

## 8 seasons of war in 'Game of Thrones' lead to ADR

By: Special to The Daily Record Jeff Trueman ⌚ June 26, 2019

A friend and colleague pointed out to me that the entire eight-year run of the hit television series "Game of Thrones" – where sustained conflict inflicted countless deaths and drained unimaginable resources – resulted in a form of alternative dispute resolution. The leaders of the Seven Kingdoms met to discuss and negotiate their collective future. In other words, years of intense, "scorched earth" fighting (pun intended) failed to produce anything constructive.



Some devotees of the show reject the overall outcome and criticize the way the settlement agreement was negotiated. They disparage the way in which the process capitulated to one of the main characters, Tyrion, who emerged as a discredited prisoner as the talks began. Actually, I liked his speech about how a "good story" is more powerful than anything else. But somehow Tyrion was permitted to advise the Seven Kingdoms that their new king should be elected rather than determined by birth. Critics rightly point out that each character would have maintained higher degrees of self-interest, despite many years of war. The discussion would have been heated, taken much longer and probably ended without a deal.

But let's remember that Game of Thrones is entertainment. The point is that, even in war, negotiation is necessary. Similarly, litigants resolve more lawsuits than judges do. Of course, the litigation process will often motivate people to bargain. But when is it overkill? In my view, the question is whether efficiency matters since the parties will most likely end up settled rather than adjudicated.

I think the answer lies in whether people are *motivated* to be efficient. All the rationality in the world won't make people want to change. Fighting is easier because combatants and litigants don't have to acknowledge that they played a part in the events that led to the conflict – however innocent or justified they felt at the time. They don't have to listen to or understand anyone else's perspective. And they can believe absolute triumph awaits them.

On the other hand, time and money can motivate efficiency in the world of legal services. Some litigation clients are savvy consumers. They know that the best firm is not the one that turns every dispute into a complex trial. They look at a law firm's portfolio of cases and ask specific questions regarding how long it typically takes to close a file. They consider hard costs and the extent to which the litigation process will interfere with their business. They may also want to know how the firm defines "good" performance outcomes and how it incentivizes its staff to exceed performance goals.

Nonetheless, in the midst of a hotly contested case, redirecting motivation is like redirecting a charging bull. Influence and persuasion – which are art forms – take time. When people trust the process and the mediator, and when their values are elevated and incorporated into the outcome, bulls can be redirected. Tyrion was right about the power of stories – they can be highly persuasive when they transport us into another world where we identify with characters that reflect our better natures as well as our darker sides. Truth resonates through stories.

Perhaps critics of Game of Thrones' ending could recreate a realistic postwar negotiation, complete with all the complexity and intrigue that permeated the prior seasons. I might like that, but I know most people would miss seeing dragons and other cool computer-generated creatures. I admit I would too.

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