

## Learning lessons to stop conflicts

*John Sturrock*

LAST WEEK in Brussels, the New York-based International Institute for Conflict Prevention & Resolution held its second European Business Mediation Congress, attended by business-people, lawyers, judges and academics from Europe, Asia and the USA. The Congress left little doubt about the global shift occurring in the management of conflict and disputes.

For lawyers, there was a clear message from the clients, represented by such as Akzo Nobel, IKEA, Northrop Grumman, BAT, Alcan and Bechtel: when conflict arises, they want speedy, business solutions. They want to turn disputes from a threat to an opportunity. They are looking for lawyers to be part of conflict strategy teams, using creative tools to find solutions.

Going to a lawyer is often described as a "distress purchase", something people do when they have a problem they can't resolve themselves. The way in which matters then develop can add to that distress. One explanation may be lawyers are educated and trained in a tradition where the emphasis is on rights and remedies, with winners and losers. Lawyers can be perceived as defending a client's position and attacking that of the other side. Success may be measured by how arguments can be deployed to achieve these ends.

This is part of a traditional approach to resolving disputes. The disadvantage can be the cost and time-consuming nature of this pursuit, not to mention the impact on business, professional and personal relationships. Polarisation may make it difficult for people to change position, for fear of losing face, and may reduce any prospect of a real understanding emerging. Sadly, there is often little satisfaction in such a process.

Former Chief Justice of the US Supreme Court, Warren Burger, looked forward to a time when lawyers would be viewed as "reconcilers not warriors, healers not hired guns". He was frustrated by cost and delay in US litigation. From his initiative has come a remarkable change in the practice of many US lawyers. The latest development is "collaborative lawyering", where attorneys commit to working together to find a solution to clients' problems.

Research by Professor Carrie Menkel Meadow, of Georgetown University, suggests, historically, we are now in a post-litigation age, many people crave greater involvement in decisions about the matters most important to them and we are moving away from imposed decision-making. In reality, legal rights are only one in a matrix of elements, including commercial interests and human relations, which impact on problem-solving.

The creative lawyer will see opportunities and will be just as interested in the client's personal and business interests as in legal analysis. But traditional legal education has left a legacy that may be hard to shift. The creative problem-solving skills and attitudes that those clients in Brussels seek in their lawyers may require greater prominence in law school curricula.

Innovation and creativity will come, in law schools and the profession. The business guru, Charles Handy, uses the metaphor of the frog in gradually heated water. Only when it is too late does the poor creature realise his environment has been changing. At the congress in Brussels, it was striking that Eastern European countries are among those who have enthusiastically grasped the new realities. Can we also do so in Scotland?