

# Alternative Dispute Resolution Annotated Bibliography (2011)

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## Project Summary:

The aim of this project was to create an annotated bibliography from the following sources:

- Books
- Journal articles
- Seminar publications
- Research theses

From the following jurisdictions:

- New Zealand
- Australia
- United States
- United Kingdom (England)
- Canada

Using the following depositories:

- Victoria University of Wellington Library
- Wellington City Library
- On-line depositories

On the following topics within the overall topic of alternative dispute resolution:

- Theoretical underpinnings of ADR
- ADR in a New Zealand context
- The historical development of ADR
- Specific applications of ADR to family law
- Specific applications of ADR to employment law
- Cross cultural ADR
- Teaching of ADR

The most relevant sources have been listed and annotated. Less relevant sources have been listed only. The bibliography is not exhaustive but should provide good coverage relating to the areas noted above.

## Books (alphabetical order by surname)

### *Victoria University of Wellington Law Library*

#### New Zealand

**Boulle, Laurence, Goldblatt, Virginia and Green, Philip *Mediation: Principles, Process, Practice* (2<sup>nd</sup> New Zealand ed, LexisNexis, Wellington, 2008)**

First edition (Boulle, Jones and Goldblatt) 1998. Also an Australian version (Boulle) 1996.

Laurence Boulle: LLM (London), PHD (Natal). He is heavily involved in Australian dispute resolution. He is the Acting Dean of the Faculty of Law at Bond University, the Deputy Director of the Bond Dispute Resolution Centre and an Adjunct Professor at the University of Queensland. Virginia Goldblatt: Dip Bus Studies (Dispute Resolution), FAMINZ (Med). She is the Director of the Dispute Resolution Centre at Massey University. Philip Green: FCI Arb (London), FAMINZ (arb/med), barrister. He has a wide range of qualifications and experience across different countries.

An authoritative guide to mediation in New Zealand. Designed for both students of mediation and those who practice mediation in its many forms. The first part covers mediation principles including the origins, values and objectives of mediation, culture, conflict and negotiation in mediation and mediation, justice and the legal system. Part two covers the mediation process, roles and functions in mediation and choice of mediation and mediator. Part three is the largest, constituting half the book, and covers the law and practice of mediation. Topics covered include court-connected mediation, public and private regimes, mediated clauses and agreement, training and codes of conduct in mediation, mediator liability and immunity, confidentiality, privacy and privilege and finally looking back and forward. The book seeks to evaluate the vast changes which occurred in mediation over the ten years since the last edition. The authors provide detailed footnotes from a variety of jurisdictions.

**Greener, Peter (ed) *Turning the Tide: A New Approach to Conflict Resolution* (Auckland University of Technology with the British Council, Wellington, 2001)**

A collection of essays by established and emerging leaders in conflict resolution from a wide variety of backgrounds presented at the "Turning the Tide" Learning and Development Programme and Conference. The conference was organised by the British Council and Auckland University of Technology in 2000. This conference sought to increase understanding of the fundamental causes of conflict and determine ways to defuse conflict. The included essays varied widely. Examples include: "New Zealand, the United Nations and Conflict Resolution", "Conflict Resolution: The Role of the Waitangi Tribunal", "Treaty of Waitangi issues from both Maori and Government Perspectives", "Alternative Dispute Resolution and the Power Imbalance Problem", "The role of Advocacy and Activism in the Peaceful Settlement of Disputes", "Towards a more Peaceful World". Other topics addressed included: Conflict resolution in Northern Ireland, the role of the media in conflict resolution, domestic violence and conflict resolution and understanding the causes of civil conflict.

**Heath, Paul and Jones, Peter *Resolving Disputes within Companies and Partnerships* (New Zealand Law Society Seminar, August 1997)**

Paul Heath is a Consultant at Stace Hammond Grace and Partners in Hamilton. He is also a Fellow of AMINZ and Director of Central ADR Services Ltd. Peter Jones is a Senior Lecturer in Law at the University of Waikato, an Associate of AMINZ, a member of the London Court of International Arbitration and LEADR New Zealand Inc. He is also a Director of Central ADR Services Ltd.

An assessment of two principles relating to disputes which arise in relation to small to medium sized companies and partnerships: choosing the right dispute resolution procedure for the circumstances and the need for flexibility and creativity in the drafting of dispute resolution clauses and the way in which dispute resolution is generally conducted. The seminar begins with a broad overview of various dispute resolution options. The following chapters discuss arbitration in more detail. The next chapters consider dispute resolution in practice, the range of potential disputes and problems and resolutions. The seminar concludes with principles for drafting dispute resolution clauses and a case study.

**Ingram, Tom *Getting the Best from a Judicial Settlement Conference* (New Zealand Law Society Seminar, August-September 2003)**

Tom Ingram is an experienced civil litigator and has acted as an arbitrator, mediator and referee. Other presenters included Hon Justice Harrison and Hon Justice Wolfe.

An assessment of the Judicial Settlement Conference environment and the skills and techniques required to take advantage of that environment. This seminar was designed as a practical guide for practitioners to help them in the new process for resolving cases: mediation and judge assisted settlement conferences. The first chapter analyses the process of a Judicial Settlement Conference. The second chapter covers persuasion and addresses issues like preparing the client and case management. The final chapter covers what may happen at the conference itself. Environment and procedures, initial objectives, interest based bargaining and disagreements are discussed. The seminar concludes with various appendices which include court rules and an example settlement of claim.

***Introduction to mediation: In association with LEADR* (New Zealand Law Society Seminar, August 1994)**

Presenters: Judith Heap (Joint Principal Executive Officer – LEADR, Dispute Resolution Consultant – Mallesons Stephen Jacques, Sydney). David Williams QC (LLM (Harvard), Partner at Russell McVeagh, New Zealand Chair of LEADR, taught Dispute Resolution at Auckland. Les Taylor (Bell Gully, National Committee Member of LEADR and Chairperson of Wellington Committee of LEADR.

This seminar provided a discussion of various aspects of mediation with a particular focus on commercial mediation. Judith Heap begins by providing an overview of ADR in commercial practice. She concludes that dispute resolution clauses should be encouraged in business settings and that mediation is the most preferable form. The seminar then depicts the LEADR model of mediation. The following section contains a Law Society of New South Wales Mediation Agreement. The seminar concludes with the New Zealand Law Society Law Talk Special Feature on Dispute Resolution. This feature was constructed to provide legal practitioners with information on dispute resolution techniques which most lacked.

**Saville-Smith, K and Fraser R *Alternative Dispute Resolution = General Civil Cases (Ministry of Justice, June 2004)***

Saville-Smith was previously engaged with substantial research on ADR for the Department of Courts (now Ministry of Justice).

This report was a consolidation of the various investigations in ADR which sought to provide empirical evidence about the use, impacts, benefits and costs of ADR for disputants and the courts. Initial chapters provide an overview of the ADR research programme, consider the provision of ADR in New Zealand, the extent to which the use of ADR is growing and consider the advantages and disadvantages of ADR. The following chapters consider the extent to which ADR contributes to settlement, costs and timelines and the impact of ADR on the Court system. Finally the report looks at opportunities for improving ADR use. The report finishes with a range of appendices and concludes that ADR should be more actively promoted by the Courts.

**Spiller, Peter (ed) *Dispute Resolution in New Zealand (2<sup>nd</sup> ed, Oxford University Press, South Melbourne, 2007)***

Dr Spiller: Professor of Law at Waikato University and Principal Disputes Referee of the Disputes Tribunals of New Zealand. He is also a judicial member of AMINZ.

The authoritative text on ADR in New Zealand and the recommended text for law students. The text provides a clear description of the theory and practice of the key dispute resolution procedures in New Zealand. The various contributors come from a variety of backgrounds with a variety of qualifications and experiences. This provides a wide range of perspectives in the text. An enormous range of topics are covered including communication skills, client interviewing, negotiation and mediation. These are followed by chapters on investigation and arbitration. Spiller personally authored the next chapters on litigation and dispute resolution in a statutory context. The final chapters address Maori disputes and cross cultural conflict resolution. Each chapter is finished with a useful practical exercise. The book concludes with two appendices on professional organisations and a mooting guide.

New Zealand Potentially Useful

- *Annual report on Crown implementation of Waitangi Tribunal recommendations for the period July 2008 - June 2009* (Ministry of Maori Affairs, 2009)
- Arthur, Bronwyn H., 'Alternative dispute resolution opportunities within the Resource Management Act 1991' (Research Paper, LLM, 1992)
- Barwick, Helen and Gray, Alison *Family Mediation: Evaluation of the Pilot* (Ministry of Justice, Wellington, 2007)
- Beck, Kathryn and Swarbrick, Penny, *Running a personal grievance case* (New Zealand Law Society Seminar, 2002)
- Borchardt, Anja, 'Employment dispute resolution by mediation: does good faith apply?' (Research Paper, LLM, 2003)
- Busch, Sunanda, 'Institutionalisation of mediation: civil and common law approaches with special reference to the New Zealand and German legal system' (Research Paper, LLM, 2006)
- Cecil-Gibson, Amy, 'Institutionalising the alternative: the justice of court-referred mediation' (Research Paper, LLM, 1997)
- Cheney, Belinda, 'Commercial disputes, the mini-trial option' (Research Paper, LLM, 1988)

- *Civil Litigation in Crisis – What Crisis?* (Legal Research Foundation (University of Auckland) Seminar, 2008)
- Davis, Catherine, 'The Crown's development of its proposals for the settlement of Treaty of Waitangi claims and negotiating with iwi' (Research Paper, LLM, 1996)
- Dentice, Nathan, 'Towards an understanding of principled negotiation: a cultural feminist critique of Fisher and Ury's *Getting to Yes*' (Legal Writing Requirements, LLB Hons, 1997)
- *Dispute Resolution in the Family Court* (New Zealand Law Commission, 2003)
- *Disputes with the IRD* (New Zealand Law Society Seminar, 2009)
- *Family Court Dispute Resolution: A Discussion Paper* (New Zealand Law Commission, 2002)
- *Full particulars of the optimum method for allocation to be included in the report to the Minister/ Te Ohu Kai Moana* (Treaty of Waitangi Fisheries Commission, 1999)
- Geidelberg, Dimitri, 'Direct negotiation with the Crown in Treaty of Waitangi claims' (Legal Writing Requirements, LLB Hons, 1997)
- Gooding, Michelle Nena, 'Mediation and domestic violence: well "suited" or perpetuating a crime?' (Research Paper, LLB Hons, 1997)
- Green, Philip D *Employment dispute resolution* (LexisNexis, Wellington, 2002)
- Greer, Belinda Mary, 'Negotiated settlements within a statutory framework: can private and public interests be reconciled under consumer protection laws?' (Research Paper, LLM, 1996)
- *He Hinatore ki te Ao Maori: A glimpse into the Maori World: Maori Perspectives on Justice* (Ministry of Justice, Wellington, 2001)
- Hudson, James T., 'Tikanga Maori and the mediation process' (Research Paper, LLM, 1996)
- Johnson, Tirawhanaunga Brigitte, 'Process issues in Crown-Maori Treaty negotiations' (Research Paper, LLB Hons, 1996)
- Liddicoat, Joy Jennifer, 'Domain name disputes: is private dispute resolution working?' (Thesis, LLM, 2010)
- *Maori experiences of the direct negotiation process: case studies and personal experiences of various negotiators on the negotiation process with the Crown to settle claims under the Treaty of Waitangi* (Crown Forestry Rental Trust, 2003)
- Marshall, Nicholas, 'Protection of privacy in New Zealand: is there a better way?' (Research Paper, LLM, 2004)
- Marshall, Nicholas, 'The Banking Ombudsman in New Zealand: ten years of consumer dispute resolution' (Research Paper, LLM, 2002)
- McCartney, Robyn, 'Towards Workplace Mediation: Resolving Issues of Power' (Research Paper, LLM, 1997)
- Mills, Alison, 'Mediation and the environment court: ten years on' (Research Paper, LLB Hons, 2002)
- Moll, Patrick, 'More competition for employment courts: dispute resolution and judgements outside the courtroom' (Research Paper, LLM, 2002)
- Parker, Wendy E., 'The negotiation of justice : the hidden agenda of hegemony in state legal system incorporation of ADR processes and Maori perspectives' (Research Paper, LLM, 1992)
- *Proposed reserve dispute resolution scheme under the Financial Service Providers (Registration and Dispute Resolution) Act 2008: a discussion paper* (Ministry of Consumer Affairs, 2009)
- *Report on the proposed method for allocation of pre settlement assets (PRESA) / Te Ohu Kai Moana* (Treaty of Waitangi Fisheries Commission, 1998)
- Sharpe, Susannah, 'Transplanting Mediation into Complex Settings: Dispute Resolution of Maori Fisheries Issues' (Research Paper, LLM, 1997)
- Spletzer, Christine, 'Can judges be mediators?: court-connected mediation in New Zealand and Germany' (Research Paper, LLM, 2005)

- Streuffert, Ulrike, 'Environmental mediation in a statutory context: a comparison between New Zealand and Germany' (Thesis, LLM, 2004)
- Taylor, Bruce, 'Environmental risks: assessing the options for resolving disputes' (Research Paper, MPP, 1996)
- *Treaty of Waitangi Claims: Addressing the Post Settlement Phase* (New Zealand Law Commission Study Paper 13, 2002)
- Webb, Duncan A., 'The negotiator's ethic: fair-minded self interest' (Research Paper, LLM, 1992)
- Westley, Leigh, 'The Office of the Banking Ombudsman: Dispute Resolution that consumers can bank on?' (Research Paper, LLB Hons, 1997)
- White, David M., 'Exploring the morality of "med-arb": an analysis of the appropriateness of section 88(2) of the Employment Contracts Act 1991' (Research Paper, LLM, 1996)
- Wilken, Sven, 'Court connected mediation in New Zealand and Germany: comparative analyses and future legislative tendencies' (Thesis, LLM, 2008)

### Australia

**Astor, Hilary and Chinkin, Christine M** *Dispute resolution in Australia* (2<sup>nd</sup> ed, LexisNexis Butterworths, Chatswood, 2002).

First edition = 1992

Hilary Astor is the Abbott Tout Professor of Litigation and Dispute Resolution at Sydney University. Christine Chinkin is a Professor of International Law at the London School of Economics.

A theoretical, critical and evaluative overview of ADR in Australia which is aimed at practitioners and students of ADR. A range of ADR processes across a spectrum of applications is examined. While having a predominantly Australian focus the book draws on research and experience from other jurisdictions. Themes, trends and differences in particular contexts are also identified. In part one the historical context, theories and processes are considered. Alternative methods of dispute resolution are discussed with a particular focus on negotiation and mediation. In part two key topics in ADR are considered. These include legal issues of ADR, dispute resolution standards and qualifications and ADR within the Australian courts. In part three the application of ADR in various areas, including commercial, family, discrimination and international disputes, is considered.

**Behrendt, Larissa** *Aboriginal dispute resolution: a step towards self-determination and community autonomy* (Federation Press, Leichhardt, 1995)

Behrendt is a Sydney solicitor who was studying for her doctorate at Harvard. She argues for a radical change in the system of resolving land disputes with Aboriginal Australians. Written from an Aboriginal perspective Behrendt analyses dispute resolution in traditional and contemporary Aboriginal society. She notes the oppression faced by the Aboriginal people from the legal system and their disproportionately low socio-economic status. However, she is skeptical of modern ideas of ADR, like mediation and negotiation, as a viable answer to resolving disputes within and involving the Aboriginal community. She argues that imposing such mechanisms would be contrary to cultural autonomy. Instead she argues land disputes involving Aboriginals should be resolved using traditional Aboriginal methods which embody traditional cultural values such as recognising the importance of elders, especially women. She argues that only this method will help restore the power imbalance and equality.

**Charlton, Ruth and Dewdney, Micheline *The mediator's handbook: skills and strategies for practitioners* (2<sup>nd</sup> ed, Lawbook Co, Sydney, 2004)**

Ruth Charlton and Micheline Dewdney are Solicitors of the Supreme Court of New South Wales.

A “how to do it” book on mediation. This text focuses on the practical aspects of the process, practice and working dynamics of mediation. In part one the authors consider the mediation process and its practical application. In part two procedural variations to the mediation process, like co-mediation and phone mediation, are considered. Part three addresses pre-mediation and part four considers mediation skills and strategies. Part five considers special mediation issues including neutrality, power and the role of legal representatives. The appendices provide several example documents.

***Collaborative practice in family law: a report to the Attorney-General* (Prepared by the Family Law Council, 2006)**

This report considered the nature and extent of collaborative practice in Australia and overseas. The report recommended the promotion and practice of collaborative law in Australia. The key recommendation of the report was that the Family Law Council and the Law Council of Australia should establish a working group to develop national guidelines for collaborative practice in family law.

**King, Michael (et al) *Non-adversarial justice* (The Federation Press, Annandale, 2009)**

Michael King is a Senior Lecturer in the Faculty of Law at Monash University. This text outlines key aspects of a growing trend within many commonwealth legal systems towards the use of non-adversarial justice. It also seeks to identify common features and points of difference before suggesting how this development is affecting and will affect legal practice courts and legal education. The book is a collaboration by academic and practising lawyers who have entered the field of non-adversarial justice from different directions. Initial chapters consider therapeutic jurisprudence, restorative justice, preventive law, creative problem solving and holistic approaches to law. Chapter seven considers ADR and chapter eight addresses non-adversarial processes in family law. The following chapters consider problem-orientated courts, diversion schemes, intervention programmes and indigenous sentencing courts. The last section of the book considers the implications for the courts, legal profession and legal education. The appendix provides a dispute resolution and problem solving table 2003-2007.

**Sampford, C. J. G., Blencowe, Sophie and Condlin, Suzanne (eds) *Educating lawyers for a less adversarial system* (Federation Press, Leichhardt, 1999).**

This book is comprised of essays from a wide variety of authors all focusing on the reform of the civil litigation system in Australia. The book is divided into two parts. Part one considers Courts, Tribunals and Legal Professionals: Changing roles and skills. Part two focuses on education. In part one the authors consider combating the warrior mentality, implications for the judiciary, the Administrative Appeals Tribunal, the consequences of procedural and practical reform, the impact of ADR upon legal practitioners in the 1990s and the movement away from oral evidence. In part two the authors address educating lawyers in different countries including France, Germany and Australia, teaching ADR and educating lawyers for changing processes. A common thread amongst all the contributions is a need for an integrated approach to reform and continuing legal education.

**Sourdin, Tania *Alternative dispute resolution* (2<sup>nd</sup> ed, Lawbook Co, Pyrmont, 2005)**

First edition = 2002.

Tania Sourdin (PHD (UTS)) is a Professor of Law and Dispute Resolution at La Trobe University.

This text combines the theory and practice of ADR in a concise, insightful and comprehensive format directed at practitioners, students and individuals who practice ADR in a diverse range of settings. Sourdin argues that ADR processes should not be a substitute for judicial processes. Rather she argues in favour of a single dispute resolution system and the possible benefits of a strategic architectural approach. In chapter one conflict and dispute resolution are discussed generally. Chapters on process and practice, skills and system objectives follow. Court based ADR, multi option civil justice and ADR outside the litigation system are then discussed. This is followed by chapters on system design issues and technology. The final chapters address complaints and future trends. The book concludes with a variety of practical appendices.

**Spencer, David and Brogan, Michael *Mediation law and practice* (Cambridge University Press, Melbourne, 2006)**

David Spencer is a Senior Lecturer in the Department of Law at Macquarie University. Michael Brogan is a Senior Lecturer in the School of Law and University Teaching Fellow at the University of Western Sydney.

A comprehensive survey of the place of mediation in the expanding field of ADR. It considers the philosophy underlying mediation, the step by step process involved in mediator's practical application and the developing law of mediation. The first part of the book focuses on the practice of mediation. Topics covered include: a definition and history of mediation, the mediation process, the theory of mediation, types of mediation, the mediator and the ethics of mediation. Part two deals with the law of mediation. Topics covered include: mandatory mediation, confidentiality, settlement agreements, state sponsored mediation, mediation clauses, liability in mediation and finally the future of mediation.

Australia Potentially Useful

- Astor, Hilary *Quality in court connected mediation programs : an issues paper* (Australian Institute of Judicial Administration, Carlton, 2001)
- Behrendt, Larissa and Kelly, Loretta *Resolving indigenous disputes: land conflict and beyond* (Federation Press, Leichhardt, 2008)
- *Dispute resolution - getting to yes (or no!): construction industry dispute resolution options - an overview* (Building Science Forum of Australia, New South Wales Division, Sydney, 1998)
- Fulton, Maxwell J *Commercial alternative dispute resolution* (Lawbook Co, Sydney, 1989)
- Hyams, Ross, Campbell, Susan and Evans, Adrian *Practical legal skills* (2<sup>nd</sup> ed, Oxford University Press, South Melbourne, 2004)
- Ingleby, Richard *In the ball park: alternative dispute resolution and the courts* (Australian Institute of Judicial Administration, Carlton South, 1991)
- Mack, Kathy *Court referral to ADR: criteria and research* (Australian Institute of Judicial Administration and the National Alternative Dispute Resolution Advisory Council, Melbourne, 2003)
- Mugford, Jane (ed) *Alternative dispute resolution: proceedings 22-24 July 1986* (Australian Institute of Criminology, Canberra, 1986)



- *Papers presented at the ninth annual AIJA Conference, 18-19 August, 1990, Melbourne* (Australian Institute of Judicial Administration, Carlton South, 1991)
- *Review of the adversarial system of litigation: ADR, its role in federal dispute resolution* (Australian Law Reform Commission, Issues Paper 25, Sydney, 1998)
- *Technology, what it means for federal dispute resolution* (Australian Law Reform Commission, Issues Paper 23, Sydney, 1998)
- Van Gramberg, Bernadine *Managing workplace conflict: alternative dispute resolution in Australia* (Federation Press, Annandale, 2006)

### United States

#### **Burns, Stacy Lee *Making Settlement Work: An Examination of the Work of Judicial Mediators* (Ashgate, Aldershot, 2000)**

An investigation into the expanding area of judicial activity of acting and former judges working as mediators. Initial chapters provide an introduction into the work of judge mediators and assess the historical developments in Court Settlement work and the rise of JAMS (Judicial Arbitration and Mediation Services). Money damage mediation is then considered. The following chapter addresses more practical matters like the initial joint session and private conference system, obstacles to settlement and overcoming them, taking money, bilateral solutions and substantive professional competency. The book concludes with a methodological appendix on recovering the coherence of the field.

#### **Folberg, Jay (et al) *Resolving Disputes: Theory, Practice, and Law* (Aspen Publishers, New York, 2005)**

Written from the perspective of a lawyer representing clients, practical while grounded in theory. Part one is dedicated to negotiation and discusses negotiation and conflict, the inner negotiator, negotiator styles, the negotiation dance, gender and cultural considerations, the ethical negotiator and what's law got to do with it? Part two addresses mediation and discusses a deeper examination of method, representing clients in mediation, specific applications, court-connected mediation and law and ethics. Arbitration is considered in part three. Part four is devoted to mixing, matching and moving forward. "Ice breakers", Med-Arb and Arb-Med and opportunities and challenges in ADR are among the topics considered. An electronic appendix is included as well as a bibliography.

#### **Golann, Dwight (et al) *Mediating Legal Disputes: Effective Strategies for Lawyers and Mediators* (Aspen Publishers, Boston, 1996)**

Dwight Golann is a Professor of Law at Suffolk University School of Law.

Written both for persons new to mediation and experienced neutrals looking to improve their effectiveness. Part one provides an overview of the process of mediation with an introduction to the basis of managing the process. Part two analyses specific issues and strategies. These include: administering and beginning a mediation, process and psychological issues, evaluation, decision analysis and achieving closure. Special problems of confidentiality, liability and ethics are considered in part three. Part four addresses the specialised contexts of employment, environmental and product liability disputes. The book concludes with a list of resources for mediators and advocates.

#### **Goldberg, Stephen B (et al) *Dispute Resolution: Negotiation, Mediation, and Other Processes* (4<sup>th</sup> ed, Aspen Publishers, New York, 2003)**

Previous editions: 1985 (1<sup>st</sup>), 1999 (3<sup>rd</sup>)

Stephen B. Goldberg is a Professor of Law at Northwestern University.

This book is an attempt to reflect new developments in ADR, both legal and empirical, with simulations and questions to help students understand the various processes. A broad overview of the field is provided in part one. In part two a critical examination of negotiation, mediation, arbitration and some of their hybrid variants is undertaken. The chapters on negotiation and mediation are chiefly comprised of excerpts from different theorists or cases with commentary and questions provided by the authors. In part three Dispute Resolution and the Justice System is considered. This is followed by a description and analysis of several selected applications of ADR from family and public to international disputes. Part five considers the future of ADR before some Dispute Resolution problems are set out in part six. The appendices include a range of clauses, Acts and standards.

**Goodpaster, Gary A *Guide to Negotiation and Mediation* (Transnational Publishers, New York, 1997)**

A practical guide to understanding what goes on in negotiations, about knowing how to think and talk about negotiation and about how to negotiate and resolve conflicts. The book also summarises important ideas and insights of theorists and practitioners. Initial chapters cover basic negotiation dynamics and variables. This is followed by an analysis of competitive negotiation and competitive negotiation tactics. After a discussion of deception in negotiation, compromise negotiation and interest based negotiation are considered. The following chapters address the issues of facilitating efficient tradeoffs, cognitive problems in negotiation, collations and representative bargaining. Negotiation preparation and lawsuits as negotiators are considered before mediation is addressed. Other negotiated dispute resolution processes and complex negotiations and mediations are then addressed. The final chapter deals with the issue of cross-cultural negotiations and mediations. A bibliography is also included.

**Lewicki, Roy J, Saunders, David M and Barry, Bruce *Negotiation* (5<sup>th</sup> ed, McGraw-Hill Irwin, Boston, 2006)**

Previous editions: 1985, 1994, 1999, 2003.

Companion volume to *Negotiation: Readings, Exercises and Cases* (6<sup>th</sup> ed, 2010)

Roy J. Lewicki is the Dean's Distinguished Teaching Professor and Professor of Management and Human Resources at the Max M. Fisher College of Business at the Ohio State University. David M. Saunders is the Dean of the School of Business at Queens University in Canada. Bruce Barry is a Professor of Management and Sociology at Vanderbilt University.

Part one of the book covers the fundamentals of negotiation. Topics covered include the nature of negotiation, two approaches to negotiation (competitive and integrative) and negotiation strategy and planning. Part two discusses negotiation issues such as perception, emotion, communication, power, influence and ethics. Part three examines the social contexts in which these negotiations occur. Relationships, agents, collations and multiple parties are among the topics discussed. Part four covers the individual differences such as gender and personality. In part five negotiations across cultures are discussed. Part six covers resolving differences in cases of impasses, mismatches and different negotiations. The book concludes with a summary of the ten best practices for negotiators and a bibliography.

**Meek, Susan B *Alternative Dispute Resolution* (Lawyers & Judges Publishing Company Inc, Tucson, 1996)**

Meek begins by providing an assessment of the growing field of ADR. Her aim was to provide an understanding and comprehension of the processes involved. She embarks on an assessment of negotiation including specific areas of negotiation. This is followed by an introduction to mediation, the steps to a successful mediation and areas of mediation. The ethics of mediation and mediation court cases are then considered. The book concludes with a chapter on arbitration and arbitration court cases. This is followed by a list of references.

**Menkel-Meadow, Carrie J (et al) *Dispute Resolution: Beyond the Adversarial Model* (Aspen Publishers, New York, 2005)**

Carrie Menkel-Meadow is a Professor of Law and Director of the Georgetown Hewlett Program on Conflict Resolution and Legal Problem Solving at the Georgetown University Law Centre.

After an introduction on entering the fields of conflict and dispute resolution the basic processes of negotiation, mediation and arbitration are analysed. The concepts and models, skills and practices, and law, ethics and policy of negotiation, mediation and arbitration are considered in detail. The next part of the book considers adaptations and variations of these processes. Topics covered include: private and public hybrid processes, multiparty dispute resolution processes, planning for dispute resolution, conflict resolution in the international legal order, thinking critically about non adjudicatory processes and counselling about dispute resolution processes. The appendices (both in the book and attached compact disk) include a variety of rules, standards and conferences.

**Menkel-Meadow, Carrie and Wheeler, Michael (eds) *What's Fair: Ethics for Negotiators* (Jossey-Bass, San Francisco, 2004)**

A compilation of over 30 different essays on ethics and negotiation. Broad topics covered include truth telling, bargaining tactics, negotiating relationships, agents, social influences and impacts. The book concludes with a bibliography.

**Mnookin, Robert H, Peppet, Scott R and Tulumello, Andrew S *Beyond Winning: Negotiating to create value in deals and disputes* (Belknap Press of Harvard University Press, Cambridge and Massachusetts, 2000)**

Robert H Mnookin is the Director of the Harvard Negotiation Research Project.

In this book the authors argue that a problem solving approach to negotiation offers the most promising means of creating value. The authors aim to not only help lawyers conduct better negotiations but also to help lawyers and clients work together to negotiate deals and disputes more effectively. The book is divided into four parts. In part one the authors consider the dynamics of negotiation. This part develops the central idea that negotiation requires the management of three discreet tensions: between creating and distributing value, between empathy and assertiveness and between principles and agents. In part two the authors enter the world of legal negotiations. The authors argue that in both dispute resolution and deal-making lawyers have special opportunities to create value that would not otherwise be available to their clients. However, they also note that there are psychological and cultural barriers to the effectiveness of lawyer's negotiations. Part three provides advice to lawyers about how they can change the traditional game from adversarial bargaining to problem solving. The authors consider how to create a strong working relationship

behind the table with their clients and across the table with other lawyers. They also offer some advice for resolving disputes and making deals. Finally part four briefly addresses the professional and ethical dilemmas that legal negotiations pose and the added complexities of negotiating with organisations and multiple parties.

**Moffitt, Michael L and Bordone, Robert C (eds) *The Handbook of Dispute Resolution* (Jossey-Bass, San Francisco, 2005)**

This text contains a collection of chapters covering a variety of topics within dispute resolution composed by the leading academics in American dispute resolution. Designed for both those with no previous knowledge and those with extensive knowledge. Each chapter covers previous research and the most current thinking. The book begins with chapters on perspectives of and a history of dispute resolution. Part one considers understanding disputants. It explores how personality factors, emotions, concerns about identity, relationship dynamics and perceptions contribute to the escalation of disputes. Gender and cultural differences are also explored. Part two addresses understanding disputes and dispute contexts. This part explores creating value in disputes, using agents, settlement through tools and options. Organisational dynamics, law and ethics are also considered. Part three contains an overview of a wide range of available dispute resolution processes including negotiation, mediation and selecting the appropriate process. Part four considers emerging issues in dispute resolution. Strategies for organisational leadership, online dispute resolution, public and private international dispute resolution, victim offender mediation and youths are among the topics considered. The Handbook concludes by considering the future of dispute resolution.

**Moore, Christopher W., *The Mediation Process: Practical Strategies for Resolving Conflict* (3<sup>rd</sup> ed, Jossey-Bass, San Francisco, 2003)**

Previous editions: 1986 and 1996

Designed as a practical guide to mediation this text considers a variety of different aspects in the process of mediation. Part one is devoted to understanding dispute resolution and mediation and considers different approaches to managing and resolving conflict and how mediation works. Part two considers laying the groundwork for effective mediation. Managing initial contacts with the disputing parties, selecting a strategy to guide mediation, collecting and analyzing background information, designing a detailed plan for mediation and building trust and cooperation are considered. Part three deals with conducting productive mediations and considers beginning the mediation session, defining issues and setting an agenda, uncovering hidden interests of the disputing parties and generating options for settlement. Part four covers reaching settlement and discusses assessing options for settlement, conducting final bargaining and reaching closure, achieving formal agreement or settlement, strategies for dealing with special situations, strategies for multiparty mediation and toward an excellent practice of mediation. More concludes with a chapter on the challenges for the growth and development of mediation and includes a number of resources.

**Nolan-Haley, Jacqueline M *Alternative dispute resolution in a nutshell* (Thomson/West, St. Paul, 2008)**

Jacqueline Nolan-Haley is a Professor of Law and Director of the ADR and Conflict Resolution Program at the Fordham University School of Law.

A succinct guide to American ADR. Initial chapters cover negotiation and discuss definitions, approaches, stages, ethical issues and legal aspects. The chapter on mediation covers the mediation process, ethical concerns, mediation and the law and an example of a mediation approach in litigation. Chapter four considers arbitration and chapter five addresses dispute resolution in the court system. Court-annexed arbitration and mediation, the summary jury trial, early neutral evaluation, magistrates and restorative justice are specifically considered. Chapter six covers hybrid dispute resolution and addresses topics such as the mini trial, med-arb and conciliation. The appendices provide a variety of rules and standards.

**Rau, Alan Scott, Sherman, Edward F and Peppet, Scott R *Mediation and other non-binding ADR processes* (3<sup>rd</sup> ed, Foundation Press Thomson/West, New York, 2006)**

Previous editions: 1996, 2002.

Reprinted in part from *Processes of Dispute Resolution: The Role of Lawyers – Mediation and Court annexed ADR processes*.

**Rau, Alan Scott, Sherman, Edward F and Peppet, Scott R *Processes of Dispute Resolution: The Role of Lawyers* (4<sup>th</sup> ed, Foundation Press Thomson/West, New York, 2006)**

Previous editions: 1989, 1996, 2002.

Alan Scott Rau is the Burg Family Professor of Law at the University of Texas at Austin School of Law. Edward F. Sherman is the Moise F Steeg Jr Professor of Law at the Tulane University School of Law. Scott Peppet is an Associate Professor of Law at the University of Colorado School of Law.

This book focuses on processes of dispute resolution with attention given to both theoretical and practical aspects. The objective is to train lawyers to use ADR. The first chapter addresses the general issue of lawyers, litigation and the process. The following chapter addresses negotiation covering in detail structure, strategy, style and skill, psychological and social aspects of bargaining and finally the professional and legal framework for negotiation. The mediation chapter addresses sources, process, roles, confidentiality, enforceability and regulation. Court-annexed ADR processes are considered in the following chapter. Finally arbitration is considered. The book concludes with a range of appendices and further references.

**Schneider, Andrea Kupfer and Honeyman, Christopher (eds) *The Negotiator's Fieldbook: A desk reference for the Experienced Negotiator* (American Bar Association, Washington, 2006)**

A compilation of over 80 different essays with a useful summary of each essay is provided at the start. The broad topics covered include why even the best get stuck, how people frame negotiations, whether it is really a negotiation, morality and fairness, the people on all sides, what to do in various situations, enlisting help and putting it all together. The appendix covers the evolution of the book.

**Stulberg, Joseph B and Love, Lela P *The Middle Voice: Mediating Conflict Successfully* (Carolina Academic Press, Durham, 2009)**

Joseph B. Stulberg is the John W. Bricker Professor of Law and Associate Dean for Faculty at the Ohio State University Moritz College of Law. Lela P. Love is a Professor of Law at Benjamin N Cardozo School of Law where she developed and directs the Mediation Clinic and Program for Conflict Resolution.

Describes the role of the mediator and the skills and knowledge necessary to conduct a successful process. Part one addresses responses to conflict. Topics covered include the middle voice, intervener models, patterns in conflict, the mediator's job and assessing entry. Part two represents the main portion of the book and consists of the author's recommendation for the key skills and strategies of a mediator = BADGER (begin the discussions, accumulate information, develop the discussion strategy, generate movement, elect separate sessions and reach closure). Part three considers lessons of experience. The book concludes with recommendations for further reading and model standards of conduct for mediators.

**Ware, Stephen J *Principles of Alternative Dispute Resolution* (2<sup>nd</sup> ed, Thomson/West, St. Paul, 2007)**

Stephen J. Ware is a Professor of Law at the University of Kansas.

This text, written by a lawyer for lawyers and law students, intends to serve as a clear and reliable statement of the law and the concepts central to ADR. The book begins with an introduction and a consideration of arbitration. This is followed by detailed chapters on negotiation and mediation (and other processes in the aid of negotiation). In the negotiation chapter, context, the settlement/litigation choice, theory, approaches, preparation and law are among the topics considered. In the mediation chapter goals, process, context, representation, law and other processes are considered. The book ends with appendices containing an Act and Convention.

United States Potentially Useful

- Barrett, Jerome T with Barrett, Joseph P *A History of Alternative Dispute Resolution: The story of a political, cultural, and social movement* (Jossey-Bass, San Francisco, 2004)
- Bercovitch, Jacob, Kremenyuk, Victor and Zartman, I. William (eds) *The SAGE Handbook of Conflict Resolution* (SAGE, Los Angeles, 2009)
- Bianchi, Herman *Justice as Sanctuary: Toward a new system of crime control* (Indiana University Press, Bloomington, 1994)
- Chern, Cyril *Chern on Dispute Boards: Practice and Procedure* (Blackwell Publishers, Oxford, 2008)
- Dingwall, Robert and Eekelaar, John (eds) *Divorce mediation and the Legal Process* (Oxford University Press, Oxford and New York, 1988)
- Eaton, Adrienne E and Keefe, Jeffrey H (eds) *Employment Dispute Resolution and worker rights in the changing workplace* (Industrial Relations Research Association, Champaign, 1999)
- Fisher, Roger and Brown, Scott *Getting Together: Building a Relationship that gets to Yes* (Houghton Mifflin, Boston, 1988)
- Fisher, Roger and Ury, William with Patton, Bruce (ed) *Getting to Yes: Negotiating an Agreement Without Giving In* (2<sup>nd</sup> ed, Random House Business Books, London, 1999)

- Folberg, Jay and Taylor, Alison *Mediation: A comprehensive guide to resolving conflicts without litigation* (Jossey-Bass, San Francisco, 1984)
- Folberg, Jay and Taylor, Alison *Mediation: A comprehensive guide to resolving conflicts without litigation* (Jossey-Bass, San Francisco, 1984)
- Gifford, Donald G *Legal Negotiation: Theory and Practice* (West Publishing Co, St. Paul, 2007)
- Gleason, Sandra E (ed) *Workplace Dispute Resolution: Directions for the 21st century* (Michigan State University Press, East Lansing, 1997)
- Goldman, Alvin L and Rojot, Jacques *Negotiation: Theory and Practice* (Kluwer Law International, Hague, 2003)
- Greenwald, Bob *Conflict without Chaos: A look back at conflict intervention initiatives during the nations' early civil rights era* (Hampton Press, Cresskill, 2008)
- Hannum, Hurst and Babbitt, Eileen F (eds) *Negotiating Self-Determination* (Rowman & Littlefield Publishers, Lanham, 2006)
- Harrington, Christine B *Shadow Justice: the ideology and institutionalization of alternatives to court* (Greenwood Press, Westport, 1985)
- Isak Applbaum, Arthur *Knowledge and Negotiation: Learning under Conflict, Bargaining under Uncertainty* (PHD thesis, Harvard University, 1987)
- Lewicki, Roy J, Hiam, Alexander and Olander, Karen Wise *Think Before you Speak: The complete guide to strategic negotiation* (J Wiley, New York, 1996)
- Mayer, Bernard *The Dynamics of Conflict Resolution: A Practitioner's Guide* (Jossey-Bass Publishers, San Francisco, 2000)
- Menkel-Meadow, Carrie *Dispute Processing and Conflict Resolution: Theory, Practice, and Policy* (Ashgate/Dartmouth, Aldershot, 2003)
- Mills, Miriam K (ed) *Conflict Resolution and Public Policy* (Greenwood Press, New York, 1990)
- Moffitt, Michael L and Schneider, Andrea Kupfer *Dispute Resolution: Examples and Explanations* (Aspen Publishers, New York, 2008)
- Scholtz, Christa *Negotiating Claims: The emergence of indigenous land claim negotiation policies in Australia, Canada, New Zealand, and the United States* (Routledge, New York, 2006)
- Schwerin, Edward W *Mediation, citizen empowerment, and transformational politics* (Praeger, Westport, 1995)
- Woolford, Andrew and Ratner, R. S *Informal Reckonings: Conflict Resolution in mediation, restorative justice and reparations* (Routledge-Cavendish, Abingdon, 2008)
- Zartman, I. William *Negotiation and Conflict Management: Essays on Theory and Practice* (Routledge, London, 2008)

England (limited resources – focus on arbitration)

**Brown, Henry J and Marriott, Arthur L *ADR Principles and Practice* (2<sup>nd</sup> ed, Sweet & Maxwell, London, 1999)**

A text by two British practitioners seeking to contribute to the rise of ADR in Britain by drawing attention to the principles and practice of ADR. The authors begin by exploring the nature of conflicts and disputes and providing an outline of ADR. This is followed by chapters on litigation and court reform, arbitration and court-annexed ADR. Negotiation is covered briefly before several chapters are devoted to mediation including mediation in civil, commercial, family, employment, community, criminal and environmental contexts. The following chapters consider non-binding evaluative ADR, online ADR, choice of process and the role of lawyers. The final chapters address jurisdiction, ethics and values, confidentiality and privilege, enforcement and regulation. The book concludes with a consideration of the future. The appendices contain helpful notes on organisations, drafting and practice directions.

**Roberts, Simon and Palmer, Michael *Dispute Processes: ADR and Primary Forms of Decision Making* (2<sup>nd</sup> ed, Cambridge University Press, Cambridge, 2005)**

A study of the primary forms of decision-making (negotiation, mediation and umpiring) in the context of changing practices of civil justice recognisable across many jurisdictions. The authors argue a common linkage between these new methods is a general shift of ideological priorities between judgment and settlement. Although mainly aimed at law students the authors suggest the book will also appeal to sociologists and anthropologists. The authors begin by considering precursors to the emergence of ADR and the movement towards procedural innovation. The following chapters consider the dispute process, negotiation, mediation, umpiring and hybrid forms. The book concludes with a consideration of the future of ADR.

England Potentially Useful

- Bernstein, Ronald *Bernstein's Handbook of Arbitration and Dispute Resolution Practice* (Sweet & Maxwell, London, 2003)
- Genn, Hazel G *Paths to Justice: What people do and think about going to law* (Hart, Oxford, 1999)
- Hörnle, Julia *Cross-border internet dispute resolution* (Cambridge University Press, Cambridge, 2009)
- Kendall, John, Freedman, Clive and Farrell, James *Expert Determination* (4<sup>th</sup> ed, Sweet & Maxwell, London, 2008)
- Wright, Martin and Galaway, Burt (eds) *Mediation and Criminal Justice: Victims, Offenders and Community* (Sage, London, 1989)
- Zartman, I. William *Negotiation and Conflict Management: Essays on Theory and Practice* (Routledge, London, 2008)

Canada (limited resources – focus on arbitration)

**Macfarlane, Julie *The New Lawyer: How Settlement is Transforming the Practice of Law* (UBC Press, Vancouver, 2008)**

An exploration of the changes in legal practice which have taken place in recent years and the effect of these on the role of lawyers. Macfarlane argues that changes in procedure, voluntary initiatives and changing client expectations have created a new role for lawyers and a new model for client service. Rather than focusing only on providing technical advice and litigation, lawyers are now expected to also provide a more practical and efficient method of conflict resolution. Macfarlane explores the practical and conceptual dimensions of this new lawyer-client relationship as well as the role of the law in conflict resolution advocacy and the ethical challenges faced by the new lawyer. Macfarlane also argues that there are many aspects of legal practice and education which have not yet caught up to the changing professional identity of the lawyer.

**Nelson, Robert M *Nelson on ADR* (Carswell, Scarborough, 2003)**

An exploration of ADR principles and practices drawn from practical experience. After an introduction and overview of the history of ADR Nelson explores negotiation theories, privilege, confidentiality and conflict analysis. Mediation, both in philosophy and real life, is then considered in detail. Several chapters are devoted to arbitration before international dispute resolution and med-arb are considered. An epilogue anticipates the future of ADR. The book concludes with an appendix tracing worldwide developments in a number of different countries.



Canada Potentially Useful

- Emond, D. Paul (ed) *Commercial Dispute Resolution: Alternatives to Litigation* (Canada Law Book, Aurora, 1989)
- Michalos, Alex C *Trade Barriers to the Public Good: Free trade and environmental protection* (McGill-Queen's University Press, Montreal, 2008)

*Victoria University of Wellington Commerce Library*

Some material on employment relations but otherwise little on ADR

- Mead, Richard *International Management: Cross-Cultural Dimensions* (3<sup>rd</sup> ed, Blackwell, Oxford, 2005)
- Roberts, Harold S *Roberts' Dictionary of Industrial Relations* (4<sup>th</sup> ed, Bureau of National Affairs, Washington, 1994)

*Victoria University of Wellington Kelburn Library*

**Alexander, Nadja (ed) *Global Trends in Mediation* (2<sup>nd</sup> ed, Kluwer Law International, Alphen aan den Rijn, 2006**

An exploration of mediation from a comparative perspective. In the first chapter Alexander discusses global trends in mediation generally. The following chapters discuss mediation in a variety of different jurisdictions including Australia, Austria, Canada, Quebec, Denmark, England and Wales, France, Germany, Italy, the Netherlands, Scotland, South Africa, Switzerland and the United States. The appendix includes a comparative mediation table.

**Avruch, Kevin *Culture and Conflict Resolution* (United States Institute of Peace Press, Washington, 1998)**

An expose of the shortcomings of the treatment and understanding of culture in conflict resolution and the promotion of an alternative conception in which culture is seen as dynamic and derivative of individual experience. Avruch explores divergent theories of social conflict and differing strategies that shape the conduct of diplomacy and examines the role that culture has (and has not) played in conflict resolution. In part one Avruch explores culture generally looking into the concept of culture, an approach to culture and thinking about culture. In part two he considers conflict resolution. Topics covered include thinking about social conflict, political culture, culture in international relations, culture and negotiation and culture and power. In part three frames for culture and conflict resolution are considered with a focus on conceptualising cultural difference and emic and etic approaches. In part four Avruch considers discourses of culture in conflict resolution. Topics covered include rational choice and gaming, bargaining and negotiation, third party processes, culture and problem solving, restricted conflict resolution and finally some notes for trainers and practitioners.

**Boulle, Laurence *Mediation: Principles, Process, Practice* (Butterworths, Sydney, 1996)**

In this Australian version of an Australasian text Boulle considers the principles, process and practice of mediation. Part one is devoted to principles and includes an introduction to mediation, the principles and policies of mediation and a consideration of mediation as a comparative dispute resolution process. Part two discusses the mediation process including consideration of the roles and functions in mediation and the skills and techniques of mediators. Part three considers mediation in practice and addresses quality, standards and accountability, legal issues and themes and trends in mediation. A bibliography of principal works is also included.

**Brandon, Mieke and Robertson Leigh *Conflict and Dispute Resolution: A Guide for Practice* (Oxford University Press, South Melbourne, 2007)**

A practical text for professionals, in a variety of different fields, which applies conflict and mediation theory to build skills in dispute resolution. Brandon and Robertson begin by setting the scene, addressing what causes conflict and putting workplace conflict in context. Conflict as a catastrophe or catalyst for change is also considered. Part two considers mediation and other processes. A variety of processes are considered along with workplace mediation, relevant skills and techniques, collaborative problem solving and strategies for negotiation. Part three addresses integrating professional practice. Topics covered include: challenges and considerations for practice and

reflecting in and on practice. The appendices include an example mediation agreement and ethical guidelines for mediators.

**Burton, John W., *Conflict Resolution: Its Language and Processes* (Scarecrow Press, London, 1996)**

Designed as an introductory text with definitions and explanations of key ideas and processes. This book also provides an understanding of the history, basic theory and practice of conflict resolution. After considering problem-solving conflict resolution Burton discusses the language of conflict resolution and several terms. He finishes by discussing conflict resolution procedures.

**Carbonneau, Thomas E., (ed) *Handbook on Mediation* (JurisNet, New York, 2006)**

A compilation of chapters covering a wide range of topics from a variety of authors. Chapter one provides an introduction to mediation covering the principles, theory and application of mediation. Chapter two focuses on getting started with mediation with segments on key factors to consider, effective and successful mediation and effective advocacy. Chapter three covers the mediator and explores selecting a mediator as well as questioning whether software programs will in the future replace mediation. Chapter four discusses making mediation work and considers mediation style, creative mediators, evaluations, risk, culture and med/arb. Chapter five considers attorneys, mediation and tools for successful mediation. Questions about mediation, preparing clients, emotions, non disclosure and expert witnesses are also considered. Chapter six addresses confidentiality and ethics in mediation. Chapter seven considers mediation in the workplace with attention given to steps for better employment mediation, perceptual errors, workplace discrimination, race and culture, disabilities and EEO disputes. Chapter eight considers mediation in specific dispute areas including family, business, environmental, medical malpractice and school. Finally chapter nine considers mediation and the legal system with articles on the constitution, enforcement, fraudulent claims and evaluative mediation as the practice of law.

**Herrman, Margaret S., (ed) *The Blackwell Handbook of Mediation: Bridging Theory, Research, and Practice* (Blackwell Pub, Malden, 2006)**

An extensive text composed by a variety of scholars, mediators, trainers and negotiators. Taking an interdisciplinary approach to mediation the book emphasises both internal and external factors as important influences when negotiating conflicts. It also explores the cultural and institutional frameworks that have shaped intervention processes and considers which intervention techniques might work. A large variety of topics are examined including mediation and negotiation in their contextual frames, exploring internal dynamics, strategies and difficult situations.

**Phillips, Barbara Ashley *The Mediation Field Guide: Transcending litigation and resolving conflicts in your business or organization* (Jossey-Bass, San Francisco, 2001)**

Designed to be a definitive one stop guide for knowing what mediation is and how it works. Part one considers a way beyond litigation and addresses mediation in action, strategies for war and peace and transformation in mediation. Part two is devoted to obstacles to resolution and considers stumbling blocks, the lawyer culture and using a lawyer for mediation. Part three addresses putting principles to work. This discussion includes evaluating mediation, selecting a mediator, preparing to mediate, the art of mediating, employment and construction matters and public and private policy. The appendices include various helpful documents, including on writing agreements and sample agreements. A bibliography is also included.

**Ury, William *Getting Past No: Negotiating with Difficult People* (Business Books, London, 1991)**

The sequel to *Getting to Yes* explains a five step strategy for dealing with people who won't deal, known as "breakthrough negotiation". According to Ury *Getting to Yes* outlines the dance routine whilst *Getting Past No* shows how to get a reluctant partner to dance. Ury's steps are: 1) Don't react, 2) Disarm them, 3) Change the game, 4) Make it easy to say yes and 5) Make it hard to say no. Ury concludes with a chapter on turning adversaries into partners.

Kelburn potentially useful

- Anderson, Kare *Getting what you want: How to reach agreement and resolve conflict every time* (Dutton, New York, 1993)
- Burgess, Heidi and Burgess, Guy M., *Encyclopedia of Conflict Resolution* (ABC-CLIO, Santa Barbara, 1997)
- Dana, Daniel *Conflict resolution: Mediation tools for everyday worklife* (McGraw-Hill, New York, c2001)
- Davis, Gwynn *Making Amends: Mediation and Reparation in Criminal Justice* (Routledge, London, 1992)
- Fisher, Roger and Shapiro, Daniel *Beyond Reason: Using Emotions as you Negotiate* (Penguin Books, New York, 2006)
- Gerzon, Mark *Leading Through Conflict: How successful leaders transform differences into opportunities* (Harvard Business School, Boston, 2006)
- Kolb, Deborah M and Williams, Judith *Everyday Negotiation: Navigating the Hidden Agendas in Bargaining* (Jossey-Bass, San Francisco, 2003)
- Mitchell, Christopher and Banks, Michael *Handbook of Conflict Resolution: The analytical problem solving approach* (Pinter, New York, 1996)
- Schellenberg, James A., *Conflict Resolution: Theory, Research, and Practice* (State University of New York Press, Albany, 1996)
- Tillett, Gregory *Resolving Conflict: A Practical Approach* (2<sup>nd</sup> ed, Oxford University Press, South Melbourne, 1999)
- Vasquez, John A., (et al) *Beyond Confrontation: Learning Conflict Resolution in the Post-Cold War Era* (University of Michigan Press, Ann Arbor, 1995)

## Wellington City Library

A lot on negotiation but mostly with a business focus

**Kheel, Theodore W., *The Keys to Conflict Resolution: Proven Methods of Settling Disputes Voluntarily* (2<sup>nd</sup> ed, Four Walls Eight Windows, New York, 2001) – 347.09 KHE**

Kheel begins his book by discussing the strengths and limitations of the voluntary techniques of conflict resolution: negotiation, mediation and arbitration. Chapter two discusses the structure of negotiation as the primary technique of conflict resolution. Chapter three considers the dynamics of negotiation and includes the Ten Commandments for negotiators. The following chapters examine the structure of mediation, the principle roles of a mediator and Ten Commandments for mediators. A brief chapter on arbitration is also included. The final chapters consider boards of mediators, legal restraints on the voluntary techniques and anti-trust Law. A postscript considers the future of ADR.

**Levine, Stewart, *Getting to Resolution: Turning Conflict into collaboration* (Berrett-Koehler Publishers, San Francisco, 1998) – 347.09 LEV**

In this book Levine explores a new way of resolving conflicts. In part one Levine considers the value of resolution and provides the context for the book. He reveals the costs of conflict and the problems with the current system. In part two he considers a better way of resolving conflict. This part provides an introduction to the steps of the model of resolution and a case study example. In part three he introduces new thinking that fosters resolution in the form of ten principles. In part four Levine lays out his step by step resolution model. The final parts of the book consider when professional help is needed and the power of resolution.

### Potentially relevant

- Adler, Bill, *How to negotiate like a child: unleash the little monster within to get everything you want* (Amacom, New York, 2006)
- Blackford, Carolyn, *Cross cultural mediation: guidelines for those who interface with iwi* (Centre for Resource Management, Lincoln University, 1993)
- Blackford, Carolyn, *Maori participation in environmental mediation* (Centre for Resource Management, Lincoln University, 1991) – 333.72 BLA (2<sup>nd</sup> floor) not for loan
- Bowling, Daniel and Hoffman, David (eds), *Bringing peace into the room: how the personal qualities of the mediator impact the process of conflict resolution* (Jossey-Bass, San Francisco, 2003) – 303.69 BR1
- Brodow, Ed, *Negotiation Bootcamp: How to resolve conflict, satisfy customers and make better deals* (Doubleday, New York, 2006)
- Cohen, Herb, *Negotiate This! By caring but not t-h-a-t much* (Little Brown, New York, 2006)
- Deepak, Malhotra, *Negotiation genius: how to overcome obstacles and achieve brilliant results at the bargaining table and beyond* (Bantam, New York, 2007)
- Eunson, Baden, *Conflict management* (John Wiley & Sons Australia, Milton, 2007) > business focus
- *Harvard Business Essentials: Negotiation* (Boston, Harvard Business School, 2003)
- Howells, John M and Cathro, Susan H., *Mediation in New Zealand: The Attitudes of the Mediated* (Dunmore Press, Palmerston North, 1986)
- Langdon, Ken, *Succeed at Negotiating: Effective Techniques to Secure the Results you want* (Dorling Kindersley, London, 2006) > business focus

- Lyons, Carl, *I win, you win: The essential guide to principled negotiation* (A & C Black, London, 2007) > business focus
- Mills, Harry, *Negotiate: The Art of Winning* (Mills Publications, Lower Hutt, 1990)
- Mills, Harry, *The Streetsmart negotiator: How to outwit, outmaneuver, and outlast your opponents* (Amacom, New York, 2005)
- *Negotiating Outcomes: Expert Solutions to Everyday Challenges* (Harvard Business School Publication, Boston, 2007) > business focus
- Oliver, David, *How to Negotiate Effectively* (Kogan Page Limited, London, 2006)
- *Pre-Settlement assets ("PRESA"): dispute resolution procedures* (Treaty of Waitangi Fisheries Commission, Wellington, 1995) – 333.95617 PRE (2<sup>nd</sup> floor) not for loan
- Rumbles, Wayne, *Treaty of Waitangi settlement process: new relationship or new mask? : papers presented at the Compromising Post/Colonialism Conference* (Wollongong, 10-13 February 1999) – 333.1 Rum (2<sup>nd</sup> floor) not for loan
- *The human dynamics of dispute resolution* (1992 Annual Conference 17-18 July, Arbitrators Institute of New Zealand, Wellington, 1992) – 344.0189 ARB (2<sup>nd</sup> floor) not for loan
- Ury, William, *The Power of a Positive No: How to say No and still get to Yes* (Hodder Mobius, London, 2007) – 158.2 URY
- Volkema, Roger J., *Leverage: How to get it and how to keep it in any negotiation* (Amacom, New York, 2006)
- Ward, Damian, *Contract Negotiation Handbook: Getting the Most out of Commercial Deals* (Wrightbooks, Milton, 2007)

## Journal articles (chronological order)

### *Alternative Law Journal (Aust)*

Began 1992. Known as Legal Service Bulletin from 1974-1991

Full text available from HeinOnline Law Journal Library: 1974 to 2007

Full text available from AGIS Plus Text: 01/08/1999 to present

Searched volume 15 (1990) to volume 35 (2010)

Generally limited, Legal Service Bulletin seems to have more comprehensive cover but is dated now.

### Potentially relevant

- Alexander, Renata, 'Mediation, Violence and the Family' (1992) 17 *Alternative Law Journal* 271  
Herriot, Ann-Margaret, 'ADR - A Threat to Democracy' (1994) 19 *Alternative Law Journal* 75
- Alexander, Renata, 'New Mantras in Family Law' (1996) 21 *Alternative Law Journal* 276
- Brown, Ken, 'Indigenous Forums: Laughed out of Court?' (2000) 25 *Alternative Law Journal* 216
- Guthrie, Rob; Fernandez, Joseph, 'Law Schools in the 21st Century' (2004) 29 *Alternative Law Journal* 276
- King, Michael, 'What can mainstream courts learn from problem-solving courts?' (2007) 32 *Alternative Law Journal* 91



## *Asian Journal of Comparative Law*

Began in May 2006

Full text available from Berkeley Electronic Press Journals: 01/05/2006 to present

### Potentially relevant

- Rehman, Javaid, 'Institutions of International Law and the Development of Regional Forum for Peaceful Dialogue in South Asia' (2006) vol 1, issue 1, *Asian Journal of Comparative Law*, article 16
- Crouch, Melissa A., 'The Yogyakarta Local Ombudsman: Promoting Good Governance through Local Support' (2007) vol 2, issue 1, *Asian Journal of Comparative Law*, article 11
- Black, Ann, 'Ideology and Law: The Impact of the MIB Ideology on Law and Dispute Resolution in the Sultanate of Brunei Darussalam' (2008) vol 3, issue 1, *Asian Journal of Comparative Law*, article 5

## *Auckland University Law Review*

Full text available from HeinOnline Law Journal Library: 1967 to present

Searched volume 6 (1988-1991) to volume 15 (2009)

### **Wilson, Denise, 'Alternative Dispute Resolution' (1992-1995) 7 *Auckland University Law Review* 362**

In this article Wilson explores alternative dispute resolution particularly in the context of family and employment mediation. She compares the process of mediation in the Family Court and Employment Tribunal to provide an insight into the complexities of alternative dispute resolution in present day New Zealand. Wilson first examines the Family Court specifically looking at counselling and mediation in the Family Court. She also considers influences on mediation in the Family Court. She concludes that mediation in the Family Court system is both confused and distorted by the institutionalisation of the process. She points out the problems of power raised by the use of the Court and judges and mediated agreements will need to comply with the preferred outcomes favoured by these brokers of power before receiving legal and moral sanction. She then moves on to discuss mediation in the Employment Tribunal where she argues that many of the distortions in the Family Court have been removed. She provides an introduction to the Employment Tribunal before considering dispute resolution procedures, separation of functions and an assessment of mediation in such a context. She ends with some comparisons between mediation in the Family Court and Employment Tribunal. Unlike in the Family Court mediation in the Employment Tribunal is a process where the parties have a lot more control and flexibility and has the advantage of specialist mediators. She concludes that mediation in both areas is shaped by their basic objectives and moulded into an institutionalised process of dispute resolution within the state legal system.

#### Potentially relevant

- Voigt, Christina, 'Environmental Mediation and the Resource Management Act 1991: Resolving Resource Management Problems or Compromising the Environment?' (2000-2003) 9 *Auckland University Law Review* 912
- Hefferan, Gina, 'Post-Settlement Dispute Resolution: Time to Tread Lightly' (2004) 10 *Auckland University Law Review* 212

## *Australasian Dispute Resolution Journal*

Known as the Australian Dispute Resolution Journal from Feb 1990-Nov 1998

Available from Legal Online 2001-present

Law library has hard copies of the Australian Dispute Resolution Journal (Vol. 1, no. 1 (Feb 1990)-v. 9, no. 4 (Nov 1998)) and from v. 10, no. 1 (1999 Feb) to present

Part one of volume 22 (2011) has been released

Volume 1- volume 11 (incomplete)

### **(Earlier)**

**Street, Laurence, 'The Court System and Alternative Dispute Resolution Procedures' (1990) vol 1, no 1, ADRJ 5**

In this article Sir Laurence Street attempts to co-relate the functions of the court system and ADR procedures in the resolution of disputes. Street begins with a discussion of sovereignty and the courts and notes that the judicial institution, with its inherent sovereign quality, cannot be confronted by any alternative mechanism. However, he goes on to note that although it is the responsibility of judges to enforce the rule of law, they should not be obliged to decide every dispute that may arise in society. Street goes on to warn against overtaxing judicial resources and instead suggests that alternative processes be set up to ease their burden and preserve the high standard of the judiciary. Street then considers how arbitration and other consensual processes fit within the judicial institution. He concludes that mediation is a step along the way, but not an alternative step to sovereign judicial power. Street then considers differences between Western and Islamic or Oriental cultures. He concludes that it was the rise in status of Islamic and Oriental nations that ushered in the age of ADR in the west. Street also considers the differences between the mechanisms for resolving domestic disputes and the mechanisms for resolving international commercial disputes.

Ultimately Street concludes that ADR processes are not in their essence alternative to the exercise of sovereign judicial power as a means of resolving domestic disputes, nor do they present any threat to the stature and authority of judicial institutions. Rather they should be seen as no more than contractual arrangements chosen by the parties as the way in which they wish to resolve their disputes. He argues that concerns over the role of ADR procedures in domestic disputes should be dispelled and that ADR processes are part of society's overall resources for resolving disputes and should be embraced by lawyers.

**Faulkes, Wendy, 'The Modern Development of Alternative Dispute Resolution in Australia' (1990) vol 1, no 2, ADRJ 61**

In this article Faulkes provides an overview of the development of ADR in Australia. She considers many developments including the Pilot Project of 1979, early ADR for specific types of disputes such as discrimination or family and the Conciliation Acts. The development and expansion of the Community Justice Centres, first established in New South Wales, is covered in detail. Faulkes expresses some concern at the low regard with which most people continue to hold ADR. She emphasises that the Centres were never intended to be just another legal service with a different face. She concludes that it is in the field of community mediation that mediators can gain the best experience to develop and maintain their skills. In a final comment she notes that the development of professional standards is essential for the survival of ADR and community mediation. However, she considers that a move to a fully "professionalised" service (academic qualifications rather than

personal suitability and motivation) would erode the vitality and enthusiasm which have made mediation a success.

**Pengilley, Warren, 'Alternative Dispute Resolution: The Philosophy and the Need' (1990) vol 1, no 2, ADRJ 81**

In this article Pengilley explores the philosophy and need for ADR as well as some key aspects. He begins with an exploration of the historical need for ADR. Next Pengilley considers the track record of ADR and highlights some of its more interesting successes. He then considers the prerequisites for the successful use of ADR techniques, specifically commitment in principle and an appropriate philosophical approach. Pengilley then attempts to define ADR before considering the types of ADR processes which exist. The advantages and disadvantages of ADR are then addressed. Pengilley then examines the role of lawyers in ADR. Finally Pengilley considers the compatibility between ADR and litigation before concluding that ADR is the recognition of a philosophy of compromise when two parties are in dispute.

**(More recent)**

**Dewdney, Micheline, 'Transformative mediation: implications for practitioners' (2001) vol 12, no 1, ADRJ 20**

This article explores the definition of the term "transformative mediation" (which has been increasingly discussed and analysed since the publication of Bush and Folger's *The Promise of Mediation: Responding to Conflict Through Empowerment and Recognition*) and examines its goals, underlying values, trends and hallmarks. Commentary by some critics of the transformative mediation ideology is included, together with discussion on whether the recommended methodology is really saying anything new.

**McCarthy, Christine, 'Can leopards change their spots? Litigation and its interface with alternative dispute resolution' (2001) vol 12, no 1, ADRJ 35**

This article explores the relationship between the theory of alternative dispute resolution (ADR) and its practice particularly in the context of matters litigated in Victoria. It examines various Acts and Regulations dealing with ADR and compares the ADR theory with the mandated action required of litigants. A consideration of some of the case law which has arisen in the context of ADR reveals how litigation affects the attitude of the parties to the ADR process, particularly in regard to concerns of whether reliance can be placed on the assurance of confidentiality when mediation is attempted. This analysis demonstrates that what occurs when ADR is juxtaposed with litigation may not necessarily accord with the theory of ADR.

**Wills, Michelle, 'The negotiator's ethical and economic dilemma: to lie, or not to lie' (2001) vol 12, no 1, ADRJ 48**

In this article Wills examines the effectiveness of lying versus telling the truth as a negotiation strategy in a business environment. First she examines whether lying is an effective negotiation strategy. She examines different theorists and justifications for the use of lying in negotiations. She acknowledges that there may be strategic advantages to withholding information but that there is always the risk that the lying will be uncovered. She then moves on to consider whether truthfulness or ethical behaviour is always a good negotiating tactic from an economic point of view. She notes that there will always be those negotiators who disregard ethics and the truth, and who will reap the short-term rewards of lying to the other party. However, they have an uncertain future as it is unlikely that an unethical negotiator will escape public censure indefinitely. It can thus be

inferred that the long-term benefits of being honest far outweigh the short-term benefits of making a "quick buck" at the other party's expense. She concludes that when it comes to negotiation strategy refraining from lying is ultimately the safest way to do business. Telling the truth in negotiations may not always be the most expedient tactic but is one crucial to the negotiator's continued economic and moral well-being.

**Grant, Simon R., 'The importance of lateral thinking in mediation' (2001) vol 12, no 2, ADRJ 77**

This article aims to assist practitioners to focus on what is the real issue of mediation, that is, the generation of possible options for resolving a dispute by concentrating on the real needs or desires of the parties. It discusses the way lateral thinking can be used, its appropriateness, and the results that can be achieved or lost.

**Bryson, David, 'Insider mediators and the ADR practice of spitting on the spear' (2001) vol 12, no 2, ADRJ 89**

The analogy of the dispute resolution agent within a tribal village or organisation is explored in this article. The analogy is relevant to the choices and dilemmas facing practitioners in mandatory ADR systems because they are all "insider mediators", embedded in the dispute context and possessing, through relationships and knowledge, the power to persuade. They also have an interest in the outcome, with the power to reward or punish. However, these very same things can limit their role. How can insider mediators operate most effectively? A model for understanding the insider mediator's role is examined, and a new ethical standard is sketched.

**Redfern, Michael, 'Capturing the magic – time as a factor in the mediation process' (2001) vol 12, no 2, ADRJ 98**

This article argues that constructive use of time, and the more flexible procedures which flow as a result, mean the mediation process is able to be used more effectively for the long-term interests of the parties and the fuller and fairer handling and resolution of their dispute. The use of time in this way emphasises the essential commerciality and interest-directed approach of the mediation process and thus its greater ability to address and deal effectively with disputes, especially those of a commercial nature.

**Yuan, Lim Lan, 'Developing role-plays for experiential mediation learning' (2001) vol 12, no 2, ADRJ 103**

The use of role-plays as an educational or training technique is common in disciplines which involve interpersonal behaviour and interactions. A role-play aims to provide trainees with a highly simplified reproduction of parts of a real world where they can relate learning to practice and practice to real life. This article highlights the importance of role-plays in training mediators and discusses how a proper role-play can be written and used to effect the learning process. A case study of writing a role-play is described as an illustration.

**Roebuck, Joanne, 'Mediation in North Queensland: user perceptions – a research report' (2001) vol 12, no 2, ADRJ 119**

The main purpose of this North Queensland study was to consider what litigating parties thought about the mediation they had participated in, to contrast these perceptions with what their respective lawyer and mediator thought of the mediation, and to find out whether perceptions of the mediation process were common to all participants. It was thought that this could shed some

light on how mediation could be improved and would further raise awareness, in the minds of mediators and lawyers, of the issues that are important to clients.

**Prior, Anne and Thompson, Rosemary, 'Is to and fro the way to go? A discussion of the practice and effectiveness of shuttle mediation' (2001) vol 12, no 3, ADRJ 160**

Shuttle mediation has become an essential element in the mediator's bag of tools, yet little has been done in the way of research on, or evaluation of, the practice. The aim of this article is to highlight some of the issues raised by its practice in family mediation disputes and to provide some information about the shuttle practices used by Relationships Australia mediation services across Australia. The authors pose some questions for further reflection and research within the area of shuttle mediation.

**Sourdin, Tania, 'Legislative referral to alternative dispute resolution processes' (2001) vol 12, no 3, ADRJ 180**

This article summarises key legislative changes in relation to ADR process referral within court and tribunal systems (primarily in New South Wales). Issues relating to the legislative referral of disputes to ADR processes are also explored, together with issues relating to the role of judges and courts and their relationship with ADR processes. In particular, the role of judges, registrars and tribunal members acting as neutrals in ADR processes is considered, as well as the role that judges and courts have in encouraging or mandating ADR.

**Rothfield, Jonathan, 'What (I think) I do as the mediator' (2001) vol 12, no 4, ADRJ 240**

This article is a summary of the author's (one of Australia's experienced Commercial Litigation mediators) endeavour to record his standard for ADR in response to a discussion paper called "The Development of Standards for ADR" published in 2000 by the National Alternative Dispute Resolution Advisory Council (NADRAC).

**Wolski, Bobette, 'Mediator settlement strategies: winning friends and influencing people' (2001) vol 12, no 4, ADRJ 248**

This article questions the concepts of mediator neutrality and impartiality. Using a process model of mediation as a basis for analysis, the article catalogues a range of strategies used by mediators to pressure parties to settle and to influence the course and outcome of mediations. It also identifies some of the contextual factors that influence mediator choice of strategies. Of necessity, the article discusses possible mediator interests and various sources of mediator power and influence.

**Redfern, Michael, 'Mediation and the legal profession' (2002) vol 13, no 1, ADRJ 15**

This article describes a forum at which there was a dialogue between a group of experienced Victorian litigators and mediators and how the litigators saw the mediation process working in the course of their practices.

**Spencer, David and Scott, Marilyn, 'ADR for undergraduates: Are we wide of the mark?' (2002) vol 13, no 1, ADRJ 22**

The authors have taught negotiation and mediation to undergraduate law students in the Bachelor of Laws program at the University of Technology Sydney, and have formed the view that to best achieve the desired learning strategies of such courses, students need an understanding of the

doctrinal foundation of law, including ethics, and at least two years experience as a legal practitioner. The authors base their views on experiences in teaching ADR to undergraduate students and in particular the outcomes of derivations of the X-Y game taught in such courses. The authors are of the view that students in their penultimate or ultimate year of law studies display very little understanding of the application of the doctrinal foundation of law learnt at law school and very little understanding of or regard for the ethical considerations required of legal practitioners. Therefore, the authors canvass the notion that whilst a basic understanding of ADR is appropriate at undergraduate level, perhaps the best learning strategy would be for compulsory postgraduate studies in ADR two years after working as a legal practitioner.

**Meishan Goh, Gérardine, 'Psychometric analysis: The winged seraph in the pandora's box of dispute resolution?' (2002) vol 13, no 2, ADRJ 73**

In choosing a dispute resolution process, the criteria have almost exclusively focused on the type of dispute. In this article the author proposes that the traditional problem based approach to dispute resolution should shift towards a party-focused one. Thus it is vital to prioritise the parties characteristics, particularly the way they deal with conflict, in determining the choice of the most suitable dispute resolution process. Following a discussion on the available dispute resolution methods, a background of psychometric analysis is outlined.

Follow up article: Meishan Goh, Gérardine, 'Seraph released: psychometric analysis in the Pandora's box of dispute resolution' (2002) vol 13, no 3, ADRJ 179

**Redfern, Michael, 'Capturing the magic: the diplomatic factor' (2002) vol 13, no 2, ADRJ 113**

This article describes the value to the parties of adopting a diplomatic approach to negotiations whenever it is appropriate. Redfern argues that although giving a concession may involve a loss of a legal right or entitlement, it will often be in the interests of the party to concede this in order to ensure a final resolution of their dispute in their own long term interests and benefit. Although a concession may be unjustified on the merits of the case it may be required in order to breach an impasse, keep the discussion proceeding and reach a final resolution. The mediator must therefore always be prepared to counsel the parties and to look to the overall and final result which may be achieved by taking such steps, especially in situations where there are ongoing relations.

**Redfern, Michael, 'Capturing the magic: the biscuit factor' (2002) vol 13, no 2, ADRJ 126**

This article emphasises the need for the utmost fairness in the conduct of a mediation even in respect of the seemingly unimportant and trivial, like biscuits. Redfern argues that a mediator must at all times be mindful of the perceptions of his or her conduct and consciously work to ensure that as best as he or she can there are no perceptions of unfair or favourable treatment.

**Redfern, Michael, 'A mediator's notebook-preliminary matters' (2002) vol 13, no 3, ADRJ 174**

This article describes the preliminary matters which a mediator needs to consider and deal with in the course of his or her practice, before embarking on the mediation process itself. First a mediator needs to deal with enquiries pertaining to availability and cost. This is followed by a letter of confirmation and a mediation agreement. The next steps are a preliminary conference and preparation by the mediator. This is followed by adjournments and communications. Finally a mediator must ascertain whether there are any conflicts of interest.

Follow up article: Redfern, Michael, 'A mediator's notebook: The mediation conference' (2003) vol 14, no 2, DRJ 124

**Meishan Goh, Gérardine, 'Seraph released: psychometric analysis in the Pandora's box of dispute resolution' (2002) vol 13, no 3, ADRJ 179**

In an earlier paper (Meishan Goh, Gérardine, 'Psychometric analysis: The winged seraph in the Pandora's box of dispute resolution?' (2002) vol 13, no 2, ADRJ 73) Meishan Goh argued that because the purpose of dispute resolution is to effectively solve the underlying disputes of the parties the problem-based approach of dispute resolution should be discarded for a party-prioritised one. This would require a contemplation of the parties' needs and preferences using psychometric analysis. This paper catalogues the results of the field study undertaken to determine the utility of psychometric analysis in dispute resolution. A statistical analysis indicated a significant association between psychometric analysis and dispute resolution beyond that expected by coincidence. A psychometric analysis component in the existing dispute resolution system is proposed. In conclusion, it deals with the application of the proposed approach in the Singaporean legal system.

**Serventy, Natasha, 'NLP for mediators: understanding and influencing yourself and others' (2002) vol 13, no 4, ADRJ 201**

In this article Serventy explores Neuro Linguistic Programming (NLP) which originated in the 1970s under Richard Bandler and John Grinder. NLP provides a clear guide to how our minds operate, how we take in and process information, as well as how we make meaning of what we take in. NLP is designed to improve communication and teaches conscious use of language. Serventy lays out some of the ideas of NLP and how they may be used. A generic framework of stages during mediation is used to explore NLP. The article ends by considering NLP principles and underlying presuppositions as they relate to the mediator, such as the mediator's beliefs and state, and the usefulness of modelling for mediators.

Follow up article: Serventy, Natasha, 'NLP for mediators – Linguistic and mental tools for improved communication' (2003) vol 14, no 1, ADRJ 10

**Halburd, Christopher, 'On the manner of negotiating with princes: principled negotiation during the reign of the Sun King' (2002) vol 13, no 4, ADRJ 223**

In this article Halburd examines *On the Manner of Negotiating with Princes*, a text on negotiation written in 1716 by Francois de Callières one of the Sun King's (Louis XIV) foreign envoys and chief negotiators. Callières advocated good faith in negotiation and the harmonisation of competing parties interests as the secret to successful negotiation. His treatise goes beyond the mere "how to" of negotiation and also deals with the personal qualities and proper training of a good negotiator. Halburd concludes that Callières' writings demonstrate that negotiation theory has, in many ways, changed little in the last three centuries.

**Cannon, Andrew, 'What is the proper role of judicial officers in ADR?' (2002) vol 13, no 4, ADRJ 253**

This paper discusses two similar civil assault cases arising from gaol riots, the first determined by trial and the second mediated, to open a discussion of the judicial role in ADR. The judicial role in assisting settlements in civil code countries is briefly described leading to a discussion of some dangers, and appropriate ways of judicial officers assisting settlements. Some benefits that ADR can offer to the judicial method are mentioned.

**Serventy, Natasha, 'NLP for mediators – Linguistic and mental tools for improved communication' (2003) vol 14, no 1, ADRJ 10**



Following on from an earlier article (Serventy, Natasha, 'NLP for mediators: understanding and influencing yourself and others' (2002) vol 13, no 4, ADRJ 201) Serventy discusses mediator questioning skills and the conscious use of language. In particular she covers the Meta Model (a questioning tool which helps mediators recover deleted, distorted and generalised information), reframing, a hierarchy of ideas, goal setting, evidence procedure and personal state and beliefs. Serventy concludes that NLP explains the underlying reason for these techniques and this knowledge provides the power for mediators to extend their abilities.

**Simpson, Jim, 'Guarded participation: Alternative dispute resolution and people with disabilities' (2003) vol 14, no 1, ADRJ 31**

In this article Simpson argues that a person with a disability may be disadvantaged in mediation and other ADR processes due to their emphasis on the parties working out an agreed solution. However, it would be simplistic to jump to the conclusion that ADR has little place in disputes involving a person with disability. Rather Simpson argues that a number of features of ADR may make it particularly attractive for people with disabilities and that there are a number of approaches by which the ADR process might be adjusted to avoid a person with a disability being disadvantaged. A number of these strategies are discussed including enabling the person to participate, support and advocacy for that person, the role of other parties and the independent and statutory safeguards. Simpson concludes by noting other issues that must be considered in an ADR case involving a person suffering from disabilities.

**Bagshaw, Dale and Baker, David, 'And the cobbler's children have no shoes ... Promoting national collaboration between dispute resolvers in a climate of competition' (2003) vol 14, no 1, ADRJ 57**

This article reports on a survey conducted by the authors to ascertain the views of the dispute resolution community about issues facing the field, including the need for national collaboration and ways to promote this. A questionnaire was completed in 2000 by a total of 145 dispute resolution practitioners from a range of locations, professions and affiliations in Australia and the findings suggested a need for dispute resolution associations, disciplines and practitioners to put into practice some of the principles they espouse as mediators. Overall it was suggested that, among other things, unnecessary competition among various disciplines, organisations, associations and specialised fields of practice and "petty jealousies between groups" have posed barriers to national cooperation and collaboration in the field of dispute resolution in Australia.

**Fisher, Linda, 'Healing through yarning: Training issues in an indigenous family mediation program' (2003) vol 14, no 2, ADRJ 105**

When Legal Aid NSW set out in 2001 to pilot a family dispute resolution service targeting Aboriginal and Torres Strait Islander people, it was aware of data showing that indigenous people in NSW make little use of its existing family law litigation and Primary Dispute Resolution (PDR) processes. Consequently the challenge was to establish a service that Aboriginal people would want to use. The result is ATSIFAM, the Aboriginal and Torres Strait Islander Family Mediation Program. This paper details the development of the training program for ATSIFAM, its aims and content, the delivery of the training, and issues that arose during the training.

**Elix, Jane, 'The meaning of success in public policy dispute interventions' (2003) vol 14, no 2, ADRJ 113**

In this article Elix considers success in public policy disputes, particularly in the environmental arena. She addresses the complex area of what might be understood to be a success in public policy conflict

interventions, the importance of neutrality and the need for process and outcome evaluation. She begins by considering failing public policy systems and consensus building processes. She then considers whether settlement is a meaningful concept and changes to the way we look for success. Next she considers the importance of neutrality concluding that it is a concept which needs far greater exploration and consideration by clients in choosing mediators and facilitators to carry out dispute resolution work. She then considers the characteristics of an effective intervener and methods for measuring outcomes. She concludes that although this debate may be considered purely academic considering what will be successful outcomes, neutrality practices, and developing robust evaluation processes that accept that "multiple passes" might be needed at a dispute, are all first steps in improving practice and outcomes.

**Redfern, Michael , ‘A mediator's notebook: The mediation conference’ (2003) vol 14, no 2, DRJ 124**

In this follow up article (see: Redfern, Michael , ‘A mediator's notebook-preliminary matters’ (2002) vol 13, no 3, ADRJ 174) Redfern continues to describe mediation matters from the point of view of the mediator. Points discussed include the first joint conference with focus on the setting and format, a private conference, subsequent sessions, adjournments and settlements.

**Bagshaw, Dale, ‘Language, power and mediation’ (2003) vol 14, no 2, ADRJ 130**

This paper explores the implications of poststructuralist ideas for the practice of mediation, with a particular emphasis on the links between power and knowledge and language as discourse. Bagshaw draws from the writings of the French philosopher, Michel Foucault, and poststructuralist theorists and explores the power of language and discourse to define our identities and to shape the way we view, define and approach conflict. Bagshaw argues that mediators should avoid defining themselves and their role as "neutral" and emphasises the importance of self-reflexivity, which demands that mediators maintain awareness and control of their professional, personal and cultural biases in order to understand the standpoint of the "other".

**Moore, Justice Michael, ‘Judges as mediators: A Chapter III prohibition or accommodation?’ (2003) vol 14, no 3, ADRJ 188**

Response to: Tucker, Philip, ‘Judges as Mediators: A Chapter III Prohibition?’ (2000) vol 11, ADRJ 84  
The Federal Court Rules O 72 rr 1 – 4 , together with s 53A of the Federal Court of Australia Act 1976, contemplate that a judge of the Federal Court might act as a mediator. This paper discusses the constitutional issues that may arise in the context of a judge acting as a mediator. Justice Moore suggests that while a federal judge acting as a mediator is not exercising the judicial power of the commonwealth, the judge is exercising a function not incompatible with the exercise of judicial power.

**Jesser, David, ‘Mediator – not legal adviser’ (2003) vol 14, no 3, ADRJ 211**

This paper suggests that a legally trained mediator espousing their views on the law at a mediation acts contrary to their proper role and further, creates needless exposure to potential liability. The flexible nature of a mediation provides scope to an imposing mediator to exert strong influence over the participants and their advisers. Jesser concludes that if a mediator strays from simply questioning the basis for a position and steps over the line by providing erroneous legal advice or imposing biased views on the parties, that mediator should be held accountable for those actions just as any other lawyer would be.

**Crockett, Julia, 'Cross-cultural mediation and the multicultural/natural model' (2003) vol 14, no 4, ADRJ 257**

In this article Crockett tackles the criticisms that have been made of cross-cultural mediation as an alternative to the courts. She argues that while ADR is not a panacea for all cultural ills there are methods through which an appropriate balance of power can be struck within a given cross-cultural dispute. Crockett discusses the cultural universalism/relativism approach and its application to cross-cultural mediation. She criticizes this approach because of the classification and judgment of other cultures that it inevitably involves. Instead, a new model is offered that combines the aspirations of P S Alder's "multiculturalist" but is rooted in R D Benjamin's notion of the "natural mediator". These enable the mediator to strive for the ideal of multiculturalism while providing the useful framework of the naturalist mediator through which immediate realities can be grasped. Crockett concludes that ADR has a crucial role to play in cross-cultural disputes because it can be flexible enough to meet the particular linguistic and cultural needs of individual disputants and that with this new model, mediators will have a useful tool with which to effectively engage in cross-cultural disputes and meet the challenges of ADR critics.

**Rogers, Margot and Gee, Tony, 'Mediation, conciliation and high conflict families: Dialogue with a dead horse' (2003) vol 14, no 4, ADRJ 266**

The article discusses recent changes in mediation and conciliation with particular emphasis on high conflict families. Traditionally in Australia mediation and conciliation were classified as different interventions available for families, however, more recently there has been a blurring of these boundaries. This has also meant the "quiet" shift of a population of higher conflict clients from the court to the community. Rogers and Gee explore the differences and similarities between mediation and conciliation and the particular problem of high conflict families. They argue that both mediation and conciliation are embedded in a "rational man/mutual interest" model which is unable to effectively deal with high conflict cases. Effective intervention with these families is beyond the boundaries of rational, mutual interest interventions. In high conflict couples, even minimal change requires an increased number of sessions, greater flexibility, structure, and containment. Rogers and Gee then recommend a different approach based on "self interest" and a greater emphasis on working with the individual.

**McIntosh, Magdalena, 'A step forward – mandatory mediations' (2003) vol 14, no 4, ADRJ 280**

Traditionally mediation was described as a voluntary process whereby parties consented to the intervention of a trained, neutral third party to assist them in reaching a solution to their dispute. However, in more recent times, mediation has been mandated by court rules, legislation and tribunal procedures. This article explores the various mandatory processes which have been introduced by legislation and court connected processes in various states. McIntosh then balances the limitations and benefits of mandatory mediation before concluding that mediation, even mandatory mediation benefits all parties involved due to its reduced cost and delay.

**Redfern, Michael, 'Capturing the magic – the non participation factor again' (2003) vol 14, no 4, ADRJ 299**

Follow on article from Redfern, Michael, 'Capturing the Magic – Non-participation as a Factor in Mediation Practice' (2000) vol 11 ADRJ 102

In this article Redfern describes another example of a mediation without the mediator. When the appointed mediator was significantly delayed for a court ordered mediation the parties began the mediation themselves with a settlement resulting in a few hours. Redfern comments that mediation

is no more than a formalisation of the negotiation process and that the role of the mediator is to do no more than bring the parties together and get them talking between themselves with, sometimes useful assistance being provided by the mediator.

**Spencer, David, 'Case notes: The role of the national native title tribunal in mediation and testing statutory privilege provisions' (2004) vol 15, no 1, ADRJ 5**

In this case note Spencer considers the role of the national native title tribunal in mediation and testing statutory privilege provisions. He first considers the role of the national native title tribunal in mediation and the decision of *Frazer v State of Western Australia* in which the Federal Court of Australia was given the opportunity to discuss the role of mandatory mediation in the National Native Title Tribunal. The Court defined the role of the national native title tribunal and when it should become involved in native title claims. French J advocated "a more systematic and focussed approach to the progression of native title claims than has occurred up to this point" and that mediation should be conducted in a "timely fashion". Spencer then considers the case of *Rajski v Tectran Corporation Pty Limited Rajski* where the privilege provisions of s 110P of the Supreme Court Act 1970 (NSW) were scrutinised. The Court found that s 110P catches verbal or written communications made in the course of, or as a result of, mediation in certain circumstances. The Court also made several observations relating to the relationship between the Supreme Court Act and the Evidence Act.

**Venus, Paul, 'Court directed compulsory mediation – attendance or participation?' (2004) vol 15, no 1, ADRJ 29**

This article is concerned with whether there is any practical difference between mandated and compulsory mediation in terms of the participation of the parties. In addressing this question Venus turns to the experiences of mandatory mediation before the Supreme Court of New South Wales. Among his findings are that parties must mediate in good faith, failure to act in good faith will contravene the law, mediators can exert pressure on parties to participate, the mediation process itself can create pressures on parties to participate and finally, the possibility of judicial review and the response to this possibility is likely to effect the way in which parties conduct themselves in a mediation. Venus concludes that court directed mandatory mediation is unlikely to result in mere attendance of the parties.

**Boyhan, P, Foster, L, Grimes, A and Jaffe, R., 'Conjoint mediation and therapy: Emergence of the CoMeT model' (2004) vol 15, no 2, ADRJ 108**

This paper explores the trialling of a model of "Conjoint Mediation and Therapy" (CoMeT), undertaken by the Family Mediation Centre (FMC) and Relationships Australia (RA) in Melbourne. Twelve families were seen over the period of the pilot project. The term "Conjoint Mediation and Therapy" was chosen in preference to the name "Therapeutic Mediation". A crucial finding was, although violence was initially seen as a contra-indicator for referral to the project, it emerged that all families involved had experienced some degree of family violence. Nevertheless, they were able to be accommodated in the project. The CoMeT model primarily catered for mediation clients unable to reach agreement due to abusive behaviour, unresolved emotional issues and past emotional wounds. Maintaining discipline purity, the two clinical staff assisted the parties to release impasses through a process of "unpacking the emotional wounding" and through inviting each party to take responsibility for their own behaviour. Interviews with clients in the pilot project indicated a high level of satisfaction with outcomes. A series of key learnings are discussed, as well as strategies for replicating this model in other settings.

**Redfern, Michael, 'Capturing the magic – preparation' (2004) vol 15, no 2, ADRJ 119**

In this article Redfern examines how a lawyer for a party can prepare for a mediation. Redfern discusses a variety of topics including the initiation of the mediation either by agreement or court order, a number of alternatives to mediation, the appointment of a mediator, the mediation agreement, preparing for a mediation and position statements. Redfern concludes that if the lawyer and the party are adequately prepared they will be able to provide greater assistance to the mediator in doing her or his job and, they will put themselves in a far better position to deal with all of the matters required to be dealt with and ensure a better chance of a successful outcome to the mediation.

**Garwood, Maureen, 'Current statistics on child contact are of grave national concern' (2004) vol 15, no 3, ADRJ 170**

In this article Garwood tackles the problem of child contact in divorce proceedings. She argues this is a growing problem in Australia and elsewhere and needs to be dealt with appropriately with consideration for differences which will inevitably arise. She argues that mediators need to think creatively and laterally because in some cases the appropriateness of the normal contact regime is questionable. In reviewing what type of dispute resolution processes are made available for Family Law child contact matters, the government and its advisors need to look not only at the dispute resolution processes, but how the mental health assessment and treatment components by suitably qualified, trained and experienced mental health professionals are integrated into the process. Interventions and legal policy need to be fashioned from a clear understanding of the many threads that contribute to the problem of child contact frustration.

**Tillett, Gregory, 'Terminology in dispute resolution: A review of issues and literature' (2004) vol 15, no 3, ADRJ 178**

In this article Tillett considers the terminology of dispute resolution and some of the attempts to resolve the confusion. He argues that the development of alternative dispute resolution has not been matched by the development of a consistent language within the field. Instead different terms are used by different groups. Tillett begins by providing numerous examples of the inconsistent terminology of dispute resolution. He argues this lack of a universally accepted and consistently used terminology is one of the key difficulties with the study of conflict and disputes and processes for their resolution. Tillett then considers some of the attempts to resolve the differences in dispute resolution terminology. Tillett concludes that the development of clear definitions and descriptions is essential, not only for effective communication within and about the field of alternative dispute resolution, but to ensure that potential and actual practitioners and consumers have adequate information on the basis of which to make decisions and to assess processes and practitioners.

**Rothfield, Jonathan, 'Is it really just about money?' (2004) vol 15, no 3, ADRJ 188**

In this article Rothfield provides a case example where although the parties argued the dispute was "just about the money" it became evident it was about something more than just money. The case involved a claim for unfair dismissal in the telecommunications industry. Lawyers represented each of the parties in mediation and insisted the mediation was nothing more than a dispute over money. Rothfield then explains the stages of the mediation from the first joint session to exploring the needs and interests to changing the mediation from rights based to interest based. As these interests were further explored Rothfield discovered that the dispute was not just about the money. Rothfield concludes that the sharing and understanding of the very significant non-monetary parts of the

dispute enabled the parties to cooperatively negotiate a settlement of their very significant monetary disagreements.

**Scott, Marilyn, 'Collaborative Law: A new role for lawyers' (2004) vol 15, no 3, ADRJ 207**

This article presents an overview of the philosophy, process and paradigm shift in the emerging practice of Collaborative Law and explores some of the opportunities for applying Collaborative Law philosophy and process pursuant to the recent changes to the Family Law Rules. Scott argues that the Collaborative Law model offers lawyers an alternative to traditional adversarial negotiation that has a high capacity to lead to an impasse because of the distributive nature of the traditional bargaining practice. The Collaborative Law model offers such lawyers the opportunity to participate more fully in the client's negotiations, rather than the prevailing situation where the Family Court and external providers of mediation services have actively discouraged the participation of lawyers during the mediation stage where most negotiation can occur. She concludes that the coincidence of the maturing of the practice of Collaborative Law and the advent of the new family law pre-action procedures offers family lawyers the opportunity to participate in a legal cultural change that offers benefits for clients, lawyers and the practice of law.

**Fisher, Linda , 'Working with gay and lesbian partners – process and practice issues' (2004) vol 15, no 4, ADRJ 273**

In this article Fisher shares her extensive experience of homosexuality and mediation. She begins by analysing her approach to practice and assumptions about mediation and homosexual couples. She challenges some commonly held assumptions about mediation and about homosexual men and women, and describes some of the ways in which mediators may be able to assist gay and lesbian partners sort out their separation issues more effectively. These include departures from traditional mediation models and processes. She begins by considering the skills and attributes of a "same sex mediator". Next she considers aspects of mediation practice, like choosing an appropriate mediator and venue, and aspects of the mediation process which also requires flexibility and a focus on the parties' needs. She then considers mediating non-disputes and describes ways in which mediators may be able to assist gay and lesbian partners in the development of commitment, cohabitation and parenting agreements so that later disputes may be avoided. Fisher concludes that working with gay and lesbian partners is both similar to, and different from, working with heterosexual couples.

**Spencer, David, 'Costs sanctions against parties refusing to mediate' (2005) vol 16, no 1, ADRJ 15**

This article looks at the issue of cost sanctions in mediation after the English Court of Appeal decision of *Halsey v Milton Keynes General NHS Trust* [2004] EWCA Civ 576. This decision put parties and their lawyers on notice that only in exceptional circumstances will costs not follow the cause where the successful party has failed to participate in mediation. Spencer lays out the law in this area before and after the *Halsey* decision before considering the implications for Australia. Spencer argues the Australian courts are likely to follow *Halsey*.

**Astor, Hilary, 'Some contemporary theories of power in mediation: A primer for the puzzled practitioner' (2005) vol 16, no 1, ADRJ 30**

In this article Astor considers power in mediation and seeks to provide a bridge between theory and practice by examining, in an accessible fashion, some contemporary theories of power and their application in mediation. Astor tackles a number of topics including going beyond the classic "power imbalance" problem, forms of power, postmodern theories of power, discourse theories and culture. She argues that the potential of mediation to handle power relationships in a way that produces fair

and equitable participation in mediation, supports and develops consensuality and produces good agreements depends to a considerable extent on mediators' ideas of power and how they put those ideas into practice.

**Carroll, Robyn, 'Apologising safely in mediation' (2005) vol 16, no 1, ADRJ 40**

This article considers apologies in mediations. Although expressions of regret, remorse, sorrow or sympathy may go some way to resolving the conflict between parties in mediation there are complex psychological and ethical issues pertaining to apologies during mediation. This article explores the legal significance of apology and the concept of a "safe" apology. Carroll begins by exploring what an apology is, followed by the legal implications of making an apology. She then considers the benefits, from a legal perspective, of making or receiving an apology in mediation. She concludes that, contrary to popular belief, the law does provide a safe way for parties to a dispute to apologise because in some cases the law does not regard expressions of regret, sorrow, or sympathy as admissions or fault or liability. There are also legal principles that recognise that an apology has the capacity to reduce certain types of hurt, just as a failure or refusal to apologise can aggravate that hurt.

**Redfern, Michael, 'A place for the courts in the dispute resolution process' (2005) vol 16, no 1, ADRJ 79**

This article looks at the role the courts might play in future dispute resolution systems where primary importance is placed upon mediation and alternative dispute resolution rather than litigation. Redfern begins by noting that in the future the role of the courts could be limited to dealing with those cases which are unable to be dealt with by ADR processes and in all other cases confined to little more than the administration and management of the new processes. He considers the current influence of ADR in pre-litigation and post-litigation procedures but also emphasises the continued need for the courts. Redfern concludes that with the increasing importance of ADR there are real concerns that there is an absence of the valuable controls provided by the courts. Ideally, he argues, the best of both worlds could be obtained by marrying the benefit of the mediation process with the supervisory strengths of the courts. The result would be that mediation processes can be pursued wherever possible, together with the minimal involvement, but nevertheless still critical protective and authoritative controls, of the courts and the ready availability of the courts to proceed with their own determinative processes if and when required.

**Bernauer, Amber, 'Confidentiality' (2005) vol 16, no 2, ADRJ 135**

This article critically analyses the prevalence of confidentiality as a basic philosophical tenet of mediation. In particular, it canvasses the contemporary proliferation of statutory and common law principles imposing limitations upon the absolute application of non-disclosure. Bernauer argues that while contemporary limitations imposed upon the privilege of "without prejudice" may be plausible in specific circumstances, doubt may be cast upon the absolute exclusion of confidentiality as a fundamental philosophical underpinning of mediation. Accordingly, in advocating the success of procedures of dispute resolution one must achieve a balance between supporting mediation on one hand, and awarding respect to the traditional justice system on the other. While complex, the accommodation of such interests in upholding the significance of confidentiality, essentially allows the salutary innovation of mediation to prosper.

**Balstad, Just, 'What do litigants really want? Comparing and evaluating adversarial negotiation and ADR' (2005) vol 16, no 4, ADRJ 244**

This article utilises existing research and literature to contextualise and describe party satisfaction with different dispute resolution procedures in order to provide a comprehensive view on which expectations are most likely to be met in adversarial negotiation and ADR with third-party intervention (facilitative mediation). Balstad begins by exploring the concept of negotiation within different dispute resolution procedures before comparing and evaluating ADR and adversarial negotiation in terms of party satisfaction. Balstad suggests that all dispute resolution procedures have advantages and disadvantages in terms of how they cater for party satisfaction. Much of the critique of the adversarial process has been rooted in the fact that it is too rigid, expensive and time consuming. However, some claimants prefer adversarial procedures for a variety of reasons. Balstad thus concludes that in principle making an informed and individual choice of dispute resolution process seems to be the best way to ensure the greatest party satisfaction.

**Power, Mary R., 'Negotiation in the news: The role of newspaper reporting in the broader social acceptance of principled negotiation' (2006) vol 17, no 1, ADRJ 20**

This article investigates how the concept of negotiation is represented in newspaper stories. Based on a study of the Factiva database Power argues that the way newspapers use the word "negotiation" emphasises adversarial and "big picture" negotiations rather than the problem-solving principled negotiations which form a productive part of everyday life, as well as being useful to business people and politicians. Power expresses concern over this "haggling positional" approach reported by journalists and notes that the innovation of interest-based negotiation needs to be more effectively diffused among journalists in order to spread interest in alternative ways of solving problems and conflicts. She then uses the Diffusion of Innovations Model to explain why journalists report negotiations as adversarial. Power concludes that greater awareness by journalists of the range of types and methods of negotiation could ensure that reports would reveal attempts by negotiating parties to use an analytical approach, to commit themselves to a wide exploration of possibilities and to accept outside facilitation which are the hallmarks of principled negotiation.

**Leventhal, Leib, 'The foundation and contemporary history of negotiation theory' (2006) vol 17, no 2, ADRJ 70**

This article explores the foundations and recent historical developments in the theory of negotiation. Leventhal first examines negotiation in general, looking at the purpose of negotiation, its characteristics and outlining a model for understanding distributive and integrative negotiation. Both negotiation models are then explored further, including their history, assumptions, characteristics, processes, results and criticisms. Whether they are divergent or convergent is also examined. Leventhal concludes that distributive bargaining has a tendency to create hostility between disputing parties due to the competitive behaviours that exist in attempts to achieve personal gain. So where long-term relationships are important, parties to the dispute should adopt the integrative negotiation model.

**Noone, Mary Anne, 'Lawyers as mediators: more responsibility?' (2006) vol 17, no 2, ADRJ 96**

It is becoming increasingly common for lawyers to act as mediators, particularly in court-related mediations. This article focuses on the potential liability for these lawyers who act as mediators and explores whether a legal practitioner who acts as a mediator has greater responsibilities than other mediators. Noone begins by outlining the nature of mediation and the concept of neutrality. She then moves on to discuss mediator's liability and immunity. The status of a legal practitioner, lawyer's liability and lawyer's immunity are then considered. Finally Noone considers some issues for lawyers who act as mediators. Noone concludes that the extent of potential liability of mediators is uncertain and still open to speculation. However, when lawyers act as mediators, they need to be



conscious and cautious about their mediation style in order to avoid potential liability and fulfil their professional responsibilities. To prevent the prospect of claims against them, lawyers acting as mediators need to practice facilitative mediation and clearly differentiate their role as mediator from that of legal advisor. Noone also notes that the prospect of a court finding that a lawyer acting as a mediator has fiduciary duties may well be higher because lawyers are often chosen for their expertise, knowledge, skills and familiarity with the nature of fiduciary duties.

**Spencer, David, 'Judicial mediators: Is the time right? – Part I' (2006) vol 17, no 3, ADRJ 130**

This article provides the first part of a two part discussion on the controversial issue of whether there is a need for judicial mediators in Australia. Spencer explores some of the concerns held by some over the appointment of judicial mediators, as well as discussing some of the positives that may flow from such appointments. Prior to embarking on this discussion Spencer explains the function and role of judicial mediators and then discusses why the judicial promotion of settlement is vital to the functioning of the judicial system. He concludes that there is a strong argument that the appointment of judicial mediators is merely the next logical step in a process that charges the courts to find just, quick and cheap resolutions to disputes. However, Spencer goes on to note that there is an important factor to be considered, namely whether the appointment of judicial mediators breaches the separation of powers doctrine set out in the Australian Constitution. The article then commences the detailed argument about the constitutional validity of the appointment of judicial mediators and the legal and philosophical arguments that stem from that discussion.

**Spencer, David, 'Judicial mediators: Is the time right? – Part II' (2006) vol 17, no 4, ADRJ 189**

This article provides the second part of a two part discussion on the controversial issue of whether there is a need for judicial mediators in Australia. Spencer continues his discussion on the constitutional validity of the appointment of judicial mediators. He concludes that because there have been no judicial mediators appointed to any courts in Australia, a definitive answer to whether judicial mediators would diminish public confidence in the integrity of the judiciary as an institution is moot. Until a thorough debate is had or until a judicial mediator is appointed and his or her authority is challenged, there can be no definitive answer. Spencer then considers the case both for and against the appointment of judicial mediators. He notes that the arguments both for and against the appointment of judicial mediators are compelling. The chief argument against the loss of public confidence in the judicial institution is of great concern as the preservation of that confidence is crucial to the functioning of society. The argument in favour of the appointment of judicial mediators is equally compelling – that of the benefits that could potentially flow to the users of the justice system.

**Dewdney, Micheline, 'Party, mediator and lawyer-driven problems and ways of avoiding them' (2006) vol 17, no 4, ADRJ 200**

This article discusses party, mediator and lawyer-driven problems which become evident in mediation and suggests ways of avoiding them. Dewdney begins by noting that the success of mediation cannot be attributed solely to the mediator, just as failure to reach a mediated agreement cannot be attributed solely to the parties and/or their legal representatives. She then discusses party, mediator and lawyer driven problems along with ways of avoiding them. Dewdney argues that not all party-driven problems can be avoided. However, they can at least be managed in the course of the mediation session. Common party-driven problems include hidden agendas and bad-faith participation; requests to the mediator for advice; accusing the mediator of bias; demands for private sessions; directive, angry or threatening parties; destructive communication; and threats to abandon the mediation. Dewdney then discusses mediator-driven problems such as the mediator

acting as an advocate or advisor or acting on his or her private agenda. The mediator may also be responsible for procedural problems, eg: using jargon or technical terms which may be difficult for the parties to understand, or being inadequately prepared for the mediation session. Finally she discusses lawyer-driven problems including the legal takeover, the passive legal representative and lawyers adopting an adversarial approach and not encouraging their clients to participate actively in the mediation process. However, she also notes way in which a legal representatives can assist settlement in mediation or at least narrow the issues which may end up in litigation.

**Gray, Bronwen, 'Mediation as a post-modern practice: A challenge to the cornerstones of mediation's legitimacy' (2006) vol 17, no 4, ADRJ 208**

In this article Gray considers the traditional legitimising cornerstones of mediation, consensuality and neutrality, from a post-modern perspective. He argues that mediation needs to be understood as a post-modern construct, which seeks to empower participants rather than control them. Identifying mediation as a post-modern construct allows for new ways to be found in which power, neutrality and consensuality can be understood. After considering professional standards in ADR Gray moves on to consider Power in both modernism and post-modernism. Next he considers neutrality and consensuality. He then considers mediation power and the law before concluding that neutrality and consensuality can both be viewed as myths. He argues that critiquing mediation through a post-modern discourse allows for power and neutrality to be viewed as positive forces that do not need to be controlled by or imbued in the mediator. Because of this it can be accepted that mediation gets its formal legitimacy from its acceptance into the discourse of the formal justice system. However, it will always be its commitment to empowerment principles that will ultimately legitimise the profession in the eyes of the users. Finally he notes that locating mediation in post-modernist constructs assists in identifying the ideology that underlies the process.

**Coburn, Clare and Edge, Ann, 'Listening to each other: The heart of mediation and dialogue' (2007) vol 18, no 1, ADRJ 19**

In this article the authors discuss truly effective listening and its importance for effective mediation. The authors consider listening as a deeply receptive capacity, ideology and philosophy, "doing" listening, active listening, listening in mediation and dialogue, towards a deeper receptivity and a mediator as a listener. The authors conclude that rather than a skill that is learned or taught through prescriptive models or systems, deeply receptive listening is concerned with a way of being, being present in a state of self-awareness, and simultaneously a state of unselfconsciousness, or freedom from concerns. It is also suggested that deepening the mediator's capacity for listening may support people in conflict to express themselves more openly, relate to each other more deeply and enter into dialogue.

**Field, Rachael and Brandon, Mieke, 'A conversation about the introduction of compulsory family dispute resolution in Australia: Some positive and negative issues for women' (2007) vol 18, no 1, ADRJ 27**

In this article the authors have a conversation about some of the practical and theoretical issues for women arising from the introduction in Australia of compulsory family dispute resolution in parenting disputes from July 2007. The authors begin by providing an introduction to the compulsory family dispute resolution scheme in Australia. They consider the positive aspects of mandating family dispute resolution for women parties, along with some of the potential disadvantages and dangers that women might face, particularly when family violence has been perpetrated in the relationship. The authors conclude that training and the development of full and relevant professional mediator ethics are critical to the ongoing growth and maturing of the

mediation process, and its appropriate use in a variety of contexts where significant power fluctuations leave one party feeling coerced into a settlement. Ethical decision making on the part of mediators, as to how they use their power and position in the mediation room, must be based on an integration of theory, practice application and reflection in and on practice.

**Foong, Deanna, 'A discussion of apology and its use in alternative dispute resolution' (2007) vol 18, no 2, ADRJ 73**

This article looks at apologies in the specific context of ADR. Foong begins by defining an apology before moving on to discuss the effectiveness of an apology with focus on timing and nuance. The value and significance of an apology is then discussed with attention given to the psychological, social, economic and strategic benefits. Foong then considers barriers to apologies including an admission of liability and encouraging apologies. Foong concludes that "apology is but one word, but it is the one word that can make all the difference for those who need to hear it." It is "often a key element, if not the key element, to resolving a dispute". Its power should not be underestimated.

**Caputo, Chiara-Marisa, 'Lawyers' participation in mediation' (2007) vol 18, no 2, ADRJ 84**

In this article Caputo explores what role exists for lawyers as representatives in mediation. She begins by considering whether mediation and litigation are inherently inconsistent and the interrelatedness between ADR and more traditional processes. She then addresses some of the problems which may arise with lawyers in the mediation process specifically their adversarial mindset and focus on problem solving. Caputo then proceeds to make a case for lawyer's involvement in mediation and concludes that if the principles of mediation are to be maintained, lawyers must adopt different perspectives, behaviours and skills to those typically employed in court. However, if lawyers could discriminate between the adversarial and mediation realms and consciously promote their client's self-determination of the process and of the outcome, there is still room for their meaningful participation.

**Butler, Jennifer, 'Mediator ethics: To teach or not to teach' (2007) vol 18, no 2, ADRJ 119**

In this article Butler considers the teaching of ethics in mediation which she finds is often neglected despite its importance. Butler begins by considering the ethical obligations of mediators and argues these ethical obligations make it vital that mediators develop a mindset which allows them to recognise an ethical dilemma when it arises. She argues that ethics should thus be taught in mediation courses and then moves on to consider various methods of teaching mediation ethics. She provides a critique of various methods of teaching ethics and a recommendation as to which methods are best used for teaching ethics in mediation. Butler concludes that use of the role-play method which involves a combination of substantive issues of mediation with ethical dilemmas is the recommended method of teaching ethics to students. It is recommended that this method be combined with the use of carefully crafted case studies to ensure adequate coverage of varying ethical dilemmas and give some practice in engaging in the ethical reasoning process. Use of these two methods in combination should elevate the level of ethical awareness of the beginner mediator to a level where ethical dilemmas are recognised by them and they have some prior experience in addressing those ethical dilemmas in a reasonable and practical way.

**Foong, Deanna, 'Emotions in negotiation' (2007) vol 18, no 3, ADRJ 186**

In this article Foong examines the impact of emotions on negotiations. It looks at how negotiators are able to create a more conducive negotiating environment, thereby enhancing the likelihood of achieving their objectives by recognising and understanding their own and their counterparts'

emotions, by initiating or instilling positive emotions in themselves and their counterparts, and by constructively managing their own and their counterparts' negative emotions. She begins by defining emotion before moving on to consider the power of enlisting positive emotions. She also considers managing negative emotions. She concludes that emotions are central in negotiations because people rely on emotional input in order to make decisions. Effective negotiators must therefore be emotionally intelligent, ie have the ability to accurately perceive and express emotion in oneself, to recognise and appraise emotion in others, and to regulate one's own emotions. By mastering the "emotional vocabulary of human interaction and deliberation", negotiators will be empowered to defuse negative emotions, to constructively manage, and use positive emotions to further their negotiation goals. Negotiators should not, however, privilege emotional sense over rational thought but rather create a balance.

**Ardagh, Anne and Cumes, Guy, 'The legal profession post-ADR: From mediation to collaborative law' (2007) vol 18, no 4, ADRJ 205**

This article examines the changing role of the legal profession with regard to the incorporation of ADR and collaborative law into legal practice. After providing an overview of the changing legal profession and the development of ADR in Australia the authors consider how ADR, in particular mediation, has impacted on the legal profession. The authors argue that the legal profession has provided services such as mediation in the form of legal settlement without making fundamental changes in the way traditional legal processes work. From here the authors discuss the role of lawyers in mediation before moving on to consider collaborative law. It is argued that collaborative law could be seen as a method for ADR and indeed could produce a more satisfactory alternative to an ad hoc tacking on of "mediation" within adversarial processes. However, the authors caution that collaborative law could be viewed as a professional desire on the part of individual lawyers to maintain control of dispute resolution services while making minimal changes to their practices, yet appearing to be at the forefront of its reform. The authors conclude that if this is the purpose and effect of collaborative law, then it raises real questions about whether or not it is genuine ADR reform or just a legal "alternative" to institutionalised ADR.

**French, Brendan, 'Dispute resolution in Australia – the movement from litigation to mediation' (2007) vol 18, no 4, ADRJ 213**

In this article French provides a brief overview of the development of ADR in Australia, touching upon its rapid institutionalisation within the courts, ombudsmen and industry. In his account of the development of ADR in Australia French focuses on the contextual factors that led to the movement "from litigation to mediation". Various developments are considered including the Community Justice Centre Pilot program in New South Wales in 1980, developments in Family Law, the multiplication of dispute resolution models in the 1980s and 1990s, the institutional acceptance of ADR within Australian universities and law schools, court-sponsored dispute resolution and a movement of conflict prevention. French then considers whether there has been an uncritical acceptance of ADR and cautions that for all of its undoubted contribution to the modern decision-making toolbox, scholars and practitioners need to be mindful that there remain significant issues yet to be properly discussed and debated. French concludes that the development of ADR and mediation in particular has radically altered the way in which disputes are now managed in this country. He also notes that ADR is far from a homogenous entity which straddles previously unbreachable divides. He considers that this may be precisely the source of its strength and remaining oppositional power. Finally French notes that even with its current teething problems and the challenges posed by its diversity, complexity and controversy, it seems clear that dispute resolution is here to stay. We need to work on getting the best out of it while somehow avoiding the worst.

**Cooper, Donna, 'The family law dispute resolution spectrum' (2007) vol 18, no 4, ADRJ 234**

In this article Cooper provides an overview of the large number of processes for resolving a dispute in family law, both inside and outside the court system. Her intention is to provide a conceptual framework to assist family lawyers to effectively advise and prepare their clients. Cooper first categorises the available dispute resolution options before considering the range of family law dispute resolution processes. She considers a number of different processes including: counselling, negotiation (including collaborative law), mediation, conciliation, case appraisal, legal aid family law conference, arbitration, litigation, case assessment conference, child dispute conference, a less adversarial trial process, child responsive program and the Magellan Program. She then considers where each of the processes is located on the spectrum of family law dispute resolution.

**Gutman, Judy, Fisher, Tom and Martens, Erika, 'Teaching ADR to Australian law students: Implications for legal practice in Australia' (2008) vol 19, no 1, ADRJ 42**

In this article the authors examine the interface between ADR practice and the teaching of ADR in most Australian Universities. The authors begin by presenting the case for teaching ADR at law school followed by an overview of Australian legal education. The article then describes an empirical inquiry conducted at La Trobe Law which investigated the extent to which attitudes of law students changed from an adversarial, rights-based approach towards a collaborative, interests based approach after taking the ADR unit offered to La Trobe Law students in their first year of law school. The authors discuss the results of the study and conclude that teaching ADR to law students is influential in changing their attitudes. The authors conclude that such courses are useful for preparing students for the future focus of Australian contemporary legal practice but warn that the effects may be countered by the rest of their legal education.

**Noone, Mary Anne, 'The disconnect between transformative mediation and social justice' (2008) vol 19, no 2, ADRJ 114**

In this article Noone explores transformative mediation and its apparent disconnection to social justice concerns. She begins by providing an outline of the transformative approach to mediation and its distinguishing aspects and the concept of social justice. Proponents of transformative mediation claim that it holds out great promise for changing the way individuals relate to one another. However, the approach taken by the transformative mediator could be construed as amoral and or insensitive to issues of discrimination and bias. After considering the premise of transformative mediation Noone explores the practice of transformative mediation. Particular social justice concerns about mediation are detailed before some approaches that might address the concerns raised are discussed. Noone concludes that if the transformative mediator wants to avoid perpetuating social injustice and at the same time remain true to the role of being "not responsible" and "non-judgmental", the mediator needs to ensure that parties come to the mediation informed and advised, not only about the mediation process, but also about their rights in the context of previous examples and experiences of similar disputes. Equally, the mediator should be cognisant of the complex nature of communications and should be mindful of the ethical implications of his or her inaction.

**Ojelabi, Lola Akin, 'Communication and culture: Implications for conflict resolution practitioners' (2008) vol 19, no 3, ADRJ 189**

This article examines issues that impede cross-cultural communication and suggests ways in which it could become positive and thus more effective. Ojelabi begins by providing an introduction to cross-

cultural communication before considering some issues which make cross-cultural communication difficult and ineffective. Ojelabi argues that the effect of stereotypes, prejudices and ethnocentrism should not be underestimated in cross-cultural conflicts and resolution. He then suggests ways in which the conflict resolution practitioner may assist in defusing such attitudes. Various factors are then explored including cultural awareness and conflict resolution, mindfulness, recognition and respect and training. Ojelabi concludes that self awareness is key and that assumptions and generalisations about whole cultures must be treated with care. However, a general knowledge of cultural patterns will form a basis on which conflict resolution practitioners can proceed, whilst bearing in mind the possibility of variance.

**Kelly, Loretta, 'Elements of a good practice Aboriginal mediation model: Part I' (2008) vol 19, no 3, ADRJ 198**

In this first part of a two part article Kelly considers some of the elements that constitute "good practice" mediation for Aboriginal people. Although not exhaustive, it provides a useful checklist of important elements of an Aboriginal mediation model, based on the author's experience and the experience of Aboriginal mediators interviewed. Topics covered include a specific aboriginal program, access to aboriginal and Torres Strait Islander mediators, appointing the right mediator and letting the aboriginal mediator control aspects of the process.

**Kelly, Loretta, 'Elements of a good practice Aboriginal mediation model: Part II' (2008) vol 19, no 4, ADRJ 223**

This article continues to explore the elements of a "good practice" mediation model for Aboriginal communities. Kelly considers further elements including cultural appropriateness and the involvement of Aboriginal elders, flexibility in the use of stages in mediation models, drawing upon customary law, early and holistic intervention including dealing with family violence and having a crime prevention objective and the significance of pre-mediation and post-mediation. It is argued that if the elements discussed in both parts of the article are practiced by mediation providers, then such services are moving towards implementing good practice mediation for Aboriginal people, families and communities.

**Charlton, Ruth, 'Practical realities in dispute resolution' (2009) vol 20, no 1, ADRJ 10**

In this article Charlton considers some practical realities and challenges for dispute resolution practitioners. Topics covered include the problems with achieving a win/win result, mediator neutrality, power balancing and stereotypes, domestic violence and mandatory mediation. Finally, the view is promoted that the responsibilities and performance tasks expected of dispute resolution practitioners need to be balanced with a Charter of Rights for Mediators and Dispute Resolution Practitioners.

**Foong, Deanna, 'Discussing metaphors in mediation and negotiation' (2009) vol 20, no 1, ADRJ 47**

In this article Foong discusses the use of metaphors in mediation and negotiation and explores why an understanding of metaphors is important for negotiators and mediators. It begins by defining a metaphor, and exploring its characteristics. Foong then explores metaphors as organising principles before exploring operating metaphors, those introduced by one's counterpart or client. She explains how the negotiators' and mediators' own metaphors impact their attitudes to, and conduct of, negotiation and mediation, and how they may, by using their counterparts' or their clients' metaphors, generate rapport and enhance the negotiation and mediation process. Foong concludes that because metaphors are so powerful, it is important for practitioners to examine carefully the

metaphors that structure their experiences of mediation and negotiation. If practitioners discover that what they are doing in negotiation or mediation is not working well, they may choose to articulate their experiences using new metaphors, thereby creating a new reality.

**Douglas, Kathy and Bayly, Andrew, 'Humour in mediation: Sparking laughter through improvisation' (2009) vol 20, no 2, ADRJ 96**

In this article the authors explore humour as one method of attempting to ease tension between parties and engender positive emotions in the mediation. The authors consider the benefits of humour in mediation but acknowledge that not all mediators are comfortable using humour and that laughter is not always easily generated in tense situations, such as those typical in conflict settings. They note that one way to increase the use of humour in mediation is through an understanding of the dramatic practice of improvisation and, in particular, the approach of comic improvisation. They argue that learning about improvisation can assist mediators to trust their comic instincts and include humour in the interventions that they use in mediation. The article then suggests various improvisation games to assist mediators to develop the intervention of humour in their practice. The authors conclude that humour is a potentially powerful intervention tactic for mediators when facilitating conflict and the discipline of dramatic (comic) improvisation can help teach mediators to add appropriate spontaneous humour in mediations.

**Fang Law, Siew, 'Culturally sensitive mediation: The importance of culture in mediation accreditation' (2009) vol 20, no 3, ADRJ 162**

This article examines the impact and implications of culture for mediation practice, training and standard setting in the context of the new Australian mediation accreditation process. The article begins with an assessment of the importance of culture to mediation practice and training especially in multicultural societies. Fang Law then provides a review of international mediation competency accreditation and standards before considering the best way to teach about culture and mediation as part of the accreditation process. Fang Law concludes that although aspects of culture and mediation have been included in part of the new mediation accreditation process further emphasis is needed on the importance of ensuring that issues of culture, identity, and power are well represented in the mediation accreditation process. Australia's multicultural society means that mediation practices must address the importance of culture in disputes, especially when designing training programs and accreditation systems for existing and new mediators.

**Dickinson, Mark, 'An evaluation of non-adversarial models of negotiation' (2009) vol 20, no 4, ADRJ 212**

In this article Dickinson seeks to evaluate negotiation as a dispute resolution process through an examination of non-adversarial theories of negotiation (negotiation characterised by problem-solving, with a focus on the parties' interests). He attempts to address the question of whether principled negotiation is most usefully considered as a theoretical "ideal", as distinct from a sound practical model for negotiations involving legal issues. Dickinson then provides an overview of a variety of different works including Mary Parker Follett (integrative negotiation), Roger Fisher and William Ury with Bruce Patten (principled negotiation), Mnookin, Peppet and Tulumello (problem-solving negotiation) and Menkel-Meadow (problem-solving negotiation). Dickinson argues that models of non-adversarial negotiation may contain several weaknesses. It is submitted, however, that these challenges can be moderated through negotiation training and greater self awareness and introspection. Dickinson concludes that we can be optimistic that training in non-adversarial negotiation will reduce this evident gap between theory and practice. We can also consider

mediation as a vehicle for non-adversarial negotiation approaches through the use of a skilled, neutral third party facilitating the process.

**Astor, Hilary, 'Why do students sue Australian universities?' (2010) vol 21, no 1, ADRJ 20**

In this article Astor uses the lens of dispute resolution to examine the increasingly problematic issue of students suing Australian universities. This article presents the results of empirical research demonstrating that higher education involves protracted conflict for some students. This research also demonstrates that the reason for student discontent does not often concern the quality of their university education. Rather, student litigation far more frequently reveals frustration with the perceived unfairness of university decision-making and/or seeks (usually unsuccessfully) to find a route to challenge academic decisions. Astor notes that although numbers are increasing the absolute number of cases going to courts or tribunals is not high. Rather universities are resolving many cases by negotiation, mediation and through other internal processes. Suggestions are made to improve dispute-handling and to provide an inexpensive and accessible method of independent review of university decision-making. Astor concludes that there are strong arguments that students are entitled to an inexpensive, accessible, expert independent review of university decisions, where those decisions are not about academic matters. The evidence of student litigation fortifies the arguments in favour of the establishment in Australia of a specialist university ombudsman.

**Redfern, Michael, 'Mediation is good business practice' (2010) vol 21, no 1, ADRJ 53**

In this article Redfern explains why mediation should be adopted as a process of first choice in dealing with business disputes. He begins by considering the limitations of litigation and explaining how mediation works. He then explores the positive benefits of mediation. Redfern concludes that business people dealing with disputes want finality, efficiency, informality and open communication, the preservation of good relations, and privacy. They appreciate flexibility; they expect expertise; they need to have commerciality; they want to be involved in the process which affects them and, above all, they want value for money. A well run mediation can usually provide most of these benefits, whereas with the litigation process, they will be very lucky to get any of them.

**Cukier, Naomi, 'Lawyers acting as mediators: Ethical dilemmas in the shift from advocacy to impartiality' (2010) vol 21, no 1, ADRJ 59**

In this article Cukier examines the ethical problems which arise when lawyers switch their hats and start acting as mediators. Whilst a lawyer's traditional role has been defined in one dimension, namely acting in their clients' best interests, the role of the third-party facilitator imposes a new set of ethical dilemmas and obligations on lawyers which encompass standards for impartiality, fee payment, conflict, confidentiality, professional conduct and fairness. Cukier begins by providing some definitions before considering some of the common features in model guidelines along with some other considerations crucial for lawyers wishing to practice ADR. She then explores ethical guidelines relevant to lawyers in whatever capacity. Cukier concludes that it is clear that lawyers who shift from the role of advocate to ADR practitioner need to be highly self aware and possess significant discipline in order to achieve the required mindset of a neutral facilitator. It is clear that rules, guidelines, standards and recommendations alone will only go so far in assisting this paradigm shift which that lawyer must actuate when "changing hats". However, they must be very careful in choosing the process which best suits the dispute at hand.

**Douglas, Kathy, 'The teaching of ADR in Australian law schools: Promoting non-adversarial practice in law' (2011) vol 22, no 1, ADRJ 49**



In this article Douglas reports on research that gathered data relating to the teaching of alternative dispute resolution (ADR) in law schools in two States of Australia: Victoria and Queensland. Douglas begins by exploring the literature on ADR and legal education and then provides the methodology for the research. She then analyses selected data and findings from the research. Through semi-structured interviews and questionnaires, a number of themes were identified including the importance of preparing future lawyers for non-adversarial practice through ADR. The research showed that ADR teachers in stand-alone ADR courses and those combined with civil procedure offerings, did value ADR and non-adversarial practice in law, however, Douglas concludes that there is a need to better support the teaching of ADR through a national forum to share ideas relating to content and pedagogy in this area.

#### Potentially relevant

- Tillett, Gregory, 'The Resolution of AIDS-Related Disputes' (1990) vol 1, no 1, ADRJ 12
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### **Cohen, Jonathan R., 'Adversaries? Partners? How About Counterparts? On Metaphors in the Practice and Teaching of Negotiation and Dispute Resolution' (2003) vol 20, issue 4, *Conflict Resolution Quarterly* 433**

In this article Cohen explores the use of metaphors in the practice and teaching of dispute resolution. He argues that since negotiation and related dispute resolution processes inherently involve both competition and cooperation, language reflecting that tension should be used. For example, negotiating parties should be called by the mixed term 'counterpart' rather than the purely competitive 'adversary' or the purely cooperative 'partner'. Most fundamentally, practitioners, both parties and neutrals, should ask themselves questions of linguistic awareness and linguistic change. Just as their students may benefit from increased linguistic awareness, negotiation and dispute resolution educators too may benefit by examining their own linguistic frames. Because language usually reflects, if only imperfectly, an underlying reality, language awareness can be a key to better understanding and hence shaping that reality. Cohen concludes that because our behaviour rests upon our thinking, if we want to improve our dispute resolution practice and teaching we would do well to examine our metaphors. Language awareness he argues can help us better understand and at times improve dispute resolution practice and teaching.

### **LeBaron, Michelle and Zumeta, Zena D., 'Windows on Diversity: Lawyers, Culture, and Mediation Practice' (2003) vol 20, issue 4, *Conflict Resolution Quarterly* 463**

In this article the authors explore the connections among culture, lawyering and mediation. Starting with a broad definition of culture, the authors illustrate ways that cultural competence is important to mediation practice and process design. They begin by exploring the connections between culture and disputing before considering cultural competence. Cultural competence and mediation training is then considered before legal culture and mediator awareness is addressed. They suggest that awareness of legal culture is an important facet of mediator competence because of the pervasive influence of legal ways of thinking in mediation process design and implementation. The authors conclude that as cultural awareness infuses mediation process design and practice, the promise of mediation comes within reach. They argue that mediation offers the ground on which the ideals of a multicultural society can be translated into reality. Cultural competence in process design and practice helps make mediation a welcoming process marked by flexibility, inquiry, sensitivity, and the awareness that in contemporary multicultural society one size does not fit all.

### **Wood, John, 'Mediation Styles: Subjective Description on Mediators' (2004) vol 21, issue 4, *Conflict Resolution Quarterly* 437**

In this article Wood examines some different styles of mediators. Some mediation scholars argue that mediator effectiveness is a direct function of matching the mediator to a specific mediation case, in terms of aligning the neutral's skill and experience to the dynamics of the case in question. This study suggests that within the population of mediators studied, there are four basic mediator styles, or frames: negotiator, facilitator, counselor, and democrat. Each mediator frame differs in its perspective on the mediator role, view on neutrality, mediation goals, and the respective strategies to obtain specific outcomes. The negotiator perspective comprises the most experienced practitioners, with the perspective that the primary goals of mediation are achieved through mutual gains. A different perspective is the facilitator; the individuals associated with this perspective assume an active mediator role with an emphasis on neutrality. Although the democratic perspective emphasizes a more passive mediator role, the mediators associated with this perspective have a similar emphasis on neutrality, as do the negotiators. Furthermore, the counsellor takes a more therapeutic approach, also with an active mediator role. Wood concludes by comparing these findings to those of other studies on different mediation styles, especially that of Riskin.

**Gaynier, Lisa P., 'Transformative mediation: In search of a theory of practice' (2005) vol 22, issue 3, *Conflict Resolution Quarterly* 397**

In this article Gaynier explores the theory of transformative mediation. She first surveys developments in the field of mediation and mediation research since Bush and Folger's 1994 publication *The Promise of Mediation*. She then considers different perspectives and addresses the fundamental weaknesses in their arguments. Finally she proposes a theoretical basis for the transformative approach to mediation. She argues that a solid grounding in Gestalt-based theory allows the mediator to approach disputants with intentional support for expanding the ground between them, thus supporting mutual recognition and empowerment. Gaynier concludes that Bush and Folger have done a great service in initiating a conversation about the role of mediation in our society. However, they are misguided owing to the same moral pitfalls they assign to results-focused mediation: the values of the mediator trump the disputants' values.

**Bannink, Fredrike P., 'Solution-focused mediation: The future with a difference' (2007) vol 25, issue 2, *Conflict Resolution Quarterly* 163**

In this article Bannink examines solution-focused mediation. The focus in solution-focused mediation is on the desired outcome: the future with a difference. The article demonstrates that concept and the methodology differ significantly from other types of mediation. Conversations become increasingly positive and shorter, ensuring that solution-focused mediation is also cost-effective. Bannink begins with a brief history of solution-focused interviewing before considering looking to the future. Solution-focused mediation in practice is then addressed with an example provided. Bannink then considers indications and contra-indications for solution-focused mediation before comparing four types of mediation: problem solving and solution-focused, transformative and solution-focused and narrative and solution-focused. Bannink concludes that with solution-focused mediation clients will be able to outline their own definition of happiness with a description of behaviour, cognitions, and emotions. Mediators could be trained to help their clients in designing desired outcomes and solutions and to assist them in the motivation to change. The solution-focused model can help both clients and mediators create their "future with a difference."

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### **Volumes 4 -15**

#### **Fox, Erica L., 'Alone in the Hallway: Challenges to Effective Self-Representation in Negotiation' (1996) vol 1, *Harvard Negotiation Law Review* 85**

In this article Fox explores the role of self-agency in negotiation using examples from the Boston Housing Court. She begins by pointing out that in some cases the primary goals of negotiation (protecting legal rights, producing co-constructed agreements and resolving conflict efficiently) are not achieved. She argues that the key to effective negotiation on one's own behalf is "self-agency" or personal authorisation to act as an agent for oneself. Fox begins by providing an overview of the problem in context and traces the development of ADR primarily in a housing context with a focus on the Boston Housing Court. Fox then moves on to consider self-agency. A model of self-agency and the traditional approach to self-agency are addressed. Next Fox explores self-agency in more detail addressing private expressions and public obstructions. Finally she assesses the ADR and Housing Law Revolutions before concluding that these self-agency problems are common in many areas and at one point or another, most people find themselves negotiating "alone in the hallway." She argues that appreciation for the role of self-agency will clarify the causes of many negotiation breakdowns, as well as suggest new ways to improve negotiators' effectiveness.

#### **Hoffer, David P., 'Decision Analysis as a Mediator's Tool' (1996) vol 1, *Harvard Negotiation Law Review* 113**

In this article Hoffer explores the technique of 'decision analysis' a useful tool for breaking impasses in a mediation. He begins by explaining how decision analysis is used in litigation generally and then how decision analysis is used by mediators. Next Hoffer presents a summary of the obstacles to the use of decision analysis in mediation and finally ties together these ideas before proposing a normative framework for the effective use of decision analysis in mediation. Hoffer concludes that although decision analysis is not an ultimate cure it does have the potential to facilitate the resolution of particularly intractable disputes and is therefore a valuable addition to a mediator's toolbox. However, he cautions that mediators must be aware of the strengths and limitations of decision analysis and appreciate that in some situations it will be inappropriate. Finally Hoffer includes an appendix on the fundamentals of decision analysis.

#### **Bordone, Robert C., 'Electronic Online Dispute Resolution: A Systems Approach--Potential, Problems, and a Proposal' (1998) vol 3, *Harvard Negotiation Law Review* 175**

In this paper Bordone explores the developing online world and dispute resolution. Bordone begins with an assessment of what makes cyberspace different before considering the struggle between rights and power on the internet. He then considers the potential of ADR to transform this issue and break the impasse between rights and power. In this part Bordone explores the advantages of an interest-based model and a systems approach to the resolution of conflicts in cyber space. This is followed by an examination of the problems in a systems approach. These include power issues, rights issues, getting the word out and the problem of interface. Finally Bordone includes a detailed proposal for an online dispute resolution system. Bordone concludes that the ADR community needs to involve itself in the growing world of the internet and take advantage of the potential for an integrative and comprehensive online dispute resolution model.

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Limited online access from 1985-1996

### **Winslade, John, Monk, Gerald and Cotter, Alison, 'A Narrative Approach to the Practice of Mediation' (1998) 14 *Negotiation Journal* 21**

In this article the authors explore a narrative approach to mediation. The authors begin by considering some of the issues which have been raised about problem solving mediation and attempt to stretch the boundaries of problem solving by applying narrative thinking to mediation. They attempt to demonstrate the usefulness and applicability of the ideas developed by Michael White and David Epstein (among others) to the practice of mediation. The authors then seek to demonstrate the potential of narrative mediation. They tell a story about a neighbourhood conflict and, as the story unfolds, explore the role of the mediator from a narrative stance. The authors conclude with a seven-point summary of the features of a narrative approach to mediation.

### **Bowling, Daniel and Hoffman, David, 'Bringing Peace into the Room: The Personal Qualities of the Mediator and Their Impact on the Mediation' (2000) 16 *Negotiation Journal* 5**

In this article the authors focus on the personal qualities of a mediator as a key factor in the success of a mediation. The authors contend that a mediator's "presence" — more a function of who the mediator is than what he or she does — has a profound impact on the mediation process. The authors begin by examining what it means to "bring peace into the room" before examining the three stages of development of a mediator: development of technique, an understanding of how and why mediation works and thirdly an awareness of how a mediator's personal qualities can affect the mediation process. The authors then explore the personal qualities of a mediator in more detail. Self-awareness, presence, authenticity, congruence and integration are among the topics considered. Drawing on analogies from research in the physical and social sciences, the article suggests that the most subtle influences of the mediator's manner may in fact be powerful influences in helping the mediator "bring peace into the room." The implications for mediation practice are then considered. The authors conclude that developing these personal qualities is a process of time, intention, and discipline, and comes not from intellectual inquiry or scholarship but from experience.

### **Avruch, Kevin, 'Culture and Negotiation Pedagogy' (2000) 16 *Negotiation Journal* 339**

In this article Avruch explores the meaning of culture in particular in a negotiation context. He begins by noting that both in theory and practice, our understanding of what "culture" is remains limited; the subject, in fact, is either misrepresented or all but ignored in most of the popular and scholarly literatures. In an attempt to resolve some of this confusion the author offers six mutually related ideas that help to explain what culture is not. He then describes an approach to understanding cultures that he finds more useful and concludes with some thoughts on teaching about culture.

### **Jones, Tricia S and Bodtker, Andrea, 'Mediating with Heart in Mind: Addressing Emotion in Mediation Practice' (2001) 17 *Negotiation Journal* 217**

In this article the authors consider the role of emotion in mediations. They suggest that mediation practice can and should be informed by the wealth of existing theory and research on emotion in the

social sciences. The authors define emotion and argue that emotion is the foundation of all conflict. They then describe theory and research relevant to the expressive, physiological, and cognitive components of emotion. Within each area, they delineate some of the implications of the emotional experience of the disputant and the emotional experience of the mediator. They conclude that regardless of a mediator's orientation, style or even age, these insights are important and valuable for mediation practice, particularly when mediation contexts involve interpersonal, family, victim-offender, school-based, and informal organizational conflicts.

**Reilly, Peter, 'Teaching Law Students How to Feel: Using Negotiations Training to Increase Emotional Intelligence' (2005) 21 *Negotiation Journal* 301**

In this article Reilly argues that negotiation courses using traditional lectures combined with role plays and simulated exercises can be used to train students in understanding emotion and increasing their emotional intelligence. He begins by defining emotion and emotional intelligence before considering moving from theory to the practice of emotional intelligence. Reilly describes and analyzes one simulated exercise that has proven to be particularly potent in the classroom for teaching both the theory and practice of emotional intelligence and then sets forth the rudimentary components of a possible curriculum for emotions training. Reilly concludes with reasons why law schools and other professional degree-granting programs can and should make training in emotions a curriculum staple. He argues that connections are more likely to be made, and meaningful and effective relationships are more likely to be built, if one can first gain a fundamental understanding, both theoretical and practical, of human emotion.

**Goldberg, Stephen B., 'The Secrets of Successful Mediators' (2005) 21 *Negotiation Journal* 365**

In this article Goldberg discusses a key factor in successful mediation: developing rapport with the disputing parties. Goldberg conducted a study and found that the response given by more than 75 percent of the respondents was that the key element in successful mediation is developing rapport with the parties. He begins by outlining the methodology of the study before analysing the results. He questions why building this rapport is so fundamental to success and discusses how mediators achieve and make use of rapport with their clients. The article also considers the implications for mediator training of the finding that achieving rapport with the parties is a key factor in successful mediation. Goldberg concludes that if the mediator is unable to develop rapport, it matters little how proficient the mediator is with the many tactics that are espoused in the mediation literature and taught in mediator training — success in bringing disputing parties to a resolution of their dispute is unlikely.

**Movius, Hal, 'The Effectiveness of Negotiation Training' (2008) 24 *Negotiation Journal* 509**

In this article Movius questions the effectiveness of the negotiation training which has become so popular in the last 25 years. He reviews the available evidence regarding the effectiveness of negotiation training using four levels of outcome measurement. Movius first reviews what has been meant by negotiation training, in pedagogical terms. Next he reviews the available research on the effects of negotiation training, including intervening variables. He discovers that while far less prevalent than one would wish; existing evidence suggests that negotiation training can have positive effects. Finally he presents six tentative conclusions on the literature to date and recommends further research and measurement, at both the individual and organizational levels.

**Menkel-Meadow, Carrie, 'Chronicling the Complexification of Negotiation Theory and Practice' (2009) 25 *Negotiation Journal* 415**

In this article Menkel-Meadow reviews the content of 25 years of the *Negotiation Journal*, identifying themes and issues explored on its pages in the past, the current issues challenging the field's scholars and practitioners, and the issues likely to confront us in the future. She argues that while those in the field of negotiation hoped for simple, elegant, and universal theories of negotiation and conflict resolution, the last twenty-five years have demonstrated the increasing complexification of negotiation theory and practice, from increased numbers of parties and issues, and dilemmas of intertemporal commitments, ethics, accountability, and relationships of private action to public responsibility. Menkel-Meadow concludes with 15 potential topics for further study in negotiation.

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Full text available from LexisNexis NZ: 2005 to present

Former title: *Butterworths Family Law Journal* (1993-2004) also available from LexisNexis

Previous title: *Family Law Bulletin* (1985-1993)

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- Zondag, Berry, 'Achieving policy objectives through court process: constitutional limits to procedural application of the welfare principle' (2010) 6 *New Zealand Family Law Journal* 298

## *New Zealand Law Journal*

Library has 1925-2009 in hard copy

Full text available from LexisNexis NZ: 2002-2011

Full text available from Available online: 1925 to 2001

Generally very basic articles – good for introductions but not very comprehensive

### **Mize, Selene, 'Is deception in negotiating unprofessional?' [2005] NZLJ 245**

In this article Mize considers deception in negotiations. She begins by noting that some level of deception (or strategic posturing) is relatively common in negotiations (eg: “my client will accept no less than \$50,000” when the client would actually accept \$30,000). Firstly Mize examines the advantages and disadvantages of honesty in negotiations. She notes that although honesty promotes trust and good relationships as well as leading to more efficient agreements it will not always maximise the outcome for an individual. She also notes that strategic posturing may confer distributive advantages. Mize then considers whether the current *Rules of Professional Conduct for Barristers and Solicitors* allow strategic posturing for New Zealand legal practitioners but finds no clear guidance except in an United States context. Mize then considers whether strategic posturing should be allowed in negotiations. She weighs up opposing evidence before concluding that strategic posturing should not be prohibited in negotiations at present and that lawyers should not be held to a higher standard than other negotiators.

### **Gibbons, Thomas, 'When mediation goes wrong' [2007] NZLJ 205**

In this article Gibbons explores some cases where mediation went wrong and a mediated settlement was not the end of the dispute. He begins by noting that for a variety of reasons mediation is sometimes upheld as perhaps the most beautiful method of dispute resolution however, there are situations where mediation fails to achieve a satisfactory outcome. He then looks at a number of examples: *Hart v Mitchell* (2007) regarding a dispute over a right of way and a mediated caveat, *Gayhurst Properties Ltd v Wong* (2006) regarding delays over the subdivision of a recently purchased property and *Marinovic v Marinovic* (2007) regarding the failure of a mediation to divide property satisfactorily. Gibbons notes that if a mediated settlement ends up in court all the advantages of mediation will be lost and the parties may end up in worse position regarding expense and confidentiality. Gibbons concludes that mediation has its advantages, and undoubtedly has its place but lawyers must be careful to weigh up whether mediation is the appropriate answer to the problem at hand, and should not “oversell” the benefits of mediation to clients.

### Potentially relevant

- Powell, Carol, 'Alternative Dispute Resolution edited by Carol Powell' [2002] NZLJ 107 > hybrid dispute resolution processes, book review: *Alternative Dispute Resolution* by Tania Sourdin, mediator profile: Kate Davenport and what's happening 2002
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- Powell, Carol, 'Alternative Dispute Resolution edited by Carol Powell' [2004] NZLJ 93 > Employment Relations Amendments, Inaugural public sector mediators forum, mediator profile: Gay Pavelka and what's happening
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- Powell, Carol, 'Alternative Dispute Resolution with Carol Powell' [2004] NZLJ 485 > dealing with inadequacy of rights to damages, confusion in the mediation marketplace, reframing, LEADR update, mediator profile: Dr Bill Hodge and what's happening
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- Powell, Carol, 'Alternative Dispute Resolution with Carol Powell' [2006] NZLJ 261 > Reforms to the Australian Family Court, Reflections from the conference of the International Academy of Mediators at Harvard University, LEADR update, mediator profile: Bill Rainey, 2006 Asia-Pacific Mediation Forum Peace Prize and what's happening

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- Powell, Carol, 'Alternative Dispute Resolution with Carol Powell' [2011] NZLJ 21 > confidentiality in mediation, what gets in the way of decisions in mediation, LEADR update, AMINZ update and what's happening

## *New Zealand Law Review*

Successor to New Zealand Recent Law Review (1989-1994)

Full text available from HeinOnline Law Journal Library: 1995 to 2007

Full text available from Lexis: 2000 to present

Limited amount on negotiation and mediation – only considered rarely, much more focus given to arbitration

### Potentially relevant

- Williams, D A R and Thorp, F J., 'Arbitration and Dispute Resolution' [1995] NZ Law Review 1 > no automatic immunity for arbitrators, misconduct by and removal of arbitrator, the right to have an arbitration hearing in private, applications for a stay of proceedings, willingness of local courts to support foreign arbitration, reasons in awards and role of an expert valuer who is also an arbitrator
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- Bollard, R J and Wooler, S E., 'Court-Annexed Mediation and Other Related Environmental Dispute Resolution' [1998] NZ Law Review 707
- Tapp, Pauline, 'Family Law' [1999] NZ Law Review 443 > some comments about family mediation
- Williams, David, 'Arbitration and Dispute Resolution' [2000] NZ Law Review 61 > various facets of Arbitration Act including confidentiality in arbitral proceedings, stay of court proceedings, requirement that arbitrators be impartial and independent, implied exclusion, setting aside awards, appeals on questions of law arising out of an award, time for appealing, enforcement of international arbitral awards under the New York Convention and mediation
- Williams, David, 'Arbitration and Dispute Resolution' [2002] NZ Law Review 49 > the success of the Arbitration Act, confidentiality, appealing awards on questions of law, stay of proceedings, interim measures of protection, international arbitration
- Williams, David, A R., 'Arbitration and Dispute Resolution' [2004] NZ Law Review 87 > Law Commission report on improving the Arbitration Act, cases identifying the aims and purposes of the Arbitration Act, arbitration, expert determination and mediation – the differences exemplified, default appointment of arbitrators, removal of arbitrators, security for costs, separate appeal from separate costs award, setting aside awards, law commission recommendations and the law commission and Privy Council on confidentiality
- Williams, David, A R., 'Arbitration and Dispute Resolution' [2005] NZ Law Review 119 > recent important arbitration cases, interim measures of protection, arbitration appeals



tribunal, law commission proposals for state and court managed mediation and court of arbitration for sport

- Williams, David, A R., 'Arbitration and Dispute Resolution' [2006] NZ Law Review 303 > the role of the judiciary, the issue of excess power under the English Arbitration Act, implied duty on arbitrators to raise costs in all circumstances and power to stay an arbitration
- Williams, David, A R and Kawharu, Amohura, 'Arbitration and Dispute Resolution' [2009] NZ Law Review 99 > the Arbitration Amendment Act 2007, the scope of arbitration clauses and the doctrine of separability, leave to appeal under the Arbitration Act, investment treaty arbitration and recent NZ cases
- Johnston, Kerensa, 'The Treaty of Waitangi and Maori custom law' [2009] NZ Law Review 549 > need for Maori to develop robust internal dispute resolution processes

## *Otago Law Review*

Full text available from HeinOnline Law Journal Library: 1965 to present  
Searched volumes 7 (1989-1992) to 12 (2009-2010)

Limited coverage of ADR.

### Potentially relevant

- Watson, Leo, 'Negotiation of Treaty of Waitangi Claims: An Issue Ignored' (1993-1996) 8 *Otago Law Review* 613
- Kirby, Justine, 'Would Principled Negotiation Have Saved Eve: A Feminist Analysis of Getting to YES' (1997-2000) 9 *Otago Law Review* 122
- Gleeson, Murray, 'The Future of Civil Justice - Adjudication or Dispute Resolution' (1997-2000) 9 *Otago Law Review* 449
- Davies, Geoffrey, 'Can Dispute Resolutions Be Made Generally Available' (2009-2010) 12 *Otago Law Review* 305

## *Victoria University of Wellington Law Review*

Available on Victoria website and HeinOnline 1957 – present  
Searched volume 20 (1990) to volume 41 (2010)

Some good material but generally limited coverage of alternative dispute resolution

### **Macduff, Ian, 'The Role of Negotiation: Negotiated Justice' (1995) 25 *Victoria University of Wellington Law Review* 144**

In this article Macduff examines various aspects of negotiation in the context of the Treaty of Waitangi. Macduff begins by pointing out some difficulties in Treaty negotiations which suggest that while the outcomes of the negotiations are clearly important the protection and management of the negotiation process is equally important both in terms of the outcomes and with a view to the ongoing relationship of the negotiating parties. He argues that in this setting as much as in any other, negotiations do not look after themselves and there are clearly special issues that need attention where there are differences in the cultural needs and priorities of the parties. Macduff then examines two key uses of negotiation, the more common settlement of deals or disputes and negotiated rulemaking or "negotiated justice". He notes that in the resolution of disputes and negotiation of claims the tasks are those of developing tools and skills for intercultural dialogue. In the negotiation of rules and policy the issue is that of determining the scope of, and structure for, Maori participation in the setting of those rules and policies. Macduff concludes with three main points. Firstly, that in this area of negotiation more than any other, what is at stake is not simply the issues of economic rationality in the determination of settlement figures, but also, and more importantly, the issue of identity. Secondly, dialogue is of the utmost importance and negotiation is not just about the settlement of narrowly defined claims and conflict, but also about the enduring qualities of the relationship of the parties. Finally, Macduff notes that the principles of negotiation need to be principles of participation, dialogue and commitment to the results. The article ends with questions asked by those attending the conference.

### **Wada, Yoshitaka, 'Merging Formality and Informality in Dispute Resolution' (1997) 27 *Victoria University of Wellington Law Review* 45**

In this article Wada considers the power of parties' perceptions of what constitutes compensation in a dispute and the relationship between formality and informality in dispute resolution. First Wada reviews the various arguments as to the relationship between formal and informal dispute resolution within the ADR movement. Various positions on ADR and litigation are considered. He then points out a number of issues which have not been raised or extensively argued in the ADR debate, aiming to take dispute resolution research to new levels. In particular, the issues are revisited from a legal sociological perspective, stressing the views of participants themselves. Wada concludes with the example of traffic accident compensation disputes in Japan. He argues that it is essential to give parties the chance to express their own perceptions, including those as to extra-legal problems, and to control their own disputes for themselves. He also argues that if the dispute resolution processes support parties in giving their own meanings to compensation the processes can work much better. In order to achieve this, he concludes, an appropriate combination of formality and informality is required.

#### Potentially relevant

- Harris, Rodney, 'Contrasting Principled Negotiation with the Adversarial Model' (1990) 20 *Victoria University of Wellington Law Review* 91

- Dannin, Ellen J., 'Three Years Out: The Labour Court's Treatment of Dispute Resolution Procedures' (1991) 21 *Victoria University of Wellington Law Review* 259
- Webb, Duncan, 'The Negotiator's Ethic: Fair Minded Self Interest' (1993) 23 *Victoria University of Wellington Law Review* 255
- Mahuta, Robert Te Kotahi, 'Tainui: A Case Study of Direct Negotiation' (1995) 25 *Victoria University of Wellington Law Review* 157
- Rangiheuea, Tania, 'Role of Maori Women in Treaty Negotiations and Settlements' (1995) 25 *Victoria University of Wellington Law Review* 195
- Baylis, Claire, 'The Appropriateness of Conciliation/Mediation for Sexual Harassment Complaints in New Zealand' (1997) 27 *Victoria University of Wellington Law Review* 585
- Baylis, Claire, 'Reviewing Statutory Models of Mediation/Conciliation in New Zealand: Three Conclusions' (1999) 30 *Victoria University of Wellington Law Review* 279
- Hond, Mereana, 'Resort to Mediation in Maori-to-Maori Dispute Resolution: Is It the Elixir to Cure All Ills?' (2002) 33 *Victoria University of Wellington Law Review* 155

## *Waikato Law Review: Taumauri*

Began with volume one in 1993

Full text available from HeinOnline Law Journal Library: 1993 to 2008

Full text available from Informit e-Library: 2005 to 2009

Limited coverage

### **North, Sandra, 'The McCaw Lewis Chapman Advocacy Competition – ADR: Appropriate Dispute Resolution' (1996) 4 *Waikato Law Review* 56**

In this article North, the winner of the 1996 McCaw Lewis Chapman Advocacy Competition, argues that from both ideological and practical perspectives ADR should also stand for appropriate dispute resolution. Firstly she considers the fundamental advantages ADR has over the traditional adversarial system. These include discovering the parties' true interests, allowing them to say what they want to say in their own way, and its inherent ability to generate positive options. Secondly, she considers whether ADR is appropriate in all circumstances and argues that in cases of domestic violence ADR may not be appropriate. She concludes that apart from situations involving domestic violence, an ADR system is appropriate and furthermore is a growing form of dispute resolution.

#### Potentially relevant

- Wilson, Margaret, 'The Making of a New Legal Education in New Zealand: Waikato Law School' (1993) 1 *Waikato Law Review* 1 > re Waikato inclusion of a compulsory dispute resolution course
- Winslande, John and Cohen, Richard, 'Narrative Mediation: Waikato Mediation Service's Answer to Community Concerns, Theoretical Shifts and Practice Demands' (1995) 3 *Waikato Law Review* 83
- Baker, Nicola J., 'The McCaw Lewis Chapman Advocacy Contest – Legislated Court Authority to Refer to Mediation or Arbitration?' (1997) 5 *Waikato Law Review* 65
- Coxhead, Craig, 'Where are the Negotiations in the Direct Negotiations of Treaty Settlements' (2002) 10 *Waikato Law Review* 13
- Arthur Les and Cullen, Brendan, 'Settlement and Reform of the Civil Justice System: How Settlement is changing the practice of Law' (2009) 17 *Waikato Law Review* 38

**Other useful journals:**

- ABA Journal: the lawyer's magazine
- The ADR bulletin : the monthly newsletter on dispute resolution (AGIS)
- LEADR brief / Lawyers Engaged in Alternative Dispute Resolution (AGIS)
- Journal of Alternative Dispute Resolution in Employment
- Emory Journal of International Dispute Resolution
- International Journal of Conflict Management
- Alternatives to the high cost of litigation
- Cardozo Journal of Conflict Resolution
- Dispute Resolution Journal of the American Arbitration Association
- Dispute Resolution magazine
- Forum/National Institute for Dispute Resolution
- Willamette Journal of International Law and Dispute Resolution
- International Negotiation: A Journal of Theory and Practice
- Conflict Resolution and Negotiation Journal