for attorneys' fees, experts' fees, and procedural fees.	Milestone/process-based. Only pays for the fees of ADR neutrals and institutions. Not attorneys' fees.
Stakeholder Alignment	Funder aligned with one party	Funder aligned with dispute resolution acceptable to all parties
Scope of Use	Legal fees, discovery, hearings	Convening, diagnostics, process design, mixed mode processes.
Cultural Fit	Adversarial environments	Collaborative or sensitive dispute contexts
Speed of Resolution	Often 2–5 years or more	Often less than 3-6 months
Success Fees	Based on damages awarded	Based on cost savings

e. Illustrative Use Cases

The practical advantages of ADR funding have already been demonstrated in diverse sectors. For example:

- A $5 million cross-border IP dispute was resolved in under four months using a tailored Med-Arb-ExEval process funded through ADR capital. The parties avoided over 80% of projected legal costs and achieved a resolution with improved post-dispute collaboration and a significantly increased IRR and lower WCC for all stakeholders, including clients and counsel.
- A global family enterprise dispute spanning several countries was resolved using stakeholder mapping, facilitated strategy sessions, and collaborative coaching. This enabled the family to agree on a restructured business model, a new business continuity plan and the reallocation of assets, thereby avoiding multimillion litigation costs and preserving long-term relationships within the family and with key staff.

These examples underscore how funding that supports collaboration, not confrontation, opens new possibilities for conflict transformation, particularly for in-house legal teams tasked with protecting value and relationships under pressure.

The benefits of these approaches depend on how legal departments embed them into their daily work through practical systems, partnerships, and performance metrics.

8. A Roadmap for Corporate Counsel: Six Steps to Transform Dispute Management

Transforming a legal department's approach to conflict management requires more than isolated changes to process or funding models. It involves creating an organisational infrastructure that enables legal teams to intervene earlier, act more strategically, and collaborate more effectively with business stakeholders. This shift calls for capacity-building, cultural adaptation, and leadership by example.

The following six steps provide a practical roadmap for in-house counsel seeking to move from reactive litigation management to proactive, value-focused dispute resolution.

i. Institutionalize Conflict Diagnostics

Effective resolution starts with accurate diagnoses. Legal teams should implement structured intake protocols that allow them to identify not only the legal merits of a dispute but also its relational, reputational, and financial dimensions. This may include:

- Embedding three-axis diagnostics (relationships, substantive issues and financial issues) into internal triage tools
- Training business teams to spot early signs of latent conflict along all three axes
- Using checklists, mapping tools, and structured interviews at the pre-dispute stage.

Over time, this will shift the default from asking "What are our chances in court?" to "What kind of process will best serve the business and the stakeholders involved?"

ii. Update Contract Templates and Escalation Clauses

Contracts should reflect the organisation's dispute resolution philosophy. Traditional boilerplate escalation clauses (e.g. "negotiate, then arbitrate") often lack specificity and flexibility. Legal teams can improve their efficacy by:

- Including more flexible multi-tiered dispute resolution clauses that allow for mediation in all contracts, as well as early neutral evaluation, and mixed-mode options such as MED-CON or Med-Arb, or institutional rules that will allow for MEDALOA or other hybrids as may be appropriate on a case-by-case basis;
- Naming or defining criteria for appropriate neutral selection in advance, which includes process design and implementation experience;
- Creating process roadmaps tied to values and milestones (e.g. operational, governance, technical);
- Including language that encourages dialogue and collaboration on process design before escalation, such as mandatory convening sessions to discuss mutual procedural needs and interests (e.g., possible cost and time savings and relationship preservation) prior to or in parallel with litigation or arbitration; and
- Crafting well-drafted clauses to ensure that if a conflict arises, the parties will be guided not just toward litigation or arbitration but toward appropriate processes and solutions.

iii. Build Internal Awareness and Capabilities

A dispute resolution strategy will only succeed if it is understood and supported across the organisation. This requires legal teams to act as educators and collaborators. Strategies include:

- Offering internal workshops for business units on dispute resolution options;
- Including dispute resolution training and early case assessment triage in onboarding and leadership development programs to provide for a broader range of factors;
- Creating internal playbooks or guidelines for engaging with external counsel and neutrals to ensure ADR as early as possible, even before proceedings are commenced; and
- Involving in-house lawyers early in project teams to help prevent disputes from escalating and to resolve them more quickly and cost-effectively.

This investment pays dividends by reducing reliance on external counsel and empowering teams to manage conflict constructively.

iv. Curate a Strategic Panel of Process Designers and Neutrals

Not all neutrals are equally effective, and the selection of an appropriate neutral is often an important factor in resolving a dispute. It is not enough for a neutral to be competent and experienced. They also need to be flexible and willing to adapt the process to the parties' procedural needs and interests, while ensuring enforceability or compliance with the outcome. Legal departments can improve outcomes by:

- Working with ADR funders to help convene the disputants and select the most appropriate combinations of neutrals in each case, without loss of face or appearing weak or eager to settle;
- Establishing a working knowledge of different types of mediators, conciliators, evaluators, and adjudicative neutrals, and how to combine different processes;
- Ensuring a diversity of backgrounds, languages, jurisdictions, and skillsets to meet a broad range of cultural and professional needs;
- Including process designers or convenors who can help structure multi-party or cross-border engagements; and
- Maintaining relationships with trusted funders or platforms that can support neutral appointments and shared-cost models, working confidentially and cost-effectively.

This ensures the organisation has access to a broader range of expertise, and competent and experienced people at the right time, with appropriate skills, without delay or uncertainty.

v. Measure What Matters: Metrics and Reporting

If legal departments are to be seen as strategic value creators, they must demonstrate their impact in measurable terms. This involves moving beyond legal cost control to track broader indicators of success, such as:

- Time to resolution and time savings;
- WCC improvements;
- IRR impacts of dispute closure;
- Cost savings;
- Stakeholder satisfaction; and
- Post-dispute collaboration outcomes.

Collecting and reporting these metrics shows the tangible business value of dispute resolution strategy, and positions legal as a performance function, not just a risk function.

vi. Create Feedback Loops and Continuous Learning

Finally, legal departments should treat disputes as learning opportunities. This involves:

- Conducting post-resolution debriefs to identify root causes and areas for improvement;
- Documenting process outcomes to refine protocols and clauses;
- Creating case studies that support institutional knowledge and training; and
- Partnering with human resources, risk, compliance, and business units to share insights.

By closing the loop, legal departments can prevent recurrence, refine their systems, and gradually embed a culture of constructive conflict engagement across the enterprise.

These six steps are neither radical nor complex. They do, however, require intention, consistency, and leadership. Legal departments that adopt them position themselves not merely as legal defenders, but as strategic architects of resolution and resilience.

9. Conclusion: From Adversaries to Co-Creators of Value

The legal profession is undergoing a quiet but profound transformation. For corporate counsel, the challenge is no longer simply to protect the business from legal risk or manage litigation efficiently. It is to help the business respond to conflict constructively, resolve disputes in ways that support broader strategic goals, and embed conflict resilience into the culture and operations of the enterprise.

Traditional approaches and new technologies, rooted in adversarial procedure, reactive strategy, and binary outcomes, often no longer serve the needs of agile, reputation-conscious, and stakeholder-driven organisations. As global data and practice show, what businesses value most today are fast, confidential, interest-based resolution processes that restore trust, preserve relationships, and support commercial momentum. These are not functions that software applications and artificial intelligence can address.

A smarter use of ADR is not a matter of sentiment, but of strategy. Appropriately designed dispute resolution processes, supported by early diagnostics, dynamic process architecture, and outcome-aligned funding, can deliver measurable advantages across financial, operational, and governance metrics. They can enhance internal rate of return, reduce working cost of capital, protect brand value, and demonstrate corporate social responsibility leadership. Most importantly, they can turn difficult moments into opportunities to strengthen collaboration, clarify expectations, and adapt systems for the future, as well as greatly improve outcomes.

The tools are available. Diagnostics frameworks have matured. Mixed-mode procedures like MED-CON offer structured flexibility without sacrificing party autonomy. ADR funding models now enable early action without disproportionate financial risk. And empirical research continues to validate that these approaches align more closely with what businesses actually want. The question is no longer whether these tools are viable, but whether legal departments will take the lead in using them.

This transformation does not require abandoning the adversarial system. There will always be a role for litigation and arbitration in protecting rights and setting precedents. But they should be used when appropriate. Not as the default. The opportunity lies in expanding the legal team's role from managing disputes to designing processes, from reacting to conflict to anticipating it, and from advocating for one side to enabling agreement among many.

In doing so, corporate counsel will not only improve outcomes for their companies. They will help redefine the role of law in business, from a shield to a strategic compass, guiding the organisation through complexity toward clarity, collaboration, and value creation.