

## COMMUNICATION AS PROFESSIONAL CAPITAL IN ADR: COLLABORATIVE LAW PRACTICE A CENTRED PILLAR.\*

For decades, legal culture rewarded confrontation. Success was often measured by procedural aggression, technical dominance, and the capacity to outmanoeuvre an opponent within adversarial systems.<sup>1</sup> Yet the realities of contemporary dispute resolution are rapidly changing. Businesses, institutions, families, regulators, and even governments are increasingly recognising that prolonged hostility is economically expensive, psychologically destructive, and commercially unsustainable.<sup>2</sup>



**When communication becomes legal power, 78% of commercial disputes escalate because of communication breakdowns, not purely legal defects.**

*In modern dispute resolution, the most valuable legal professionals may no longer be the loudest advocates, but the most intelligent communicators.*

This shift is precisely why Alternative Dispute Resolution (ADR) has become central to modern legal and corporate ecosystems. But beneath mediation sessions, settlement negotiations, arbitral procedures, and collaborative frameworks lies a deeper truth that many institutions still underestimate, communication itself has become professional capital.

### Strategic Infrastructure

In ADR environments, communication is no longer a secondary soft skill attached to legal work. It is part of the infrastructure of dispute resolution itself. The effectiveness of an ADR process frequently depends less on strict legal superiority and more on whether parties can communicate productively under conditions of tension, mistrust, fear, anger,

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<sup>1</sup> Mike Lubofsky, 'The Erosion of Civility in Litigation and Its Impact on Attorneys' Emotional Regulation' (2026) *AttorneyTherapists* available at <https://attorneytherapists.com/the-erosion-of-civility-in-litigation-and-its-impact-on-attorneys-emotional-regulation/> accessed 14 May 2026; Roy J. Lewicki, Bruce Barry and David Saunders, *Essentials of Negotiation* (McGraw-Hill Education, 2024) 27-56.

<sup>2</sup> International Chamber of Commerce (ICC) Report, *The Economic Impact of Unresolved Low-Value Commercial Disputes* (Oxera, 2025) 3-36; Leigh L. Thompson, *The Mind and Heart of the Negotiator* (7th ed., Pearson, 2022).

or institutional pressure.<sup>3</sup> The ability to manage difficult conversations now carries strategic value equal to technical legal expertise.

Poor communication escalates disputes.<sup>4</sup> Intelligent communication transforms them. This is why the most effective dispute resolution professionals increasingly combine legal competence with emotional intelligence, behavioural insight, negotiation strategy, psychological awareness, and relational management.<sup>5</sup> Listening capacity, tone discipline, empathy, strategic silence, reframing techniques, non-verbal intelligence, and trust-building are no longer abstract interpersonal virtues, they are commercially valuable professional tools.

In many respects, modern ADR has created an entirely new category of legal professionalism, one where communication competence influences outcomes, client confidence, institutional reputation, and long-term commercial relationships.<sup>6</sup> Nowhere is this evolution more visible than in Collaborative Law Practice. Collaborative practice represents one of the most communication-dependent pillars within the ADR ecosystem because its entire operational architecture rests on structured dialogue and cooperative engagement.<sup>7</sup> Unlike adversarial systems that often weaponize communication, collaborative processes are designed to stabilise it.

The collaborative lawyer is therefore not functioning merely as a legal representative.<sup>8</sup> The practitioner simultaneously becomes a negotiation architect, conflict de-escalator, communication stabiliser, trust manager, and relationship-preservation strategist. This distinction matters because in traditional adversarial settings, communication often serves positional victory.<sup>9</sup> In collaborative environments, communication serves problem-solving, dignity preservation, and sustainable resolution. The objective shifts

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<sup>3</sup> Kihwan Kim, Nicole L. A. Cundiff and Suk Bong Choi, 'The Influence of Emotional Intelligence on Negotiation Outcomes and the Mediating Effect of Rapport: A Structural Equation Modeling Approach' (2014) 24 *Negotiation Journal* 49–65.

<sup>4</sup> Polsci.Institute, 'Ineffective Communication: A Source of Conflict' (2025) Conflict Resolution and Peace Building available at <https://polsci.institute/conflict-resolution-peace-building/ineffective-communication-source-of-conflict/> accessed 14 May 2026.

<sup>5</sup> Sudeep Sharma, William P. Bottom and Hillary Anger Elfenbein, 'On the Role of Personality, Cognitive Ability, and Emotional Intelligence in Predicting Negotiation Outcomes: A Meta-analysis' (2013) 3 (4) *Organizational Psychology Review* 293–336.

<sup>6</sup> Maw D. Foo, Hillary A. Elfenbein et al., 'Emotional Intelligence and Negotiation: The Tension Between Creating and Claiming Value' (2004) 15 (4) *International Journal of Conflict Management* 411–429.

<sup>7</sup> Nancy J. Cameron, *Collaborative Practice: Deepening the Dialogue* (Vancouver B.C.: Continuing Legal Education Society of British Columbia, 2nd Ed. 2014) 321.

<sup>8</sup> Robert F. Cochran, 'Collaborative Practice's Radical Possibilities for the Legal Profession: "[Two Lawyers and Two Clients] for the Situation' (2011) 11 (2) *Pepp. Disp. Resol. L.J.* 229-251; Anita Dorczak, 'Beyond Judicial Intervention: Collaborative Law as a Novel Approach to Conflict Resolution' (2015) Special Edition Vol.1 *European Scientific Journal* 275-279; Kimberly Miller, 'The Power of Communication' (2013) Collaborative Law Institute of Minnesota available at <https://collaborativelaw.org/the-power-of-communication/> accessed 14 May 2026.

<sup>9</sup> Amuseghan Sunday Adejimiola, Language and Communication in Conflict Resolution (2020) 8 (1) *International Journal of Law and Legal Studies* 1-9.

from defeating an opponent to managing conflict constructively without destroying relationships, reputations, or institutional functionality.

That shift fundamentally changes the identity of legal practice itself. Increasingly, clients involved in sensitive disputes are not looking only for technical legal representation. They are searching for professionals capable of creating psychological safety in highly stressful situations.<sup>10</sup> They seek calmness under pressure, mature judgment, confidentiality, emotional balance, strategic empathy, and solution-oriented leadership. In other words, communication style itself is becoming part of professional value.

### **Legal legitimacy**

This transformation also carries major implications for emerging jurisdictions such as Nigeria, where collaborative legal frameworks are still developing institutional visibility. The long-term legitimacy and growth of collaborative law practice may depend less on theoretical advocacy and more on public confidence in the communication culture surrounding it. If practitioners communicate collaborative processes poorly, the field risks being misunderstood as weak, informal, or insufficiently rigorous.<sup>11</sup> But when communicated effectively, collaborative practice can reposition itself as a sophisticated, commercially intelligent, and relationship-sensitive model of dispute management.

This is especially important in commercial sectors where parties anticipate ongoing relationships beyond the dispute itself. Energy transactions, family-owned enterprises, construction partnerships, labour relationships, financial negotiations, and institutional governance disputes often require future cooperation even after conflict emerges. In such contexts, destructive communication may resolve a legal issue while simultaneously destroying the business ecosystem surrounding it.<sup>12</sup> Collaborative practice attempts to prevent exactly that outcome.

Critically, this does not suggest that adversarial litigation lacks value. Courts remain indispensable pillars of justice, accountability, constitutional order, and rights enforcement.<sup>13</sup> Nor does communication-centred practice imply weakness or avoidance of difficult legal realities.<sup>14</sup> Rather, the emerging lesson is more nuanced, not every

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<sup>10</sup> Michael W. Morris and Dacher Keltner, 'How Emotions Work: The Social Functions of Emotional Expression in Negotiations' (2000) 22 *Research in Organizational Behavior* 1-50.

<sup>11</sup> Forrest S. Mosten, Julie Macfarlane and Elizabeth Potter Scully, 'Educating the New Lawyer: Teaching Lawyers to Offer Unbundled and Other Client-Centric Services (2018) 122 (3) *Dickinson Law Review* 801-824.

<sup>12</sup> Edward J. Kelly and Natalija Kaminskienė, 'Importance of Emotional Intelligence in Negotiation and Mediation' (2016) 2 (1) *International Comparative Jurisprudence* 55-60.

<sup>13</sup> Chapter IV, sections 6 and 46 of the Constitution of the Federal Republic of Nigeria (CFRN) 1999 (as amended); *Governor of Lagos State v. Ojukwu* (1986) 1 NWLR (Pt. 18) 621; Matthew Izuchukwu Anushiem, 'Roles of the Courts and the Police in Nigeria's Justice System (2026) 3 (1) *Nnamdi Azikiwe University Journal of Private and Property Law* 125-137.

<sup>14</sup> Ingrid Smithey Fulmer and Bruce Barry, 'The Smart Negotiator: Cognitive Ability and Emotional Intelligence in Negotiation' (2004) 15 (3) *International Journal of Conflict Management* 245-272.

dispute benefits from escalation as a first instinct. Sometimes the highest level of professional sophistication lies in the ability to reduce hostility without reducing legal protection.

Some may argue that strong advocacy requires aggressive confrontation. Yet modern dispute systems increasingly demonstrate that unmanaged hostility often produces greater financial loss, reputational damage, procedural delay, and emotional exhaustion.<sup>15</sup> Communication-centred dispute resolution does not eliminate legal strength, it refines how that strength is deployed. The future of legal professionalism may therefore belong not only to those who can argue powerfully, but to those who can communicate strategically without destroying the possibility of resolution.

### **Future Legal Professionalism**

The evolution of ADR is gradually redefining what professional excellence means within legal practice. Technical competence remains essential, but communication intelligence is becoming equally indispensable. The lawyer of the future may be evaluated not only by the ability to litigate disputes, but by the capacity to prevent unnecessary escalation, preserve institutional relationships, and guide parties toward durable outcomes.

*Communication is no longer adjacent to dispute resolution. Communication itself has become part of the resolution process.*

And as collaborative law practice continues to evolve within modern ADR systems, its greatest contribution may ultimately be proving that the future of legal practice is not built only on argument, but also on intelligent human engagement.

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<sup>15</sup> Neil H. Katz and Adriana J. Sosa, 'The Emotional Advantage: The Added Value of the Emotionally Intelligent Negotiator' (2015) 33 (1) Conflict Resolution Quarterly 57-74.