

DISPUTE RESOLUTION MAGAZINE

Published by
The American Bar Association

- 3 **Peacemaking** *Applying faith to dispute resolution*
by R. Seth Shippee
- 7 **Circles of Conversation** *One trial lawyer's journey into sacred spaces*
by Tom Porter.
- 9 **Hindu DR** *developing a global program for the Hare Krishnas*
by Arnold M. Zack
- 13 **Embracing Religion**
Spiritual tools to help meet mediation challenges
by Heidi M. Tauscher
- 18 **Negotiating Wisely** *The third eye of decision making*
By Erica Ariel Fox and Marc Gafni
- 23 **FEDERAL PREEMPTION UNDER THE FAA**
FAA Preemption: Does It Wipe Out State Contract Law?
by David S. Schwartz
Revisiting Southland
Supreme Court's reasoning weak, but conclusion correct
By Christopher R. Drahozal
- 31 **To Draft or Not to Draft**
The rights and wrongs of drafting and signing settlements
Compiled by Henry N. Mazdoorion
- Apology - Help or Hindrance?** *An empirical analysis of apologies' influence on settlement decision making*
By Jennifer K. Robbennolt

Hindu DR

Developing a global program for the Hare Krishnas

By Arnold M. Zack

Arnold M. Zack is a mediator and arbitrator

of labor-management dispute and former president of the National Academy of Arbitrators. He can be reached at azack@law.harvard.edu.

ESPI THE DRAMATIC NEED FOR systematized conflict-resolution systems within religious institutions, only the International Society for Krishna Consciousness (ISKCON), commonly known as the Hare Krishnas, has adopted alternative dispute resolution (ADR) on a global basis.

In doing so, ISKCON faced several challenges, including its membership's geographic and linguistic diversity and its 2,500-year-old history of members' deference to spiritual leaders. ISKCON also risked inviting destructive challenges to its theological authority that might have weakened the institution on a global scale.

But so far, ISKCON's ADR program has been extremely successful. ISKCON has benefited both internally, through increased awareness of members' concerns, and externally, by developing an increasing reputation as a purveyor of ADR services.

Religious institutions often resist ADR

ADR has come of age as a credible vehicle for resolving disputes that had earlier gone to court, been ignored or been suppressed. Nevertheless, ADR still faces resistance among religious institutions, despite their dramatic need for systematized institutions to address issues such as gender equality, celibacy, same-sex unions, birth control and child abuse.

Although in conventional wisdom religious institutions should help heal divisions among followers, too often they plunge into partisan conflicts over theological and secular issues. They tend to coat the issues with a theological gloss in an effort to protect against erosion of the leadership's power and authority. When such conflicts remain unresolved, members often become frustrated, anguished and disloyal to their church leadership, and sometimes even leave the faith.

ISKCON decides to develop global ADR program

In the 1970s and 1980s, when Hare Krishna devotees were frequently seen selling literature at airports, their children were entrusted to boarding schools. As in other religions, there were instances of child abuse that were not uncovered until decades later. As the violations became known, ISKCON recognized the need to forestall future abuse by establishing a Child Protection Office, and to accommodate the crises of recognition, acknowledgment and lawsuits by developing an internal-dispute-resolution system.

In early 2001, Braja Bihari (Brian Bloch), an American devotee living in India, asked the ISKCON leadership to sponsor his investigation of a dispute-settlement program. I was contacted later that year and asked to assist in the effort.

Following some initial discussions, I concluded that the issues troubling the devotees were of two main types: interpersonal issues among devotees, and issues between devotees and the ISKCON leadership. The first group of conflicts, of course, is well suited to ADR. But I was concerned that the second group might be more difficult to address within a religious institution.

In some religious institutions, the leadership is the source of both theological and secular authority - even economic power. In such situations, any challenge to the leadership, even through an ADR program, might be viewed as a threat to institutional power and control that dare not be tolerated. In addition, using ADR might threaten the religious institution by treading on theological issues where the dictates of the teacher, guru or swami could not be subject to challenge.

However, the Hare Krishnas' religious tenets make them a better prospect for ADR than I had anticipated, because Hinduism is more individualized and less dependent on centralized leadership than

some other religions. While the Governing Body Commission (GBC) is the global government that ultimately manages ISKCON, each center functions semi-autonomously under a local Temple president or "Temple board. These individuals are secular leaders who are more likely to have economic power than the gurus and swamis who serve as ascetic teachers or spiritual guides.

Traditional dedication and devotion to one's teacher, guru or swami might preclude some types of challenge, but the role of that superior is primarily theological and more likely to be devoid of financial or economic authority or blurred exercise of control.

Diversity presents challenge for program design

ISKCON's decentralization also presented a challenge in designing a global ADR program. ISKCON has several million devotees across more than 100 countries, encompassing enormous ethnic and linguistic diversity. We initially thought to develop regional structures by continent, but at present we are working on a more global unified approach.

Our immediate concern was mediator training. Although I was confident that many devotees had the intangible qualities that one senses make for a good mediator, who would train them? Not me; my evaluative style, developed in the union-management field, was not well suited to ISKCON's need for mediators who would attempt to reconcile individuals and enable them to work in harmony for a common purpose.

Our inquiry through ISKCON's Internet resources led us to Krishna Lila (Christina Casanova), a devotee from Argentina who had spent more than three decades training mediators for the New York Public School system. Our first 40-hour training program, which focused on the basics of mediation training and emphasized mediation's transformational potential, was held in New Jersey in September 2002. Three months later, we hosted 28 participants from 14 Countries at a second training in Belgium.

By the end of 2003, we had held about 15 courses on four continents and trained more than 350 devotees. We planned to continue the training in 2004, adding Australia and Africa to our destinations.

Most of these courses have been held in English, although the participants come from a number of non-English-speaking countries. Some courses, as in Kiev and Moscow, were held with simultaneous translation. The expectation is that trainees from non-English speaking countries who have taken the English-language training will, in turn, develop training programs in their local languages and help develop a larger cadre of trained mediators fluent in the local languages used by the disputing devotees. Then they could mediate local disputes in local languages.

In developing the program for resolving disputes between devotees and leaders of the movement, we have followed the ombuds model developed in the last century in Scandinavia. That formula has spread around the world into international organizations, local and national governments and private institutions.

We are in the process of developing a roster of up to a dozen ombudsmen, representing divergent constituencies within ISKCON, i.e., male, female, monk, congregant, elderly, young and geographically dispersed to provide more comfortable access by devotees interested in using the ombuds service. The first three potential ombuds we selected took The Ombudsman Association training course for ombudsmen in the summer of 2003, and have become members of that Association. We expect that devotees will have their choice of ombuds from the full roster of ombudsmen by email, telephone, voice mail or personal access.

Initial caseload volume difficult to predict

When the program was proposed, we did not know what to expect in terms of case volume. Too few cases might starve the system and thwart our entire push to transparency. On the other hand, we were fearful of opening the floodgate so wide that it would undercut the authority of the GBC and temple leadership, and impinge on the two-and-a-half millennia of -theological teachings since Lord Krishna set forth his original precepts. To avoid the latter risk, we opted to start the program quietly, focusing on world wide mediation opportunities and postponing official announcement of the mediation and formal ombuds structure.

Our concern over a paucity of cases was unwarranted. The GBC endorsement of the program was sufficient to stimulate an immediate expression of interest from leadership and devotees. Most welcomed the announcement as an opportunity to use the new program to resolve pending or long lingering disputes in which they were involved. In addition, our experience has shown that as more and more devotees have taken the mediation training, they have used it to help resolve local disputes in which they had been involved in the past, and to offer their services in resolving simmering conflicts they knew of in their home communities.

Six months after the first Radhadesh training program in Belgium, 23 of the 28 people taking the course reconvened for further training and reported that they had already been asked to mediate in some 50 cases. As of January 1, 2004, only 20 months after the GBC announcement of the program and 16 months after the initial training program, our course takers had mediated approximately 250 cases in 25 Countries, with an estimated settlement rate of 80 percent.

The ombuds have likewise handled some 75 cases. The ombuds' office was visited recently by a suicidal person as well as someone who confessed to being sexually attracted to children. In both cases the ombuds his guided the visitors to get help, and has been following tip on their progress. In the latter case, tile visitor agreed to turn his name into ISKCON's Child Protection Office for help and monitoring.

As ISKCON's ADR system moves increasingly into Eastern Europe, India, Southeast Asia and Latin America devotee uptake of the processes,, may be slower than in North America and Western Europe, where the processes had already been part of the Culture. Those regions may have had less experience with the role of the mediator and the ombudsperson. Additionally, language differences may complicate the effort to resolve the disputes.

On the other hand, tile spread of cultural influences in our cyberworld occurs with amazing speed. In May2003, at the Hare Krishna-operated hospital in Mumbai (Bombay), we succeeded in establishing the first ombuds structure for any hospital in India. In the first four months of that program, the ombuds, a hospital pediatrician, had been approached in 33 cases by physicians, nurses, clerical and technical employees as well as hospital neighbors. About a third of the cases arose from managerial personnel.

The CEO of the hospital reported that early reporting of problems by the ombuds had enabled the hospital to resolve a number of serious disputes before they became hospital wide issues. Announcement of the adoption of the program in that hospital has resulted in inquiries from other hospitals in India interested in developing ombuds structures for their own institutions.

The program is anticipated to be largely pro bono, but too much success might create such a strain on the volunteer facilities and contributions that it prevents meeting devotee expectations. At that point, we might reconsider the volunteer nature of the procedures and be forced to impose charges for our services.

Program administered by web site

Our uncertainty as to the size of the caseload we would be handling has dictated a go slow approach to developing, the structures that would administer that caseload. For the first year and a half, Braja Bihari kept records on his laptop computer and administered the program largely by e-mail and phone. Now, our administration is primarily based at our web site, www.iskconresolve.com. The administrator can also help devotees select a mediator and secure the other party's agreement to mediate.

Devotees seeking to mediate may select their preferred mediator from the posted list of those who have taken our Course. They are asked to notify the administrator of their selection, mediation schedule ,and mediation outcome

The web site also contain biographies of the rostered mediators, the schedule for upcoming training programs, educational material on mediation and the ombuds process, case submission forms, and post mediation evaluation forms. Once we have our program globally up and running, we expect to have our efforts evaluated by outside academics who will offer suggestions for improvement and provide guidance to other religious institutions who might consider developing comparable structures. For those seeking to use the ombuds process, the requirement of confidentiality does not permit web page access. But the names of the ombudsmen are listed on the web page, and those seeking to use the ombuds process may be in direct contact with one of those listed ombudsmen, who would then proceed to advise them on the procedures, offer options of action for the visitor, and if appropriate, undertake action on behalf of the devotee involved.

Devotees encouraged to address and resolve problems

The early evidence indicates that ISKCON's ADR system is working beneficially. The GBC's endorsement announced to devotees a new effort at establishing transparency, which was immediately hailed throughout as a preferred image. The GBC has also acknowledged several long-suppressed complaints and disputes that have since been resolved, which enhances the status of the procedures and of ISKCON itself in endorsing them. At its 2003 annual meeting, the GBC's executive committee decided that any dispute appealed to ' it must first be submitted to mediation. Six such disputes that would have normally taken up a tremendous amount of time during the annual meeting were quietly mediated in adjoining rooms. As a result, the GBC was able to cut nearly three

days from its normal 14-day meetings and was less often required to rule in favor of one or more devotees, avoiding the risk of antagonizing those on the losing side.

As GBC members informed me at their annual meeting in Mayapur in February, 2003, they were hearing about a lot more disputes among devotees in ISKCON than they had prior to launching the initiative. We agreed that the increased awareness of problems reflected devotees' comfort in speaking up, and speaking out. More issues and concerns that had been hidden over the years were being acknowledged and being resolved, to the GBC's satisfaction.

Of particular significance for a religion such as the Hare Krishnas, where devotees tend to leave a temple or move to other Hindu sects in the event of disputes with other devotees or temple leaders, is the new availability of an outreach by mediators to defected devotees who walked out of the ISKCON structure. The mediator, unlike someone in the ISKCON establishment, may be acceptable to a devotee who has "walked" by offering to resolve the issues that might have led to the departure, thus encouraging the devotee's returns

ISKCON's global reach helps spread ADR

It soon became apparent that the ISKCON ADR system had a potential benefit beyond ISKCON. Some devotees who were trained as internal mediators have also undertaken to mediate disputes for their local communities.

ISKCON has also undertaken to spread mediation to its schoolchildren, teaching them to negotiate and mediate disputes between friends. Although the Peer Mediation program has had its origins in the United States, ISKCON, with its global reach, has the Potential to spread this worthy process to its own and outside schools throughout the world, thereby training a whole new generation of mediators.

The spreading word of what ISKCON has done in the dispute-resolution field has already led outside institutions to ask for advice in developing similar programs. Our success in introducing the ombudsman to the Hare Krishna hospital has led to our being asked to help in introducing a parallel system in **other** hospitals. This is an example of how the experience in developing the internal system may be reflected in employment opportunities in helping to develop external systems not only in hospitals but also perhaps in the burgeoning computer, construction and apparel of the growing Indian economy.

And considering ISKCON's sensitivity to the recollections of how the organization was viewed in its days of book distribution at the top of airport escalators, the enhanced perception of ISKCON as the purveyor, instead, of dispute-resolution systems can only improve its image and its opportunities for a wider ranging set of service opportunities.

Religious organizations must be more responsive to members' needs This experiment is merely months old. It has been better received and more successful than we expected in bringing resolution to devotee disputes through mediation and resort to the ombuds. Every indication is that the expansion of the program will be similarly effective. If the experience in the next year of our global expansion is as well received as our experience to date, it might send a positive and constructive message to other religious institutions.

That message is that theological institutions, Just as civic and commercial entities, must recognize that a more educated, more assertive constituency expects its institutions to be responsive to its needs. The fall off in church attendance and contributions because of religious institutions' unfeeling and insensitive response to the abuse of the faithful should send a message to church leadership everywhere. That message is that survival of such institutions, let alone their future success in ministering to their congregants, requires more outreach to devotees, more sensitivity to their problems, and more willingness to respond to their needs as an integral part of their stewarding function.

ISKCON has set the course. It will be interesting to see if other religious institutions, faced with similar internal conflicts, will move toward its model of transparency. A credible effort in making available mediation as well as an ombuds structure has now been shown to resolve disputes and enhance member loyalty ... a win-win outcome for the institution and its followers.