

Mediation, who wants it?

Presentation for the Annual Conference of the Law Society of Northern Ireland at Amsterdam on April 8, 2011

Martin Brink Ph.D.

1. Introduction.

In Western societies mediation originated from the grass roots up as a result of dissatisfaction with the existing courts system as an efficient tool in family law conflicts. Having become subject of education and training programs offered by institutions, in certain countries court annexed mediation programs were initiated and consequently rule makers in governments have taken a more serious interest in mediation in terms of access to justice and budget discussions.

How do entrepreneurs and companies as repeat players presently position themselves vis-à-vis mediation? What does all this mean for the role of outside counsel? Will there be an end to lawyers as we know them (Susskind, 2008) or the emergence of a New Lawyer (MacFarlane, 2008)?

Much of what will be said may apply also to other forms of alternative dispute resolution (ADR). Mediation is generally considered to be part of the family of ADR, as an alternative to litigation; litigation being defined as the strategic pursuit of a settlement through mobilizing the court process (Galanter, 1984).

2. Who wants mediation?

Governments, ADR centres and the Courts?

Who in Western economies at this point in time are the driving forces behind an increased awareness that mediation can lead to solutions of conflicts, is cost effective, can help to preserve relationships and offers a greater variety of answers to conflict than one party winning and the other losing? To a large extent, it is the legislators and ADR Institutions (Shariff, 2003) who will want to move things forward. The courts may also give a push.

Even if one is not enthusiastic about mediation, a shift is happening and it is to an increasing extent happening in a structured fashion. After a meteoric start upon its entry into the marketplace in the early eighties of the last century, the growth curve of the use of mediation slowed down by the new millennium. Stimulus was rejuvenated by governments through the introduction of the Uniform Mediation Act 2001 (United States of America), the enactment in various countries of the UNICITRAL Model Law on International Commercial Conciliation 2002 (United Nations), and the adoption of the European Mediation Directive in 2008 (EU). In the meantime numerous institutions were established in many parts of the world, setting deontological rules and regulations. In order to successfully have mediation become recognized as a true profession, a road will still have to be traveled (Leathes, 2010) but the rationale behind the various legislative initiatives is not to be misinterpreted. By providing a legitimate basis for the profession of mediator, a platform is created for setting, verifying and continuously developing standards of professionalism, which in turn will render confidence in the marketplace (Wilensky, 1964) in the eyes of those who may want to make use of mediation as a means of settling disputes. The mentioned initiatives by the respective legislators, follow the shift in the organization of adjudication and conflict management over the past decades, whereby proceedings to obtain judgments and awards became customized and not necessarily dependent on the traditional court system.

John Lande (2000, p. 148-150) pointed out, that traditionally the organization of the Rule of Law in civilized jurisdictions was based on a 'legal centralist ideology', that held that the courts, the law, and

lawyers were the primary means of handling disputes involving legal issues. Under this worldview, government is the principal locus of legal controls, operating through a court system. This system is a coherent structure consisting of a hierarchical set of courts in which each court acts according to prescribed and universal rules to achieve specified instrumental purposes that reflect widely shared values. The courts follow the direction of higher authorities to announce, apply, and sometimes change rules. Professionals trained in the law are needed to staff the courts and represent disputants. The prototypical mode of legal action was adjudication. Over time, problems developed with legal centralist theory and practice. The problems were perceived as relatively small anomalies that did not fundamentally threaten the core of legal centralist ideology. It was still generally taken for granted that handling problems socially defined as "legal disputes" normally meant "litigation," if not adjudication, in government courts and agencies or in their shadows. Indeed, many of the innovations consisted of new varieties of government courts such as small claims, juvenile, and family courts.

Eventually a "process pluralist" ideology evolved. This ideology is hypothesized to consist of an interrelated set of beliefs that embrace the availability and acceptability of a wide range of goals, norms, procedures, results, professional roles, skills, and styles in handling disputes involving legal issues. The essence of this ideology is that many different features of disputing processes can be manipulated and customized for each dispute. A key element of process pluralism is the belief in the legitimacy of a multiplicity of disputing mechanisms. In addition to trials in government courts, it accepts the legitimacy of diverse disputing procedures and providers including, for example, neighborhood mediation centers, private "rent-a-judges", all-purpose private court systems, university tribunals, and automobile manufacturers' procedures for handling consumer warranty complaints. This ideology also recognizes and accepts a wide assortment of values along a range of other dimensions, including values of the traditional legal system, but does not presumptively favor the traditional values. For example, a process pluralist ideology accepts the validity of various norms used in resolving disputes—such as economic norms, ethical precepts, and other cultural beliefs as well as those expressed in legal rules. It promotes consideration of many different disputing outcomes in addition to judicial monetary and injunctive remedies, including promotion of behavior, relationships, and outcomes beyond the legal and practical reach of the courts. It conceives of an array of professional roles for lawyers, including some roles in which lawyers do *not* exercise predominant decision-making authority over disputants, non-legal professionals, and non-professionals. Under this view, non-lawyers may be more appropriate to manage resolution of some disputes than lawyers (Diamond, 2011). It recognizes different negotiation styles and strategies, such as taught by the Harvard Negotiation Project i.e. an "appropriate-result, consensus-oriented" strategy focusing on parties' interests, in addition to a more traditional "maximal-result, concessions-oriented" strategy (Camp, 2002; Korobkin, 2002). In contrast to pure legal centralist ideology, which makes a strong assumption that law, lawyers, legal remedies, and courts should predominate in legal disputes, process pluralist ideology challenges all those assumptions (Lande, 2000, p. 150; Roberts & Palmer, 2005; Tercier, 2011).

A more recent driver for change in Western economies since the occurrence of the financial crises in 2002, are shrunken budgets of governments. With the euro-zone under reconstruction, this situation is not likely to change in the short term. Furthermore globalization forces economies with a large public facilities sector, to economize. The organization of the court system is a public task, funded by tax collection. Taxes in turn influence cost of labor and therefore have a direct bearing on the competitiveness of an economy. Economies with a large public sector, part of which is the courts system, will feel an increasing pressure to diminish that sector. It has been alleged earlier that mediation might easily become an instrument in the hands of policy makers who view the governmental courts system as a cost factor (De Roo & Jagtenberg, 2004; Genn, 2008). The increasing of registration fees to commence litigation in the court, introduction of more or less compulsory referral of court cases to mediation (Welsh, 2011), or even, as in Italy presently, a

prohibition to start a court case if mediation has not taken place first, are expressions of the above intended movement. An Italian Legislative Decree requiring mandatory pre-trial mediation of civil and commercial cases came into effect on March 21, 2011. The decree is part of an initiative to reduce the overload on the country's legal system, which, according to a recent World Bank Report, ranks 157th for enforcing contracts. The response of Italy's national attorneys' union (Organismo Unitario dell'Avvocatura) has been to call for a national strike in March of this year. The backlog situation is not so much different in other jurisdictions. In France, in February 2011, budget restraints were part of the reason that magistrates went on strike. The implementation process of the European Mediation Directive in the various countries of the EU is creating a new momentum for mediation, if only as a result of the waves it stirs up in several countries. In Greece people are angry because the law proposes that only lawyers can be mediators; in Italy lawyers are angry because mediation will become compulsory before one can start a court case. In the process, mediation is rising on the agenda of public attention.

Some random figures: Policy makers in governments are well aware that with the use of mediation, solving a court case with an interest involved of 200,000 euros, looking at all European countries, on average, compared to litigation, an amount of 13.738 euros would have been spared (The Cost of Non ADR – Surveying and Showing the Actual Costs of Intra-Community Commercial Litigation, ADR center, Rome, June 9, 2010, p. 55). In the case of Ireland the relevant survey showed the following figures: Savings between 42,317 and 46,800 euros. Litigating the 200,000 euros case would purportedly take an average of 515 days and a cost of 53,800 euros. Arbitration would be quicker, an average of 357 days, but could cost even more, 66,661 euros. Mediation in Ireland does not go very fast, but still much quicker than litigation or arbitration, namely 45 days. In all EU countries average cost of mediating a conflict with an interest of 200,000 euros would be 7,000 euros. Of the interest involved in such a case, litigation would absorb 26.9%, arbitration 33.3% and mediation 3.5%. In addition it will have to be considered that without different agreement, the cost of mediation will be equally divided between the parties, whereas in the case of litigation or arbitration the compensation for costs that qualifies for attribution to the winner, may have to be borne by the losing party alone.

The costs of conflict are high: in the UK, an estimated cost of 30 billion pounds to UK businesses, taking up 20% of leadership time and resulting in 370 million work days lost (bringing with it a detrimental impact on the performance and company valuation). Mediation is supposed to save the UK an annual 1.4 billion pounds, while the cost to achieve this would be a mere 15 million pounds (Sturrock, 2011).

All in all, it is clear that governments are keen on promoting mediation, because it may save their economies costs and more frequent use may help to reduce budgets for the traditional supply of justice and means to come to solutions in case of conflict. The European Directive also for this reason contains a very broad definition of mediation, so that this will not restrict a wide use of it. A broad definition covers also the use of mediation for preventing conflicts, the analyzing of situations (what and what not can be identified as conflict?), dealing with ongoing conflicts (Mayer, 2009), to negotiate agreements (Hager & Pritchard, 2000; Schonewille & Fox, 2011; Schonewille & Merks, 2011) or for policy making (Susskind & McMahon, 1985).

It have been the institutions, which in time preceded the governments in embracing mediation. In addition to governments, institutions, will continue to actively promote mediation. They are pressed to do so. Not only because as providers of ADR solutions promoting mediation is their core business, but also because they legitimately seek to enhance quality standards and to regulate education of mediators.

The European Directive (Preamble under 16 and Article 4) requires that Member States will with all means they deem appropriate stimulate the drafting and observance of ethical codes and the development of effective quality control mechanisms. Virtually every jurisdiction now has its own

mediation centre and one is starting to see the emergence of the first transnational institutions (Massie, 2011).

Courts may also prove to be a force driving mediation forward. Enormous backlog and understaffing, in addition to budget cuts in the public sector, will increasingly make courts refer cases to mediation. In combination with the ongoing attempts by regulators to promote mediation, more and more countries will see mediation becoming compulsory before or even during litigation. For example in New South Wales, Australia (later followed by other states and territories), as early as 1991, the Courts Mediation and Arbitration Act, amending the Federal Court of Australia Act, introduced an article allowing the court to refer a case or an issue to mediation or arbitration. In 1997 things were taken one step further in the Law and Justice Amendment Act, which introduced a Section 53A(1A) which states that a referral to a mediator may be made with *or without* the consent of the parties to the proceedings. Similar laws were enacted in other parts of Australia (Spencer & Brogan, 2006; Limbury 2011).

In England and Wales, following the Woolf reforms, the Civil Procedure Rules 1998 began to refer to ADR expressly. Rule 1.1. (sub e) now says that dealing with a case justly includes, so far as is practicable allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases. Rule 1.4. (sub c and e) says that the court must actively manage cases, deciding promptly which issues need full investigation and trial and accordingly dispose summarily of the others and encourage the parties to use an alternative dispute resolution procedure if the court considers that appropriate, and facilitate the use of such procedure. Following the publication of the government's response to the consultation on Jackson LJ's recommendations for reforming civil litigation funding and costs, the government has also announced a further consultation on proposals to improve the efficiency of solving disputes in the Small Claims and County Courts, including increasing the small claims threshold from £5,000 to £15,000 and increasing the financial limit below which claims cannot be commenced in the High Court from £25,000 to £100,000. The intent was expressed to create a justice system which protects access to justice, encourages earlier and more efficient solving of civil disputes, and reduces cost and disproportionate risk (Ministerial Foreword, p. 4).

New Court registration fees in the Netherlands may in 2011 be raised significantly for commercial parties. The Minister of Security and Justice as a result expects 20% less court cases.

All of this is likely to cause disputing parties to turn to other, more cost efficient ways to settle their disputes than litigation (Genn, 2008).

On ADR itself, the Jackson LJ Report proposed no changes. It recommended that there will be a serious campaign to ensure that all practitioners and judges will be properly informed about the benefits of ADR and that the public and small businesses will be alerted to the benefits of ADR. Also an authoritative handbook should be prepared, explaining clearly and concisely what ADR is and giving details of all reputable providers of mediation. This should be the standard handbook for use at all Judicial Studies Board seminars and CPR training sessions concerning mediation. The authors of *A Practical Approach to Alternative Dispute Resolution* express in the preface to the handbook, published this year, the hope that their book will meet that requirement (Blake, Browne & Sime, 2011).

Noteworthy is that Jackson LJ also notes (Chapter 27, paras 1.6-1.7, page 274) that those consulted who use the Commercial Court in the event of large commercial claims, are largely satisfied with the timely and cost-effective way in which it deals with cases. The Report quotes practitioners whose clients are of the view that costs in the Commercial Court are usually proportionate and that clients are attracted to litigating there precisely because it provides "Rolls-Royce Service", especially in relation to the extensive disclosure available. In this respect there is another comparison with the situation in the Netherlands. The Enterprise Chamber of the Amsterdam Court of Appeals, which deals with issues of mismanagement in certain legal entities and can order an inquiry into the state

of affairs of a company, is a much favored court in the event of disputes between shareholders and other stakeholders. Part of the explanation of the attraction of this court is its flexibility and its specialist expertise. Yet, as I will address next, large companies favor ADR also.

Businesses?

Do entrepreneurs and companies – as important repeat players when it comes to meeting with conflicts – want to use mediation? There is not yet one answer to that. There is a vast body of evidence in literature (Gans, 1997; Lipsky & Seeber, 1998; Lande, 2000; American Arbitration Association, 2006), that large companies have discovered the advantages of mediation. The outcome of the study undertaken by the American Arbitration Association in 2006 confirmed the findings of the Cornell study by Lipsky and Seeber in 1998, with respect to the ongoing use of both mediation and arbitration by legal departments of *Fortune* 1000 companies, and it records increases in the use of ADR procedures along with improvements in the perceived qualifications of mediators and arbitrators (page 26).

Large companies having realized that one size does not fit all, have developed in house knowledge on conflict analyses and conflict management, to ensure finding the best procedure for each dispute (Tümpel & Sudborough, 2011). Companies like Bombardier (Steinbrechter, 2011) Akzo Nobel (Eijsbouts, 2011), Siemens (Gans & Stryker, 1996), Miele, Dupont de Nemours and Royal Dutch Shell are by now 'disputewise'. They have come to realize that a systematic approach to managing business disputes serves their overall business interests.

The use of a Dispute Resolution Matrix and Early Assessment Programs help to determine very early on what would be the best option to deal with an identified conflict. These systems use methods such as allocation of points to certain elements of a conflict, to score whether one will opt for mediation, adjudication, arbitration, litigation or expert determination. CPR, the American institute for Conflict Prevention and Resolution, developed an Early Case Assessment Toolkit (www.cpradr.org) designed to facilitate more informed and expedited decision-making at the early stages of a dispute. The process calls for a team working together in a specified time frame to gather the key facts of the dispute, and identify the key business concerns, to assess the various risks and costs the dispute poses for the company, and enables an informed choice or recommendation on how to handle the dispute. It is all about matching the case to the process, or vice versa (Sander & Goldberg, 1994; Sander & Rozdeiczer, 2006).

Conflict Management Systems can come in many different sizes and shapes (Simon, 2004). Mediation for large companies has become an integrated tool for trying to avoid and settle disputes at a minimum of cost and a maximum of benefit to their business interests. There is no doubt that in any event, large companies do want to make use of mediation, whenever and wherever appropriate. It is a matter of 'horses for courses'. Not every case is suitable to be dealt with in mediation. Sometimes there are clear contra-indications to mediation. Such indicators may be that it concerns a matter of principle, a precedent valid beyond the immediate parties, trying to maximize or minimize the recovery, or public vindication. Also the jackpot syndrome, the wish to fence off wholly frivolous claims or a downright unwilling counterparty. Partial contra-indications can be different views of the law or the need for a judicial enforcement (Sander & Rozdeiczer, 2006, p. 36-37). The tools of a Dispute Resolution Matrix or a multi layered Early Assessment Program help the dispute wise company to select the best approach in case of a conflict. ADR and certainly also mediation in those programs feature on par with the other options to deal with a conflict. In terms of expertise outside counsel has to be on at least equal footing with in house counsel and many executives in larger companies, when it comes to the capability to discuss in depth, the potential and the intrinsic differences of the various options to be considered.

The AAA study of 2006 revealed that there is a greater use of mediation and arbitration among *Fortune* 1000 companies than in mid-size and private companies. Yet, the same considerations of pros and cons apply in the case of conflicts that may be confronting those mid-size and private companies. The explanation for the lesser use of mediation by smaller companies is that these

companies do not yet have sufficient realistic information on ADR procedures. They lack practical experience with these procedures (Gläser, 2007). My own research amongst in house counsels and chief financial officers (“CFO’s”) confirms this. From 119 responses to a questionnaire that was sent out to 1088 in house counsels in mid and small cap and private companies in the Netherlands, only 38.7% declared to have had any experience with mediation. Of 26 CFO’s questioned, only 19.2% said to have had experience with mediation. It is my feeling that small and medium sized companies in particular and start ups, have much to gain by utilizing conflict resolution methods that are proven to be cost effective, saving time and helping to retain business relationships, in addition to enabling one to remain the owner of the solution to which one agrees (Blancato & Gibson, Jr., 2010). If the assumption is correct that lack of experience with ADR is one of the reasons for not using mediation more often, it will be a matter of time only, before also in smaller companies mediation will become a kitchen tool.

In spite of criticism on the use of mediation (Silby, 2002) and the relative slowdown in the use of mediation after its first entry onto the market of conflict resolution, mediation is expected to be used more and more widely (Sander & Rozdeiczer, 1994; Lipsky & Seeber, 1998). Mediation is here to stay and it will blend into the environment. More experience with mediation will allow for better use and combination with other tools into hybrid forms of ADR (Roberts & Palmer, 2005, p.289-324; Leathes, 2010). Mediation will not be ‘one hand clapping’ (Genn, 2008, p. 125) if combined with arbitration (Phillips, 2010; Schneider, 2011), and/or binding advice (Golann & Aaron, 2010) or adjudication. Businesses want mediation or will be wanting to use it.

Lawyers?

Addressing the members of a Law Society, I will speak of attorneys at law. Do attorneys at law – be it solicitors or barristers – want mediation? My reply is that it is not a matter of wanting mediation or not. Who questions whether an attorney at law needs to avail over knowledge of the law or the Civil Procedure Rules? There is no doubt that knowledge of ADR is one of the requirements to be able to practice law. Mediation is part of ADR. It is therefore that I would want to steer the question whether attorneys at law have an option to want mediation or not, away from whether one is a believer in mediation or not. It is not about for or against. Knowledge of mediation is part of the skills mix one needs to avail over in order to qualify as an attorney at law in today’s and tomorrow’s market place. It ought to be on the roaster of every legal education program. To be truly effective, attorneys at law need to know when and how to mediate, negotiate, conciliate, facilitate, arbitrate or litigate. Whether and when to make use of this knowledge, is only in part left to the free will of the attorney at law. Clients are entitled to information about ADR before deciding to litigate. The Code of Conduct of The Netherlands’ Bar Association states that a settlement often is to be preferred over litigation (R.3.) and that the attorney at law is obliged to inform her client of ‘important information’(R. 8). In other countries clients might incur penalties in terms of having to pay or not being able to recuperate, costs of litigation if mediation has not been tried before litigation was initiated or one did not comply with the suggestion or order of a court to attempt a settlement in mediation. Clients will have to be informed of such risks beforehand. Clients are better informed anyway. They will learn about mediation from media campaigns. In the U.S.A. recently, a television series about mediation has started featuring a mediator as the star (“Fairly Legal”). Clients will expect to be advised about the best approach to solving their problem based on an approach compared to what in large companies is translated into a Dispute Resolution Matrix or Early Assessment Program. It is said that in the end – either before, during or after litigation – 98% of all commercial disputes are settled. This means that litigation as well as mediation, arbitration or conciliation ought not to be more than a means to an end. The following citations summarize the changes that are taking place:

“As users become better informed about how and why mediation works, demand for less conventional, more tailored processes will increase; hybrids of facilitative and evaluative elements, including early case assessment and non-binding opinions

will grow. Many trainers still teach a purely facilitative model of mediation, but mediators also need to learn how, when and whether to deploy evaluative and transformative techniques as needed. Gradually, training will adapt to include these needs.

More mediation panels will be process and/or subject-matter oriented, requiring mediators to demonstrate, in addition to their mediation competencies, knowledge of technical fields, conflict diagnostics, process design and inter-cultural communications. Mediation will no longer be viewed as an alternative form of dispute resolution and will elevate to become the primary form. In the commercial arena, good conflict management will be considered part of Good Corporate Governance and companies will design their own systems for evaluating, managing and resolving disputes. A more informed and circumspect user will emerge.” (Leathes, 2010, p. 7).

and

“A 98 percent civil settlement rate and the increasing use of negotiation, mediation, and collaboration in resolving lawsuits have dramatically altered the role of the lawyer. The traditional conception of the lawyer as ‘rights warrior’ no longer satisfies client expectations, which centre on value for money and practical problem solving rather than on expensive legal arguments and arcane procedures.” (MacFarlane, 2008, p.ix).

“A Legal appraisal should be woven into the ongoing assessment and development of a strategy that aims to achieve the best possible result for the client, which is furthered by selecting a particular dispute resolution process, mediator, approach to bargaining, and, perhaps ultimately a proposal for settlement.”(MacFarlane, 2008, p. 176).

Now that mediation is not necessarily the exclusive domain of the legal profession, one might say that attorneys at law ought to want mediation. Given the push from governments, institutions and courts and because businesses are adopting mediation to an increasing extent, the segment of the market for legal services consisting of litigation may be impinged upon by other professionals such as psychologists, economists, business valuers and auditors. Full comprehension of mediation techniques may not even be enough to be able to supply conflict solution services. In future a share of that market will have to be serviced on line, requiring knowledge of modern communication techniques also (Susskind, 2008; Schulz, 2011).

It is my belief that the emergence of mediation in the market of conflict resolution, is an expression of a changing world. The desire for self determination (Ryan & Deci, 1985, 2000) and the access to information that are at the basis of movements towards change in the Middle East, in micro, are not different in social relationships between individuals. Transparency and accountability is expected from leaders both in politics and the corporate world. Moral issues are brought into consideration in politics and business (Planalp, 2001). Clients in the market for legal services will want to be more self determined and better informed. Access to legal information is freely available to everyone on the internet. The segment of the market for legal services consisting of advising on the law or providing forms for agreements - even concerning more complicated issues or products - may, to a noticeable extent, dwindle because laws, explanations and best practice documentation, will be freely available on the internet. This will alter the working relationship between attorney at law and the client in the sense that finding the best medicine for the cure will be an exercise of an open exchange considering all the options available. Added value will have to come from supporting the client in finding solutions to legal problems by deploying more skills than availing over knowledge of the law (information services) or access to litigation. Knowing when and how to mediate, negotiate, conciliate, facilitate, arbitrate or litigate will minimally have to belong to the basic equipment in the tool kit of the New Lawyer.

Notes

- American Arbitration Association. (2006). *Dispute-Wise Business Management*. New York.
- Blake, S., Browne, J. & Sime, S. (2011). *A Practical Approach to Alternative Dispute Resolution*. Oxford: Oxford university Press.
- Blancato, W.A. & Gibson, Jr., C.A. (2010). *Controlling Your Own Destiny: You Can With Mediation* (p. 207-223) in AAA Handbook on Mediation, 2nd Ed. New York: JurisNet.
- Camp, J. (2002). *Start with No*. New York: Crown Business.
- Diamond, I. (2011). *The Value of a Psychologist Mediator*.
www.mediate.com/people/personprofile.cfm?auid=1148.
- Eijsbouts, A.J.A.J. (2011). *Mediation as Management Tool in Corporate Governance* (p. 67-81) in A. Ingen-Housz (Ed.), *ADR in Business*. Alphen aan de Rijn: Kluwer Law International.
- Galanter, M. (1984). *World of Deals: Using Negotiation to Teach About Legal Process*. 34 J. Legal Educ. 268.
- Gans, W.G. & Stryker, D. (1996). *ADR: The Siemens' Experience*, Dispute Resolution Journal, AAA, 1996.
- Gans, W.G. (1997). *Saving Time and Money in Cross-Border Commercial Disputes*, Dispute Resolution Journal, AAA, 1997.
- Genn, H. (2008). *Judging Civil Justice*. The Hamlyn Lectures 2008. Cambridge: Cambridge University Press.
- Gläser, U. (2007). *Practising Conflict Management*. Report Europa-Universität Viadrina Frankfurt (Oder). Institute for Conflict Management. www.europa-uni.de/ikm.
- Golann, D. & Aaron, M.C. (2010). *Using Evaluations in Mediation* (p. 327-343) in AAA Handbook on Mediation, 2nd Ed. New York: JurisNet.
- Korobkin, R. (2002). *Negotiation Theory And Strategy*. New York: Aspen Publishers (Wolters Kluwer Law & Business), Chapter 8, p. 243 – 257.
- Leathes, M. (2010). *2020 Vision. Where in the world will mediation be in 10 years?*
www.imimmediation.org/2020-vision-article .
- Limbury, A. (2011). *ADR in Australia* (p. 429-457) in A. Ingen-Housz (Ed.), *ADR in Business*. Alphen aan de Rijn: Kluwer Law International.
- Lipsky, D.B. & Seeber, R.L. (1998). *The Appropriate Resolution of Corporate Disputes; A Report on the Growing Use of ADR by U.S. Corporations*. Martin and Laurie Scheinman Institute on Conflict Resolution. Paper 4.
- Lande, J. (2000). *Getting the faith: Why Business Lawyers and Executives Believe in mediation*. Harvard Negotiation Law Review. Nr.5, p. 137-232.
- Massie, G. (2011). *Basic Business Issues of Mediation Centres* (p. 211-234) in A. Ingen-Housz (Ed.), *ADR in Business*. Alphen aan de Rijn: Kluwer Law International.
- Mayer, B. (2009). *Staying with conflict*, San Francisco: Jossey-Bass.
- Phillips, G.F. (2010), *Same-Neutral Med-Arb: What Does the Future Hold?* (p. 75-87) in AAA Handbook on Mediation, 2nd Ed. New York: JurisNet.
- Planalp, S. (2001). *Communicating Emotion, Social, Moral and Cultural Processes*. Cambridge: Cambridge University Press.
- Roberts, S. & Palmer, M. (2005). *Dispute Processes. ADR and the Primary Forms of Decision-Making*. 2nd Edition, Cambridge University Press, p. 45 -78.
- Roo, A. de & Jagtenberg, R. (2004). *Europese Mededingingspraktijken*. Den Haag: Boom Juridische Uitgevers.
- Deci, E. L., & Ryan, R. M. (1985). *Intrinsic motivation and self-determination in human behavior*. New York: Plenum.
- Ryan, R. M., & Deci, E. L. (2000). *Self-determination theory and the facilitation of intrinsic motivation, social development, and well-being*. American Psychologist, 55, 68-78.
- Sander, F.E.A. & Goldberg, S.B. (1994). *Fitting the Forum to the Fuss: A User-Friendly Guide to Selecting an ADR Procedure*. Negotiation Journal, Volume 10:1, p. 49-68.

Sander, F.E.A. & Rozdeiczer, L. (2006). *Matching Cases and Dispute Resolution Procedures: Detailed Analysis Leading to a Mediation-Centered Approach*. Harvard Negotiation Law Review. Vol. 11:1. Spring 2006, p.1-41.

Schulz, Th. (2011). *The Roles of Dispute Settlement and ODR* (p. 135-157) in A. Ingen-Housz (Ed.), *ADR in Business*. Alphen aan de Rijn: Kluwer Law International.

Schonewille, M.A. & Fox, K.H. (2011). *Moving beyond 'Just' a Deal, a Bad Deal or No Deal* (p. 81-117) in A. Ingen Housz (Ed.), *ADR in Business*. Alphen aan de Rijn: Kluwer Law International.

Schonewille, M.A. & Merks, F. (Eds.). (2011). *The secrets of gaining the upper hand in high performance negotiations*. Antwerpen-Apeldoorn-Portland: Maklu.

Shariff, K.Z. (2003). *Designing Institutions to Manage Conflict: Principles for the Problem Solving Organization*. Harvard Negotiation Law Review. Nr.8, p. 133-171.

Silby, S.S. (2002). *The Emperor's New Clothes: Mediation Mythology and Markets*. Journal of Dispute Resolution. Vol. 2002:1, p. 171-177.

Simon, B. (2004). *Are Businesses Missing The Dispute Resolution Boat? A Study Underscores Lack of Early Intervention Usage*. Mediate.com. www.mediate.com/people/personprofile.cfm?aid=76.

Schneider, M.E. (2011). *The Art of Blending Arbitration and Other ADR Methods: Some Examples from International Practice* (p. 313-327) in A. Ingen Housz (Ed.), *ADR in Business*. Alphen aan de Rijn: Kluwer Law International.

Steinbrecher, A. (2011). *Show me the value: Bombardier's Dispute Management System*. Paris ICC Conference, *Win Win Strategies*. February 10, 2011.

Sturrock, J. (2011). *Mediation Saves The UK An Annual £1.4bn While The Cost Of The Services That Help To Achieve It Is A Mere £15m*. www.mediate.com/people/personprofile.cfm?aid=481.

Susskind, L. & McMahon, G. (1985), *The theory and practice of negotiated rulemaking*, 3 Yale Journal of Regulation 133.

Susskind, R. (2008). *The End of Lawyers*

Tercier, P. (2011). *ADR and Arbitration* in A. Ingen-Housz (Ed.), *ADR in Business*. Alphen aan de Rijn: Kluwer Law International, p. 3-12.

Tümpel, H. & Sudborough, C. (2011). *ICC's ADR Rules 2001-2010: Current Practices, Case Examples and Lessons Learned* (p. 275) in A. Ingen Housz, *ADR in Business*. Alphen aan de Rijn: Kluwer Law International.

Welsh, N.A. (2011). *The Importance of Context in Comparing the Worldwide Institutionalization of Court-Connected Mediation* in A. Ingen-Housz (Ed.), *ADR in Business* (p. 235-253). Alphen aan de Rijn: Kluwer Law International.

Wilensky, H. L. (1964). *The Professionalization of Everyone?* American Journal of Sociology 70, p. 137-158.