

## 21<sup>st</sup> most needed skills, mediation and dispute resolution skills and legal training

*As habilidades necessárias ao profissional do século XXI, habilidades de mediação, gestão de conflitos e o ensino jurídico*

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### Abstract



The Justice System in Brazil struggles with a large stock of lawsuits. Despite the work of trial court judges, court lawsuits come in faster than they are solved. On the other hand, Law Schools focus on training lawyers to keep litigating. This research aims to understand how legal culture could be reoriented so that we could build a fairer and more peaceful society. To do that, first, we analyze the current context of the Justice System, taking a deeper look at its data. Then, as we realized that most of the disputes in adjudication currently could be more appropriately solved by ADR, we turned our eyes to how ADR tools and techniques can be used. Lastly, since we aim to achieve results in legal training, we study the skills needed to succeed in the job market. In conclusion, we found that Law Schools should focus on mediation and negotiation training and collaborative and strategic conflict resolution skills throughout the curriculum. If lawyers are trained strongly with skills to build consensus, collaborate when solving conflicts, negotiate and mediate, they should be able to design or help to design more adequate and customized solutions for a great variety of disputes, contributing to a more peaceful society and a more efficient Justice System, while becoming a more competitive professional for the labor market.



**Keywords:** alternative dispute resolution; conflict mediation; legal training; soft skills; Justice System.

### Resumo

*O Sistema de Justiça no Brasil apresenta uma série de ações visando reduzir seu amplo estoque de processos. Apesar do trabalho dos magistrados, os processos judiciais são propostos em velocidade maior do que são resolvidos. Em adição, as faculdades de Direito se concentram em treinar advogados para o processo de litígio. Desse modo, esta pesquisa visa compreender como a cultura jurídica pode ser reorientada para que se possa construir uma sociedade mais justa e pacífica. Para isso, primeiramente, se analisa o contexto atual do Sistema de Justiça, aprofundando-se em seus dados. Posteriormente, e quando se percebe que a maioria das disputas em julgamento atualmente poderia ser resolvida de forma mais apropriada pelos Meios Alternativos de Solução de Conflitos (MASCs), observa-se como as técnicas de mediação e negociação podem ser adotadas. Por fim, como se almeja alcançar resultados para o ensino jurídico, estudam-se as competências necessárias para ter sucesso no mercado de trabalho. Em conclusão, entende-se que as faculdades de Direito devem se concentrar no treinamento nas habilidades de resolução de conflitos estratégicos e colaborativos em todo o currículo educacional. Se os advogados forem formados com competências para construir consensos, colaborar na resolução de conflitos, negociar e mediar, poderão desenhar ou ajudar a conceber soluções mais adequadas e personalizadas para os diversos litígios, contribuindo para uma sociedade mais pacífica, um Sistema de Justiça mais eficiente, ao mesmo tempo em que se tornam profissionais mais competitivos para o mercado de trabalho.*

**Palavras-chave:** ensino jurídico; habilidades socioemocionais; mediação de conflitos; métodos adequados de solução de conflitos; Poder Judiciário.

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## 1 Introduction

The Judiciary Power in Brazil struggles with a stock of 80 million lawsuits. Each year, countless measures are encouraged by the National Justice Council (CNJ), to improve the productivity of courts when judging cases, which sometimes can lead to a fast paced and superficial analysis of disputes that need a deeper understanding. Moreover, despite an increase in productivity, it never seems to be enough, since new cases keep coming in.

Added to that, legal training in Brazil is mostly pragmatic and technical, preparing future lawyers as litigation specialists. This does not sound like a solution to the over-litigating culture we already have in place. Besides, depending on the nature of the dispute, adjudication may not be the best way to solve it, since it not only takes time, but it also produces a standardized solution, following laws and precedents, which not always addresses the real needs and interests of the parties involved.

Taking this into account, this research aims to understand how legal culture could be reoriented in such a manner that we could build a fairer and more peaceful society. In order to do that, first we analyze the current context of the Justice System, taking a deep look on the numbers and figures that build what we see today. Then, as we realized that most of the disputes in adjudication currently could be more appropriately solved by ADR, we turned our eyes to how ADR tools can be used to solve conflicts. Lastly, since we aim to achieve results on legal training, we study the skills needed to succeed on the job market.

Research has shown ADR methods can no longer be treated as an alternative to litigation. Lawyers are expected to play an active role as creative problem solvers not only by solving disputes but, moreover, preventing them from happening altogether. This shows a clear path to legal training. Law Schools should focus on mediation and negotiation training throughout the curriculum. If lawyers are trained as expert negotiators, they will manage disputes more adequately, contributing for a more peaceful society, a more efficient Justice System, besides becoming a more competitive professional for the labor market.

## 2 Context: The Brazilian Justice System Scenario

In Brazil, there is a stock of almost 80 million lawsuits. A study carried on by the Brazilian Magistrates Association (BMA, 2015) has shown that a new lawsuit is filed every 5 seconds, while a trial judge judges an average of 5 lawsuits every day. This math does not add up. Additionally, considering the types of conflicts, most of these lawsuits could be more properly solved by mediation or negotiation.

Handing down the task of solving conflicts almost exclusively to the State creates a scenario in which the Judicial System is used as a universal window for complaints, accepting all kinds of pretensions, resistance, dissatisfaction, and intolerance, even for some cases that primarily could be solved by a well driven negotiation. The results are an overload of these Institutions and the dissatisfaction of the parties.

Any institution has a limited-service capacity, that added to the way litigation usually occurs leads the complaint to an uncertain future and seldom solves the real problem, as it usually requires more time and more customized solutions than what the System can offer. It only adds instability to the decision and reassures the image of incapacity of the Third Power to host and efficiently solve conflicts.

The National Justice Council - CNJ<sup>1</sup>, through the report entitled “Justice in Numbers” (in Portuguese: Justiça em Números), pointed out that the Brazilian Judiciary System had 79.7 million lawsuits in progress at the end of 2019. This figure reveals that if the Justice System wanted to solve the full inventory, it would be necessary to paralyze the entrance of new cases for two years and eight months.

Meanwhile, in 2015, the Brazilian Magistrates Association (BMA) has carried out a campaign entitled “Do not let the Judiciary stop” (In Portuguese: Não Deixe o Judiciário Parar). The campaign has found that 40% of the Justice System stockpile was made of cases that did not need to have an enforcement decision. That means that those claims could be avoided by either by providing an adequate service or an Alternative Dispute Resolution procedure, such as negotiation or mediation.

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<sup>1</sup> The National Justice Council – CNJ was created by the Constitutional Amendment number 45/2004, as an autonomous institution to oversee the action, create public policies and measure the results achieved by the Brazilian courts.

The Association indicates that providers of regulated services such as phone companies, banks and financial services, health insurance and transportation providers should provide their services properly, which means delivering quality services while avoiding conflict (AMB, 2015).

It is also important to look for Customer Defense Services, Customer Service or services that promote negotiated solutions to avoid the adjudication of conflicts. The campaign's initiative is relevant, as it demonstrates the institutional will of trial judges as a category to promote better legal services and a broader access to justice (AMB, 2015).

In addition to the BMA's report, which highlights consumer law as one of the main claims in the Judiciary, CNJ's report "Justice in Numbers" corroborates this data and expands it. The report presents the other four most frequent subjects in the Judiciary, namely: obligations and breach of contracts, civil liability and damages, family law and alimony, tax debt. Most of these conflicts, by their nature, could be better solved by mediation or negotiation, proving the file of lawsuits to be unnecessary.

When dealing with negotiated solutions, it is important to present, yet more data referring to the Brazilian Justice System. The Brazilian justice workforce, in 2019, was made up of 448,964 people, of whom 18,168 are trial judges (CNJ, 2020), while there are currently almost 1 million and 300 thousand active lawyers enrolled in the Brazilian Bar Association (CFOAB, 2020). In other words, there are less than half a million people dedicated to the management and resolution of legal proceedings, while there are more than one million individuals trained to file lawsuits.

Finally, it is noteworthy that a comparative historical analysis from 2009 to 2017 shows that investment in the Judiciary Power increases every year. According to the Justice in Numbers report, the Judiciary's total expenses correspond to 1.4% of the Gross Domestic Product (GDP). In 2017, the cost for the Justice service was R\$ 437.47 (about USD100.00) per inhabitant, which represented an increase of R\$15.2 (about USD4.00) compared to 2016. That demonstrates that more investment is not the solution.

Once we have presented all important data, it is important to make an analysis. In summary, the following data were presented: 1) lawsuits inventory in the year 2019; 2) more frequent themes; 3) the Brazilian justice workforce compared to the number of lawyers.

Initially, it is important to compare the information presented that demonstrates that, despite the best productivity trial judges' indexes of the historical series, it will still take more than two years of work to zero the stock of the Judiciary, even if there are no new lawsuits. In other words, it is impossible to make ends meet when we relate productivity per magistrate and the productivity of Justice as a whole to the number of existing cases, added to the number of new cases that are filed every day, despite the annual increase in investment in the Judiciary.

Among the most demanded matters in court, which are: consumer law, obligations and breach of contracts, civil liability and damages, family law and alimony, tax debt, all of them are conflicts that, by their nature, could be appropriately solved by ADR. Depending on the situation, the negotiated solution is even more appropriate than adjudication, as it promotes dialogue, has the potential to strengthen ties between those involved and most importantly, a negotiated solution has the potential to better satisfy the parties involved.

In addition, the comparison between the workforce of the Justice System and the number of lawyers enrolled in the Brazilian Bar Association demonstrates a disproportionality between the number of professionals able to file new cases and the number of professionals to manage, judge and solve these same proceedings. Thus, there is an abundance of individuals capable of resolving conflicts, who seek primarily to resolve them through the intervention of the Judiciary, which, in turn, has scarce resources to deal with the wide demand that is destined to it.

Based on the outlined scenario, as well as on the analysis, the importance of studies that seek solutions and proposals for the improvement of conflict management is clear. To build on this section, we will go on to studying how ADR techniques can help to solve conflicts more adequately.

### 3 Mediation and negotiation skills

Lawyers are in essence problem solvers. Mnookin, Peppet and Tulumello (2009) consider lawyers to play a central role in society's negotiations. Moreover, they consider that lawyers should be collaborative problem-solvers. They are hired by people or companies to solve problems or prevent them from happening. There is an array of means to solve a problem or a conflict. Carter (2020) understands negotiation as any conversation in which we are steering a relationship.

The literature on ADR presents the skills and tools to steer a negotiation or to mediate a conflict and these skills are very similar to the ones in demand on the job market, such as we will show in the next section of this paper. This section will present the negotiation techniques, which we will relate to the skills needed to face the challenges of the contemporary job market, namely in the legal field, in the next section. We aim to argue that lawyers, as Mnookin highlights, should be trained to be collaborative problem solvers. If so, they could handle disputes more adequately, not only building a more peaceful society but also impacting on the work developed by the Judiciary System, who must deal with so many lawsuits that could be solved by ADR.

Before getting to a negotiation table, scholars are unanimous on the need of preparation. A negotiator, before starting a negotiation process, must negotiate internally first. Carter (2020) lists five questions a negotiator can ask herself before sitting down with the counterpart, which are: what is the problem I want to solve?; what do I need?; what do I feel?; how have I handled this successfully in the past?; and lastly, what is the first step?. For Carter (2020) asking oneself these questions is the first step of a successful negotiation. Ury (2015) also stresses the importance of working in a self-negotiating process, which he entitled as “getting to yes with yourself”.

Ury, Fisher and Patton on their work “Getting to Yes” (2014) have established a blueprint of tools to negotiate agreements in which all parts end better off than when they started. On their work, they list four main steps, which are: 1) separate people from the problem; 2) focus on interests, not positions; 3) invent options for mutual gain; and 4) insist on using objective criteria. Each of these steps encircle a few tools.

Separating people from problems means being empathetic enough to understand that all negotiators are people first. They have emotions, values and backgrounds that influence their actions and perceptions, but do not define the conflict you are negotiating. In order to be empathetic and negotiate conflicts while separating people from problems, it is important to know how to deal with people, how to cooperate and how to be a team player. As Ury, Fisher and Patton (2014, p. 33) put it: “Figuratively if not literally, the participants should come to see themselves as working side by side, attacking the problem, not each other”.

Galinsky (2015) highlights the importance of taking the other side’s perspective. He demonstrates that negotiators that work in collaboration with the other party, working on understanding their opinions and concerns, tend to have better results, ending up better off than when they started negotiating.

Almeida (2014) proposes that the mediator invite the parties to “visit one’s place”, which goes along with the perspective taking Galinsky (2015) recommends. Almeida (2014) advises that the invitation to make the parties walk on the other’s shoes should come phrased as questions that make them consider the other party’s possible assumptions and interests and ponder them.

In the same perspective, Shapiro and Fisher (2019) talk about appreciating the other side’s thoughts, feelings and actions. They draw attention to the importance of trying to understand the other person’s point of view, even if we don’t agree with it. As we identify merit in their viewpoint, we inspire positive emotions and can establish a better relationship with them.

The second step proposed by Ury, Fisher and Patton (2014), focusing on interests and not on positions, means that it is important to listen actively, so to understand the meaning behind the words that are actually being said. Once the negotiator understands the actual interests of the other person, they can work on a deal that makes both parties better off. It is also noteworthy that it is not enough to know the other person’s interests, it is decisive to make yours known too.

Shapiro and Fisher (2019) add that a core concern for every negotiator is to build affiliation, which means building connections and bonds that help parties collaborate instead of competing. Those connections can be rather simple such as: having gone to the same school or college, or supporting the same soccer team, but they play an important role as the negotiators have the opportunity to acknowledge each other as more than simply opponents. In order to build ties with the other negotiator, getting to know her is key.

Carter (2020) presents the importance of posing questions so as to get as much information as possible during negotiation. She teaches that the most valuable asset in a negotiation is information. So, asking the right questions is a major tool to grasp the other side’s real needs and to get to know them. With that information in hands, the negotiator is able to build ties and an agreement that satisfies them both. This set of skills not only demands high emotional intelligence, but also empathy and critical thinking, once listening is not enough. The listener must understand the meaning and real interests behind the words.

Almeida (2014) affirms the importance of active listening, basing it on the tripod: acknowledging, balancing, and making questions. She proposes that the mediator should acknowledge the speech of the parties by making them feel seen and heard on their verbal and non-verbal communication. Then, the mediator should be aware to balance his contributions evenly between the parties, so no one feels overlooked. And finally, she affirms the importance of posing strategic questions either to get more information from the parties or to clarify specific topics.

Ury, Fisher and Patton (2014, p. 33) consider that

Trying to decide in the presence of an adversary narrows your vision. Having a lot at stake inhibits creativity. So does searching for the one right solution. You can offset these constraints by setting aside a designated time within which to think up a wide range of possible solutions that advance shared interests and creatively reconcile differing interests.

It becomes clear that inventing options for mutual gains demands deep creativity and teamwork. In order to get to a point where negotiators have an array of options where to choose from and, moreover, choosing an option that gets all parties better off than when they started, it is important that parties work together in a brainstorming process, practicing their creativity and collaboration skills.

Finally, insisting on using objective criteria is the hardest (as an opposite of soft) skill in the toolset of a negotiator. It means that any agreement that comes out of the negotiation should be built on objective standards agreed upon by the parties. This is important to assure all those involved that the agreement would stand.

In order to choose criteria that fits the expectation of all parties, their communication has to be open, and they have to be willing to collaborate. As Ury, Fisher and Patton (2014, p. 34) put it: "By discussing such criteria rather than what the parties are willing or unwilling to do, neither party needs to give in to the other; both can defer to a fair solution". Hence, the parties must exercise their emotional intelligence, critical thinking and decision-making skills.

Sales (2004) explains that a negotiated solution should be sought for in cases where there is interest in maintaining a relationship. The most evident conflicts with this feature are family and neighbors' disputes, but we can easily identify that on labor and corporate disputes. The solutions born out of negotiated agreements have the specificity of thinking about the future and looking forward to the relationship between the parties, building stronger bonds. These are also solutions that are often customized by the needs and interests of the parties, while legal sentences have a pattern they must follow in order to keep legal certainty.

So, when lawyers are trained to be problem solvers, they will most likely solve most conflicts using ADR tools and procedures. However, these tools are appropriate not only to effectively solve legal disputes, but we have noticed that they also identify with most of the skills pointed as the most important for professionals in the 21st century.

#### **4 21<sup>st</sup>Century labor market needs**

The scenario described previously reveals potential and opportunities for professionals working as conflict solvers, especially lawyers, who are the professionals that people usually look for when they need to have a problem solved. Thus, building on this scenario and on the perception that the labor market for legal careers is undergoing deep changes, mainly due to the increasing adoption of technological tools in the practice of law and in procedural management, this research questioned what skills are necessary for the success of the lawyer as a professional and how this category can contribute to the most appropriate management of conflicts.

Thus, to search for the answers to these questions, we proceeded with research on the skills necessary for the professional and, above all, for the lawyer in the 21st century. The results found are presented in this section.

The American consulting company, Accenture (2013), issued a report entitled "Skills and Employment Trends Survey: Perspectives on Training", for which it interviewed 400 executives from large national companies, aiming to evaluate the hiring methods and training strategies of these. Amongst the many questions asked and results achieved by the survey, it is important to highlight those measured from the question: "What skills do you believe candidates need most to work for your company?".

The most mentioned skill was problem solving, which was mentioned by 78% of the interviewees as the most necessary in their employees. This was followed by leadership skills (75%), communication (73%), technology (73%), people or team management (71%), knowledge or experience in the specifics of the industry (71%) and creative thinking (69%). From the research, it is important to notice that although the technical skills are mentioned as important ones, they appear in fifth place, tied with the management of people or teams.



Another relevant result was presented by the Wall Street Journal, which indicates that since 2009, the number of mentions to the critical thinking skill, as desirable, in job advertisements has doubled. The newspaper cited the concept given by Michael Desmarais, from the Goldman Sachs group: “Do they [the candidates] use the information available on their journeys to reach a conclusion or decision? How is the information used?”. In the same vein, Dan Black, recruiting director at Ernst & Young, defines skill as “the ability to work with data, accumulate it, analyze it and synthesize it, in order to arrive at balanced conclusions and smart decisions” (KORN, 2014, online).

The World Economic Forum (WEF), from the data of the report *The Future of Jobs* (2018), points to the same direction. The ten most needed skills for the labor market in 2022 were:

Table I. Most needed skills for the job market to 2022 (WEF, 2018)

	<b>SKILLS</b>	<b>CATEGORY</b>
1	Analytical thinking and Innovation	Problem solving
2	Active learning and learning strategies	Self-management
3	Creativity, originality and initiative	Problem solving
4	Technology design and programming	Technology use and development
5	Critical thinking and analysis	Problem solving
6	Complex problem-solving	Problem solving
7	Leadership and social influence	Working with people
8	Emotional Intelligence	Self-management
9	Reasoning, problem-solving and ideation	Problem solving
10	Systems analysis and evaluation	Technology use and development

In 2020, the World Economic Forum updated this research, considering the impacts of the COVID-19 pandemic and, especially, the impacts of social isolation, which was the main measure used to contain the spread of the disease. As a consequence of social isolation, companies had to adapt to remote work and education had to be carried out mostly virtually. This accelerated the adoption, use, and spread of technologies, which can also indicate a workforce reduction. Therefore, different skills were required from workers during this time and the 2020 Future of Jobs Report estimates that a new set of skills will be required from workers by 2025.

Thus, for 2025, the WEF compiled the most needed skills into four categories: problem solving skills, self-management, working with people and technology use and development. These are the most needed skills:

Table II. Most needed skills for the job market to 2025 (WEF, 2020)

	<b>SKILL (In parenthesis, position in 2022)</b>	<b>CATEGORY</b>
1	Analytical thinking and Innovation (1)	Problem solving
2	Active learning and learning strategies (2)	Self-management
3	Complex problem-solving (6)	Problem solving
4	Critical thinking and analysis (5)	Problem solving
5	Creativity, originality and initiative (3)	Problem solving
6	Leadership and social influence (7)	Working with people
7	Technology use, monitoring and control (-)	Technology use and development
8	Technology design and programming (4)	Technology use and development
9	Resilience, stress tolerance and flexibility (-)	Self-management
10	Reasoning, problem-solving and ideation (9)	Problem solving

Considering the comparison between the last two reports, we can see that the distribution of skills per category remains the same: five skills are in the problem-solving category, two skills in the technology use and development and in the self-management categories, and one skill in the working with people skills category. But there are a few changes.

First, we see the skills on problem solving increasing in importance and taking almost all first places. We believe the crisis started by the pandemic has highlighted the importance of workers that are well prepared to deal with daily unpredictable challenges. Another proof of that is the substitution of the skill “emotional intelligence” to the one entitled “resilience, stress tolerance and flexibility”. In a fast-changing world, a worker that not only can deal with his own emotions but especially can overcome frustration, deal well with stressful situations, and adapt to hostile environments, is in high demand.

If we take a closer look to the local reality, we realize it is not so different. A research carried out by AfferoLab, a consulting company, mapped the scarcest skills for Brazilian professionals. The set of skills they found is similar to the one listed by the WEF, as they range from complex problem solving and critical thinking to interpersonal relationship, learning strategies and numerical skills (GASPARINI, 2016).

A similar scenario was mapped by another consulting company’s research in Brazil, which found that nine out of ten professionals are hired based on their technical skills and terminated based on attitude (G1, 2018). They highlight the importance of emotional intelligence and teamwork among the fundamental skills to strive on such a complex environment.

This set of skills matches the one described by Carter (2020) and Ury (2015) when they teach how negotiators should first prepare for the negotiation process, by analysing her own point of view and feelings before getting to the table. When they advise mediators to look inside before starting negotiations, they are actually advising them to develop emotional intelligence.

Those skills, added to critical thinking and analysis relate closely to the skills encircled by empathy and active listening, such as described by Shapiro and Fisher (2019). In order to see the world as the other side sees it, we need to find a way out of our comfort zone, analysing the situation as whole and finding the facts that influenced the other person’s point of view. We also need to be flexible and resilient enough to let go of our position and acknowledge merit in the other party’s thoughts and actions.

In 2016, Deloitte has published the results of a research entitled “*Future Trends for Legal Services*”. Amongst the findings, the report identifies the most promising areas and the ones that are receiving the highest investments on legal services: *compliance* (49%), *M&A* (42%) and, in third place, litigation (39%). This result shows the beginning of a cultural transformation, where the focus is shifted from litigation to ADR, through the elaboration of negotiated and custom agreements, and through strict rules of *compliance*.

When we discuss legal education and legal training, it is possible to identify curricula that are oriented to developing technical skills over soft skills. In Brazil, this fact can be traced back to the Brazilian Bar Exam. The Exam consists of 80 objective questions, which measure mainly the memorization skills of candidates. This is the same pattern followed by the National Exam of Student Performance (ENADE), which aims to measure the performance of college students and Higher Education Institutions over the country. This exam also measures mainly the hard skills developed during the course of college. The quality of Universities in Brazil is broadly measured by the scores they achieve in ENADE and Law Schools are as prestigious as the number of their students approved by the Bar Exam.

Considering this scenario, it is possible to establish a correlation between what these exams require from students and what Universities prepare them to accomplish. This means that instead of training the student to overcome the challenges of real-life labor market experience, such as: making partnerships, establishing a professional network, being part of an organization and dealing with colleagues, bosses and clients, being frustrated by a loss and exercising empathy with colleagues that have just won or lost a case.

Being aware of this reality means that it is time to think about redesigning legal education, in order to close the gap between the subjects that need to be learned (such as civil law, criminal law, procedures, tax law, human rights, etc.) and the attitudes the real-life legal labor market require from newly graduated professionals. A promising answer to this problem can be found in negotiation and mediation training, which has shown to be in close relation to the skills. It is possible to establish a correlation as it follows:

Table III. Comparison: 21st century skills and negotiation tools

	<b>SKILLS NEEDED FOR THE JOB MARKET (WEF, 2020)</b>	<b>NEGOTIATION TOOLS</b>
1	Analytical thinking and Innovation	Inventing options for mutual gains
2	Active learning and learning strategies	Asking the right questions
3	Complex problem-solving	The negotiation process as a whole
4	Critical thinking and analysis	Empathy Expressing appreciation Perspective Taking Building affiliation Focusing on interests and not on positions Asking the right questions Insisting on using objective criteria
5	Creativity, originality and initiative	Inventing options for mutual gains
6	Leadership and social influence	Building affiliation Focusing on interests and not on positions Asking the right questions
7	Technology use, monitoring and control	
8	Technology design and programming	
9	Resilience, stress tolerance and flexibility	Preparing for negotiation
10	Reasoning, problem-solving and ideation	Inventing options for mutual gains

One can argue that the skills that make up a capable negotiator are closely related to the ones research has shown are needed to face the challenges of the contemporary job market. When speaking of legal training, considering lawyers, in general, should be trained to be problem solvers, it becomes clear that Law Schools should be emphasizing ADR skills training.

## 5 Conclusion

The present research had the goal of analyzing improvement strategies for the legal training, so it can better prepare lawyers for the challenges of the contemporary legal job market. To do so, two scenarios were studied, the first one was the Justice System in Brazil. We studied the number of lawsuits in place, the types of conflicts those lawsuits were born from and, finally, the number of professionals working to solve those disputes, comparing the number of lawyers and magistrates.

This scenario brought to our understanding that a high number of lawsuits that are awaiting to be judged, could be solved in a more appropriate manner by ADR. Therefore, most of the lawsuits in place in the Judicial System should not be there at all, once they could be better solved by out-of-court negotiation or mediation. ADR procedures have an array of advantages to count for, such as: they empower the parties involved to find the best solution for them; they provide a countless number of possible solutions, that can be customized to the needs and reality of the parties.

Once we noticed the disputes that are brought to the Judiciary could be better solved out-of-court, we followed on to the study of ADR procedures, which pointed to the important role of lawyers as conflict managers. Data shows us that there are more than 1 million lawyers in Brazil, while there are only about 17 thousand magistrates over the country. This figure, added to the characteristics of lawsuits, pointed clearly to ADR.

Acknowledging the power of ADR procedures as tools for building a fairer Justice System, we turned our eyes to the legal job market, in order to understand the skills it takes to succeed while facing the challenges posed by the 21st century social, economic and technological transformations. Research showed that the skills expected for professionals are closely related to what has been called as soft skills and those are also in close relation to ADR skills.

In conclusion, the research has shown that legal training has to shift its focus from developing litigators to developing negotiators. ADR methods can no longer be acknowledged as an alternative to adjudication. Lawyers are



expected to act as problem solvers, analysing strategically each dispute and choosing the best path to its solution. Moreover, they are expected to avoid disputes altogether, acting by preventing disputes from happening. This is only possible if lawyers are trained as creative problem solvers, which ADR training can successfully do.

Analysing the data, it becomes clear that Law Schools should focus on mediation and negotiation training throughout the curriculum. Using ADR tools training as a methodology has the potential to develop the creative problem solvers we need in legal professions. If lawyers are trained as expert negotiators, they will manage disputes more adequately, contributing for a more peaceful society, a more efficient Justice System, besides becoming a more competitive professional for the labor market.

## Referências

- ACCENTURE 2013 skills and employment trends survey: perspectives on the perspectives on training. [S.l.]: Accenture, 2013. Available at: [https://www.accenture.com/us-en/~media/accenture/conversion-assets/dotcom/documents/global/pdf/strategy\\_3/accenture-2013-skills-and-employment-trends-survey-perspectives-on-training.pdf](https://www.accenture.com/us-en/~media/accenture/conversion-assets/dotcom/documents/global/pdf/strategy_3/accenture-2013-skills-and-employment-trends-survey-perspectives-on-training.pdf). Access in: 20 sept. 2020.
- ALMEIDA, Tania. **Caixa de ferramentas em mediação**: aportes práticos e teóricos. São Paulo: Dash, 2014.
- ASSOCIAÇÃO DOS MAGISTRADOS DO BRASIL. Não deixe o judiciário parar: placar da justiça. **AMB**, Brasília, 2015. Available at: <https://www.amb.com.br/amb-apresenta-pesquisa-inedita-sobre-o-numero-de-processos-que-chegam-a-justica/>. Access in: 10 aug. 2016.
- CARTER, Alexandra. **Ask for more**: 10 questions to negotiate anything. New York: Simon & Schuster, 2020.
- CONSELHO NACIONAL DE JUSTIÇA. **Justiça em Números 2020**. Brasília: CNJ, 2020. Available at: <https://www.cnj.jus.br/wp-content/uploads/2020/08/WEB-V3-Justi%C3%A7a-em-N%C3%BAmeros-2020-atualizado-em-25-08-2020.pdf>. Access in: 05 July 2021.
- FISHER, Roger; PATTON, Bruce; URY, William. **Getting to yes**: negotiating agreements without giving in. New York: Penguin, 2014.
- FISHER, Roger; SHAPIRO, Daniel. **Beyond reason**: using emotions as you negotiate. New York: Penguin, 2019.
- G1. 9 em cada 10 profissionais são contratados pelo perfil técnico e demitidos pelo comportamental. **G1**, [s.l.], 18 set. 2018. Available at: <https://g1.globo.com/economia/concursos-e-emprego/noticia/2018/09/18/9-em-cada-10-profissionais-sao-contratados-pelo-perfil-tecnico-e-demitidos-pelo-comportamental.ghtml>. Access in: 03 apr. 2021.
- GALINSKY, Adam; SCHWEITZER, Maurice. **Friend and foe**: when to cooperate, when to compete and how to succeed at both. New York: Penguin Random House, 2015.
- GASPARINI, Claudia. As 10 competências mais raras entre profissionais brasileiros. **Exame**, São Paulo, 31 out. 2016. Available at: <http://exame.abril.com.br/carreira/as-10-competencias-mais-raras-entre-profissionais-brasileiros/>. Access in: 15 sept. 2017.
- KORN, Melissa. Bosses seek 'critical thinking,' but what is that?. **Wall Street Journal**, New Jersey, 21 oct. 2014. Available at: <https://www.wsj.com/articles/bosses-seek-critical-thinking-but-what-is-that-1413923730>. Access in: 30 nov. 2017.
- MNOOKIN, Robert; PEPPE, Scotch; TULUMELLO, Andrew. **More than winning**: negotiating to create value in deals and disputes. Washington: Library of Congress, 2009.
- INSTITUCIONAL / quadro da advocacia. **OAB Nacional**, Brasília, [2021]. Available at: <https://www.oab.org.br/institucionalconselhofederal/quadroadvogados>. Access in: 14 aug. 2021.
- SALES, Lília Maia de Moraes. **Mediare**: um guia prático para mediadores. 3. ed. Rio de Janeiro: GZ Editora, 2004.

URY, William. **Como chegar ao sim com vocẽ mesmo**. Sãõ Paulo: Sextante, 2015.

WORLD ECONOMIC FORUM. **The future of jobs report**: employment, skills and workforce strategy for the fourth industrial revolution. Geneva: WEF, jan. 2016. Available at: [http://www3.weforum.org/docs/WEF\\_Future\\_of\\_Jobs.pdf](http://www3.weforum.org/docs/WEF_Future_of_Jobs.pdf). Access in: 22 feb. 2021.

WORLD ECONOMIC FORUM. **The future of jobs report 2020**. Geneva: WEF, oct. 2020. Available at: [http://www3.weforum.org/docs/WEF\\_Future\\_of\\_Jobs\\_2020.pdf](http://www3.weforum.org/docs/WEF_Future_of_Jobs_2020.pdf). Access in: 19 feb. 2021.

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