

Expanding the Pie or Slicing the Bug? ADR Education via Animated Short

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Alternative dispute resolution, or ADR, is the name for a multitude of nonadversarial and nonlitigious processes for resolving disputes. These ADR processes exist along a continuum. At one end are informal processes such as negotiation—something everyone does all the time—which do not require a neutral third party because the parties resolve the dispute themselves. In the middle of the continuum is mediation. Mediation is a voluntary settlement process facilitated by a neutral third party, the mediator, who has no decision-making power over the parties. Finally, at the other, more formal end of the ADR continuum is arbitration, wherein a third-party neutral makes a decision that is binding on the parties. While all potential disputants and law students have participated in negotiation, most have little to no personal experience with mediation or arbitration. As such, popular films’ depictions of mediation and arbitration can provide students with useful information and a portion of their ADR education.

Students enjoy watching and analyzing films in law school, where film-viewing is a striking contrast from the typical, appellate judgment-based curriculum. Generally, when using popular culture to teach in the law school, North American law professors use American feature-length films or clips from such films. I, for example, argue that popular films such as *Wedding Crashers*¹ and *Woman in Gold*² are pedagogically useful in law school ADR courses to teach mediation and arbitration, respectively.³ Increasingly, professors are also using legally themed television shows to make pedagogical points in their classrooms. Using film in the ADR classroom can supplement theoretical and experiential teaching methodologies by allowing students to “see” processes they might otherwise never witness.

In this article I focus on a different kind of film, an animated short with no dialogue, produced by the National Film Board of Canada, called *Dinner*

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1. WEDDING CRASHERS (Tapestry Films July 15, 2005).
2. WOMAN IN GOLD (BBC Films Apr. 1, 2015).
3. Jennifer L. Schulz, *Using Film to Teach ADR*, in *THE MEDIA METHOD: TEACHING LAW WITH POPULAR CULTURE* (Christine A. Corcos, ed., forthcoming Carolina Academic Press 2019).

for *Two*.⁴ This short film shows students something about alternative dispute resolution in its depiction of two lizards fighting over the same bug and a frog that ultimately helps them find a compromise solution. Why did I choose this particular film? There are five reasons:

First, because no one has written about the use of animated films to teach law or ADR. Professors interested in engaging with popular culture in the classroom need to broaden the canon, which to date exclusively comprises clips or full-length films or television shows populated by actors and dialogue. In *Dinner for Two*, only music accompanies the colorful hand-drawn characters. Using only images and music as a teaching “text” marks an important change for legal education.

Second, because it is only seven minutes long. Professors can easily pull up the film online and show it in class, which obviates the need to edit films or choose clips and allows all students to experience the animated short together.

Third, because it is a Canadian film. Law and popular culture academic literature written in English is overly focused on American and British films and television. I am interested in making space for Canadian popular culture.⁵

Fourth, because law and popular-culture scholarship predominantly focuses on litigation and lawyers rather than upon conflict resolvers and clients, it is important to examine popular culture artifacts such as *Dinner for Two* that do not deify the courtroom.

Finally, because *Dinner for Two* has a connection to food. I have long been interested in the links between food and dispute resolution, and especially how dispute resolvers, like cooks, bring everyone to the table, trying to ensure all leave satisfied.⁶ Everyone has experienced conflict, and everyone has shared food around a table. So *Dinner for Two* is eminently relatable for students and professors alike.

The film opens with a long shot on a tranquil forest in the sunny afternoon. We see insects and birds and some small animals as the camera pans in closer. An orange frog on a green lily pad, whenever it sees a bug fly past, jumps to try to catch and eat it, but misses and falls in the water. A blue and a green lizard are both extending their long, sticky tongues to snatch insects from the air. All at once a fluffy pink bug flies by. The frog tries but cannot jump for it. The lizards both try for the pink bug too. Their long tongues extend at the same time, and each lizard’s tongue sticks to a different side of the bug, so that the bug is trapped between the tips of both lizards’ tongues.

4. DINNER FOR TWO (Janet Perlman 1996), https://www.nfb.ca/film/dinner_for_two/.

5. Jennifer L. Schulz, *Canada: ADR and The Associates*, in *LAW AND JUSTICE ON THE SMALL SCREEN* 425-40 (Peter Robson & Jessica Silbey eds., 2012).

6. See Jennifer L. Schulz, *Confectionery and Conflict Resolution? What Chocolate Reveals about Mediation*, 22 *NEGOTIATION J.* 251, 251-77 (2006); Jennifer L. Schulz, *The Mediator as Cook: Mediation Metaphors at the Movies*, 2 *J. DISP. RESOL.* 455, 455-76 (2007); and Jennifer L. Schulz, *The Cook, the Mediator, the Feminist, and the Hero*, 21 *CAN. J. WOMEN & L.* 177, 177-95 (2009).

The blue lizard wants the pink fluffy bug. So does the green lizard. They begin to pull back and forth, each lizard attempting to pull the bug into its own mouth. As they do so, they back higher and higher up the tree's branches. Neither lizard can eat the bug. As each continues to try to pull the bug into its mouth to eat it, they both see another bug. It actually flies between their open mouths, but neither can eat it because both of their tongues are still stuck to the pink bug. At this point the blue and the green lizard start posturing. They make increasingly aggressive faces at each other. Nearby beetles, birds, and crocodiles begin to watch. Soon the entire forest population is watching the contest between the lizards, including the frog. The lizards are visibly exhausted from their struggle, but when they realize everyone is watching, they both make herculean efforts to pump up their bodies with huge, deep breaths. The music swells, and the blue and green reptiles begin hitting and punching each other, all the while ensuring their tongues remain adhered to the pink bug.

The green lizard grabs a leaf for support, and the bugs sitting on the leaf watching the fight fall to the ground. The blue lizard then grabs a branch to brace himself. In so doing he breaks the branch off, and the mother bird and four hatchlings roosting on the branch fall out of their nest and are also put in danger. The lizards carry on fighting. Dusk has now fallen, and the reptiles are in real danger of falling off the branch because they are wrestling so vigorously. Their fight is creating a commotion in the previously tranquil forest. The other forest inhabitants are visibly distressed. The music reflects this. The crocodiles swimming below the tree take advantage of the opportunity. They open their jaws wide, waiting for the lizards to fall off the branch and into their mouths. Suddenly, the tree branch begins to crack. Both lizards hear the crack of the branch and finally notice the crocodiles lying in wait below. Blue and green fear for their lives. In scabbling to grasp onto the tree, each lizard releases its hold on the bug. Panic-stricken, in fear of death, the lizards clasp each other's hands and swing themselves to the safety of the tree trunk, one lizard helping the other, just as the branch falls into the water between the disappointed crocodiles.

The lizards climb down to the safety of dry land, panting from the exertion of their ordeal. Blue and green are catching their breath when the same pink fluffy bug buzzes by again. This time, however, the pink bug falls dead onto the frog's lily pad. Both lizards eye the bug longingly from the shore. The frog rubs its hands together in anticipation, picks up the bug to eat it, drops it, retrieves it, and then has an idea. The lizards lean in with anticipation, the screen fades to black, and we cut to the last scene of the film.

The frog and lizards are seated around a tablecloth-covered table. Each has a plate and cutlery, and each wears a napkin tied around its neck. The frog carefully slices the pink bug into three equal portions, putting one on each plate. Another bug flies by and all three stare at it longingly. Then, unexpectedly, both lizards gesture that the frog can have the flying bug, so the frog jumps up, and for the first time in the film, successfully catches a bug.

Amphibian and reptiles alike settle in graciously to eat their portions of the pink bug, and as the camera pulls back, order and tranquility are restored in the forest.

Dinner for Two demonstrates many foundational ADR concepts in its seven minutes. ADR professors can address each systematically, or facilitate a discussion encouraging students to surface the concepts themselves. Professors can begin by asking students: What kind of knowledge of dispute resolution does the film offer?⁷ *Dinner for Two* offers much. For example, it has long been established that a scarcity of resources can lead to conflict.⁸ In this animated short, there is only one pink bug and both lizards want it—a typical start to conflict, which usually leads to a zero-sum resolution. A zero-sum resolution means that one lizard’s gain of the bug will be the other lizard’s loss.⁹ ADR scholars often describe mediation as a process that disputing parties can employ in order to avoid zero-sum resolutions, because in mediation the parties, with the help of the mediator, craft their own agreement.¹⁰ This agreement meets some of each of their needs, and therefore it can be a win-win outcome rather than a zero-sum or win-lose outcome typical of court decisions.

ADR professors also teach the process of naming, blaming, and claiming that takes place on the client’s journey from a perceived injurious experience to a full-fledged dispute.¹¹ Austin Sarat comments that “the processes through which problems are defined, blame is assigned, and claims are made, remain virtually unexplored as subjects in popular culture.”¹² However, we see this process in *Dinner for Two*. Each lizard perceives an injurious experience and defines it—“the other lizard has the bug I want.” The lizards recognize it and name it. The lizards move forward with the grievance to blaming—each lizard feels that, but for the other lizard, it would have enjoyed the scarce asset, the fluffy pink bug. Finally, the lizards claim the situation as a full-on dispute and fight it out in a public forum. Regrettably, the lizards are so locked into their opposing positions that they become entrenched, something that is very common for human disputants as well. Entrenchment in one’s position can

7. See Schulz, *supra* note 3.

8. WILLIAM W. WILMOT & JOYCE L. HOCKER, INTERPERSONAL CONFLICT (9th ed. 2013). Wilmot and Hocker have argued this since their first edition, published in 1995, and all other ADR scholars agree. See, e.g., DESMOND ELLIS & DAWN ANDERSON, CONFLICT RESOLUTION: AN INTRODUCTORY TEXT (2005).

9. JOHN VON NEUMANN AND OSKAR MORGENSTERN, THEORY OF GAMES AND ECONOMIC BEHAVIOR (1944).

10. FREDRIKE BANNINK, HANDBOOK OF SOLUTION-FOCUSED CONFLICT MANAGEMENT (2010).

11. William L.F. Felstiner, Richard L. Abel & Austin Sarat, *The Emergence of Transformation of Disputes: Naming, Blaming, Claiming*, 15 LAW & SOC’Y REV. 631 (1980).

12. Austin Sarat, *Exploring the Hidden Domains of Civil Justice: Naming, Blaming and Claiming in Popular Culture*, 50 DEPAUL L. REV. 425, 426 (2000).

lead to conflict escalation,¹³ and that is exactly what happens in *Dinner for Two*; the lizards increase their aggression as the film progresses.

Dinner for Two highlights the irony of missed opportunities for conflict resolution. While the lizards' tongues are firmly attached to the pink bug, another bug actually flies through their open mouths. Each lizard could have had a bug, but because they were so committed to winning the pink bug, neither of them got a bug. For student observers of the film, the folly of this is clear. Watching this scene makes students aware that, either as future dispute resolution advocates or practitioners, they should not miss opportunities for resolution that are (literally) right under their noses.

As the lizards let the other bug fly through their mouths and remain unable to eat the pink bug stuck to their tongues, it becomes embarrassing. The competing lizards now experience the problem of saving face. ADR practitioners stress the importance of allowing disputants to maintain face,¹⁴ because losing face can be distressing and humiliating. When disputants are entrenched in their positions and embarrassed to back down, as the lizards are, they often act differently than they otherwise would. This is more a cultural than a legal process.¹⁵ In the case of *Dinner for Two*, the lizards increase their violence toward each other, likely because the forest inhabitants are watching them, and they want to appear strong or tough. So the lizards, like human disputants, act up, get more positional, and turn to violence.¹⁶

Related to the problem of face-saving is publicity of conflicts. This animated short effectively highlights the problems that may ensue when conflicts are brought into the public eye. In the film, the lizards violently fight one another when they realize the other forest dwellers are watching. Students can contemplate this phenomenon as it may arise in interpersonal, workplace, and international disputes. For example, once the press is reporting on a conflict, does that change how the disputants comport themselves?

Also, when disputants fight publicly, does collateral damage ensue? *Dinner for Two* answers "yes." As a result of the lizards' fight on the branch of a high tree, not only do they almost die, but others are hurt—bugs fall off a leaf and baby birds are subjected to danger. The lizards' competition over the bug upsets others in the forest, which squawk in fear and run away. All those around the conflict experience stress. The wide-ranging effects of conflict, surely beyond what the lizards or most disputants expect or intend, are illustrated in this

13. Timing the De-Escalation of International Conflicts (Louis Kriesberg & Stuart J. Thorson eds., 1991).
14. STELLA TING-TOOMEY, A FACE NEGOTIATION PERSPECTIVE: COMMUNICATING FOR PEACE (1990); RAYMOND COHEN, NEGOTIATING ACROSS CULTURES: COMMUNICATION OBSTACLES IN INTERNATIONAL DIPLOMACY (1991); Jeffrey Z. Rubin, *The Timing of Ripeness and the Ripeness of Timing*, in *Timing the De-Escalation of International Conflicts*, *supra* note 13, at 237-47.
15. See Sarat, *supra* note 12, at 427.
16. Friedrich Glasl, *The Process of Conflict Escalation and Roles of Third Parties*, in *CONFLICT MANAGEMENT AND INDUSTRIAL RELATIONS* 119-40 (G.B.J. Bomers & Richard B. Peterson eds., 1982).

short film. In Canada, the negative mental and physical consequences associated with legal conflict have been documented.¹⁷ *Dinner for Two* echoes this critique of competitive, adversarial approaches to conflict; such conflict “may be as dangerous to the social health of a community as to the psychic health of persons.”¹⁸ *Dinner for Two* clearly exposes the pitfalls of the adversarial approach.

Dinner for Two challenges students to reverse law’s dominant competitive logic and replace it with ADR’s collaborative impulses. It demonstrates how disputing is social and contingent, rather than natural and inevitable.¹⁹ Students begin to see that culture influences what happens with each particular dispute and that litigation is not always the answer. The film tells a different conflict resolution story than legal texts do, encouraging students to focus on the benefits of engaging a third-party neutral, negotiating, compromising, and collaborating instead of fighting. Disputing parties can have input into resolutions, learn improved methods of communication, improve their relationships, and reach closure when they employ a third party, such as a mediator or an arbitrator, or in the case of *Dinner for Two*, a frog, to help resolve their conflicts.

So what about the frog in this animated short? What do students make of the fact that the frog is shown to be inept throughout the film (it cannot even catch bugs when it jumps), but then at the end it is the one who brings resolution? Students can discuss this and decide whether the portrayal of the frog encourages faith in dispute resolvers or not.

Students should also be asked whether the frog is a mediator or an arbitrator. Mediators assist the parties in voluntarily coming to their own settlement. In so doing, they attempt to expand the pie. This means that instead of merely seeing the dispute as a “fixed pie,” where the issue is the size of each disputant’s slice, mediators attempt to expand the pie. In other words, the job of the mediator is not merely to bring the parties to a compromise. The mediator needs to help the parties see beyond the pie and determine if there is something else that is also important to them. If so, the mediator brings it—whether it is respect, an apology, or a different type of dessert—into the discussion. In so doing, the mediator has “expanded the pie,” or increased the range of topics to discuss and make agreements about. Arbitrators, however, have a different role. They listen to the evidence presented by both sides and render a decision. The frog is an arbitrator. The frog hatches the dispute-resolution plan, orchestrates it, and decides what the resolution will be. The frog does not expand the pie; the frog slices the bug.

17. *Access to Civil and Family Justice: A Roadmap for Change*, ACTION COMMITTEE ON ACCESS TO JUSTICE IN CIVIL AND FAMILY MATTERS (Oct. 2013), http://www.cfcj-fcjc.org/sites/default/files/docs/2013/AC_Report_English_Final.pdf.

18. Sarat, *supra* note 12, at 451.

19. *Id.* at 430.

When the frog slices the bug, it does so into three equal portions, and then the frog and the two lizards eat them. This is unusual. The film is called *Dinner for Two*, yet three are eating. More importantly, it may be unethical. The frog takes an equal cut of the bug. This is akin to an arbitrator taking a portion of the assets the parties are disputing over. ADR professionals should not accept any part of the parties' assets as part of their services or payment unless such an arrangement has been explicitly agreed to in advance by both parties. The ADR Institute of Canada's Code of Ethics mandates that all mediators and arbitrators "shall disclose any interest or relationship likely to affect impartiality or which might create an appearance of partiality or bias."²⁰ The frog in the film clearly has an interest in the bug for itself. Further, mediators and arbitrators must "avoid impropriety or the appearance of impropriety"²¹ and "shall conduct all proceedings fairly and diligently, exhibiting independence and impartiality."²² When the frog cuts itself a piece of the very asset that is in dispute, without the parties' explicit consent, the frog is not exhibiting the independence and impartiality that Canadian codes of conduct require, and as such is behaving unethically. However, despite the frog's breach of arbitrator ethics, at the end of the film, all parties are happy; the frog has brought the lizards to the table, and everyone is satisfied, including the viewers. Does it matter that the film portrays an unethical arbitrator yet a satisfactory dispute-resolution result? This is an important conversation for the ADR professor to facilitate in the classroom.

Dinner for Two is an excellent heuristic. It is a wonderfully engaging, dialogue-free, animated short that allows students to lean back and take the film in as an entire sensory experience. It is easy to incorporate into ADR teaching because it is only seven minutes long. It is also a unique choice for professors who wish to incorporate popular culture into their teaching, because Canadian films, and especially animated films, are not typically put to use in law schools. Importantly, the film focuses upon an arbitrator and two disputants, as opposed to a trial and lawyers. Finally, it is fun; it is a cartoon about food that ends well. When *Dinner for Two* is viewed and discussed in the law school classroom, students genuinely obtain the beginning of an ADR education.

20. *Code of Ethics: Rule 6*, ADR INSTITUTE OF CANADA, <http://adric.ca/rules-codes/code-of-ethics/>.

21. *Id.* at Rule 7.

22. *Id.* at Rule 8.