

in depth



Fountainhead for peace

The emergence of an 'African hub' for dispute resolution at the University of Stellenbosch Business School symbolises a new, transformative path for the university, writes **TERRY BELL**.

The symbolism of Stellenbosch University housing a centre and putative African hub for dispute resolution is singularly appropriate. So says Dumisa Ntsebeza, advocate, company director, part-time judge and former political prisoner.

He is also the chairperson of Equillore, the private sector dispute resolution agency that is the founding sponsor of the University of Stellenbosch Business School's new Africa Centre for Dispute Settlement (ACDS), launched in February this year. The Centre was established to provide "an African hub for academic research on, and the development and teaching of, dispute settlement theory and practice".

Says Ntsebeza: "Stellenbosch was not only

the fountainhead of Afrikaner nationalism and apartheid ideology, it was also the source of much of the *verligte* movement which turned its back on narrow, ethnic nationalism." As such, he feels the university is an excellent symbol of the transformation that has taken place in South Africa and of the hope for a better and pan-African future.

Nobel Peace laureate and Anglican archbishop emeritus Desmond Tutu was also looking to the future when he agreed to the request from ACDS head, Professor Barney Jordaan, to become the Centre's patron. Speaking from Baltimore during a visit to the United States he said he was particularly struck by the intention of the Centre to extend mediation training to schools, communities and to traditional leaders.

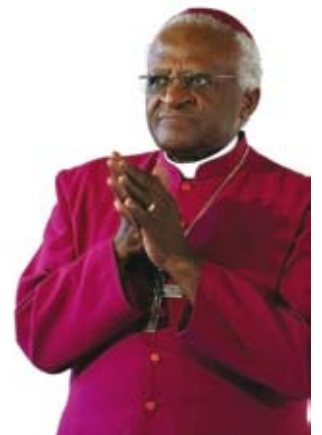
In a message from the United States, he noted: "I think that mediation and dialogue are vital skills in our society. I am particularly pleased that the Centre aims to spread its training to peer mediation in our often violence-wracked schools, as well as to community and traditional leaders."

As he sees it, the more "we talk together and find our common humanity and common interest, the better for all of us".

These comments were made before the outburst of xenophobic violence that shattered much of the image the country possessed internationally as a centre for dialogue and the peaceful settlement of disputes. The violence has highlighted, in graphic and often ghastly fashion, the fact that a culture of dialogue and of mediation is sorely lacking. >>

'Mediation and dialogue are vital skills in our society'

- Archbishop Emeritus Desmond Tutu,
Patron of the Africa Centre for
Dispute Settlement



Yet South Africa has been accorded an image as a pioneer of mediation for dispute resolution – courtesy largely of our negotiated transition to a liberal parliamentary democracy. But the reality is that we have lagged behind many other regions of the world in the application of formal processes to settle disputes by dialogue. At the same time, as Barney Jordaan is quick to point out, this country, as with much of Africa, has a rich tradition of dispute settlement based on what a former British prime minister Winston Churchill described as “jaw-jaw” rather than “war-war”.

However, the traditional systems of community dispute settlement, be they the pitso, lekgotla, imbizo or indaba, were regarded with disdain under the former political dispensation. Professor Jordaan feels that these mechanisms “which have stood the test of time” may provide keys to processes which may be more appropriate and efficient and with which parties in dispute could feel more comfortable.

In many ways, he admits, this is a case of “going backwards to the future”, researching the ancient ways, assessing them and perhaps adapting usable elements to the circumstances of today. But this will be a future thrust of the new Centre. Its main and immediate task is the training of mediators to deal with conflict, mainly in the commercial field.

In this arena the weapons are litigation; the armies, attorneys and advocates; and the battlefields, the courts. There may be no blood spilled, but balance sheets can haemorrhage red ink and even the winner can be sorely wounded. All too often, Ntsebeza agrees, commercial battles through courts can result in a Pyrrhic victory.

Says Equillore deputy chair, Wahida Parker: “I think an argument can be made that it is the fiduciary duty of company directors to avoid litigation wherever possible. Unless it is absolutely necessary, it is wasteful, often costing the shareholders dearly and damaging the company.” She maintains that mediation provides the opportunity for “win-win solutions”.

“Because mediation has proved so successful in recent years, it is seen as the way forward in countries such as Britain,”

says Dr John Fletcher, projects director of the British-based Alternative Dispute Resolution Group (ADR Group). Eastern Cape-born Fletcher, who holds a doctorate in administrative law from the University of Cambridge and formerly practised as an advocate in Johannesburg, is currently assisting the ACDS with training modules and the training of trainers.

The ADR Group, the oldest provider of



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dispute settlement training in Britain, has a panel of 550 mediators who can be called on by companies, individuals, law firms or the courts. Legislation in Britain now makes it compulsory for attorneys to refer clients in disputes to mediation before contemplating court action

Says Jordaan: “Our court rolls are now so clogged that it can take years for a matter to come to trial and this can often be a waste not only of time, but resources.” This, he agrees, was the reasoning behind the establishment locally of the Commission for Conciliation, Mediation and Arbitration (CCMA), which provides free access for the settlement of labour disputes.

But conflict in the civil, commercial and family arena still ends up adding to the chaos

in the courts and, all too often, to settlements that leave a bitter taste for the parties involved. It was a similar situation that led states and the federal government in the United States, for example, to pass more than 4 000 separate pieces of legislation providing for dispute settlement via mediation.

The realisation that deeper pockets usually mean more favourable access to the law has also seen a spin-off from the growing practice of formal mediation into what is now termed “micro justice”. A concept pioneered by the University of Tilburg in the Netherlands, it has been successfully piloted in Bolivia.

A micro justice network provides access – either through non-profit organisations or small-business models – to free or inexpensive mediation, and to the provision of quicker, easier means of dispute settlement.

Wahida Parker admits that there are some legal practitioners who see these burgeoning developments as a threat. “But there are others who realise that if they can provide quicker, easier and less expensive means of settling disputes, they actually encourage more business,” she says.

This has certainly proved to be the case with the first courses run at the ACDS where a majority of participants have been lawyers. However, there have also been accountants, an actuary, a leading trade union official and a CCMA commissioner.

A panel of mediators, all of whom have to undergo regular skills updates in future, has now been trained through the Centre, and Jordaan is on the lookout for funding to extend the reach of the ACDS. “We have only just got underway and we have a long way to go,” he says.

The recent deadly outbursts of community violence, based largely on misunderstandings, myths and bigotry, have underlined this point. As Archbishop Tutu says, it is better for all of us, in all spheres of life, if we can at least “talk together”. This implies listening and understanding, which is the essence of dialogue and for which mediation is often a necessary catalyst. □

Find out more about the Africa Centre for Dispute Settlement at www.usb.ac.za/disputesettlement.



Prof Barney Jordaan



Adv Dumisa Ntsebeza



Wahida Parker



Dr John Fletcher