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The Armchair Traveller

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Book Review

The Armchair Traveller

Nadja Alexander (ed)

*Global Trends in
Mediation (2 ed)*

Kluwer Law International

This is a book that makes stimulating reading for academics, students and policy-makers.

For me, a mediation practitioner, promoter and proselytiser, it is a coffee table book to be read and re-read, sprawled in an armchair with a good wine. For the academic and student it is a textbook, to be read and re-read hunched over a desk, with a coffee. For the policy-maker it provides vignettes of possibilities. For each of us, it offers an experience of *Around the World in Eighty Days* crossed with *The Accidental Tourist*, whether business class or backpacking!

Professor Nadja Alexander is a citizen of the world. She is a mediator and academic. Among many roles, she is the Director of ADR and Practice at the Australian Centre for Peace and Conflict Studies (ACPACS) at the University of Queensland and currently Humboldt Fellow, European University Viadrina in Frankfurt, Germany. She is known for the excellence of her key-note addresses, courses and workshops throughout the world. She is eminently qualified to edit this book.

As editor of her second edition of *Global Trends*, Alexander has again assembled articles by experts from a number of common law and civil law countries. For this edition she has added chapters on France and Quebec. She has successfully integrated her well-known depth of knowledge of mediation theory and practice with her breadth of experience of world developments to compile a text that provides the reader with choices ranging from large scale exploration for generalities to micro research for details.

By travelling through a significant part of the world mediation landscape, *Global Trends* provides both an exploration of the nature, as well as of

evolutionary patterns, of mediation.

Global Trends commences with a chapter by the editor that sets the scene and develops both a comparative framework and the reader's enquiring mind. For me this chapter creates a conceptual 'language', 'mediation Esperanto', adding value to the following chapters of mediation in 14 jurisdictions, which appear in [almost] strictly alphabetical order: Australia, Austria, Canada, Denmark, England and Wales, France, Germany, Italy, the Netherlands, Scotland, South Africa, Switzerland and the USA. It is Quebec that is out of order, following Canada and underlying France.

The generalisations of Chapter 1 motivate the reader to move on for the substance underpinning the claims. For example on page 7, 'Mediation has grown rapidly in many common law countries, such as the United States, Australia, Canada, and England and Wales since the 1970s and 1980s.'; 'in contrast, civil law countries have displayed a greater reluctance to embrace the practice' and 'it is important to point out that not all national chapters confirm these systemic patterns. The cases of the Netherlands and South Africa provide two exceptions'.

As well as creating an itinerary, Chapter 1 creates opportunities for the authors who follow. It moves their discussion past those ADR red herrings of definition and process, by identifying the 'Six Objectives of Mediation' as,

- efficient resolution
- access to justice
- self-determination of parties
- transformation
- community focus
- social control.

Chapter 1 goes on to intrigue the reader with claims such as, 'the more highly regulated the ADR industry the more likely it is that mediation program objectives will compete with rather than complement one another' (p 13).

Alexander then canvasses, in a thoroughly academic style, a wide range

of topical issues of mediation, including regulation, institutionalisation and professionalisation.

A basic principle of enhancing learning is to move from the known to the unknown. As an Australian mediator, I found it grounding to read Tania Sourdin's succinct overview entitled 'Mediation in Australia: Impacts on Litigation' which provides Australian commentary on a range of the issues raised in Chapter 1. Knowing that the perspectives of many countries were to follow, I became aware that the Australian responses, with which I am familiar, were *some* responses rather than what I had assumed to be the responses. I found myself looking forward with anticipation to the chapters to follow.

In Chapter 2 Christine Mattl et al discuss mediation in Austria: its origins in victim/offender mediation, the progressive legislation that governs it and why a facilitative style is dominant. The authors address the contradictions implicit in there being a surplus of highly-trained mediators in a country in which mediation has expanded into a number of areas.

Canada, as Alain Prujiner explains in Chapter 3, is grappling with issues of voluntariness of mediation and of professionalisation in a nation in which mediation began in the first half of the twentieth century. From Louise Otis and Eric Reiter we read of a decade of judicial mediation in Quebec, from the perspective of how adjudication is complemented by mediation, with the mediator here being a judge.

Vibeke Vindelov's description of mediation in Denmark outlines its unique beginnings and drew my attention to the frequency with which family mediation and victim/offender mediation are the settings in which mediation has originated. Vindelov documents the evolution of victim/offender mediation from its establishment, followed by its success, to the current phase of uncertainty.

Having long regarded CEDR (Centre



for Dispute Resolution) as a leader among overseas ADR organisations, I found that Loukas Mistelis's chapter on England and Wales made for affirming reading. Tables describing a variety of constructs, including attitudes to mediation and sources of mediation, provide inspiration for the reader to hypothesise regarding explanations for the trends, and to wonder how tables based on Australian research might compare.

Deborah Macfarlane provides an overview of mediation in France along three avenues: the origins, its evolution and the present scope. Mediation is moving from strength to strength in France due to the government taking the initiative, as well as following the recommendations of the European Union to support mediation in victim/offender, 'family, civil, commercial, consumer and internet disputes' (p 221). In a familiar pattern, legislative enthusiasm and optimism for mediation is ahead of consumer demand.

In Chapter 9 Alexander et al remind the reader that mediation is an interest-based process and that other forms of ADR in Germany, including 'Schlichtung' (conciliation) are not interest-based and 'provide the practitioner with a broader range of interventions' (p 224). Like other authors in *Global Trends*, they address ODR (online dispute resolution), among many other fields, and explore the checks and balances in a variety of settings and jurisdictions.

Giuseppe De Palo and Luigi Cominelli describe the emergence of mediation in Italy in terms of a recent reluctant reaction to a much-revered but rigid and understaffed court system. Italian legislation now promotes mediation through incentives to mediation organisations. Presented in 2005, Bill 5492 provides for judges to ask parties to undergo 'tentative' mediation 'which should not exceed 45 days in duration' (p 268).

In the Netherlands, as Annie de Roo and Robert Jagtenberg explain, mediation is the result of proactive cooperation among practitioners, the government and academia. In the absence of statutory regulation, the peak body, the NMI (Netherlands Mediation Institute), sets the codes

of behaviour and standards for the profession.

In keeping with the well-known diversity of approach throughout the countries of the United Kingdom, and in contrast with England and Wales, Scotland is biding its time regarding mediation, according to Margaret Ross. 'The rare mediation that does occur without institutional initiative' could perhaps be said to be mediation in its quintessential form: provided by the people for the people.

With 'one of the most progressive constitutions in the world' (p 333), it could be expected that mediation would be well-established in South Africa. On the other hand, with a recent history of endemic aggression, it could be expected that 'old habits might die hard'. Mohamed Paleker's research provides an overview of mediation in family and labour disputes, to name a few. The author's concerns for maintaining the present momentum include 'formalistic state-sponsored mediation', 'under-funded and under-resourced' public mediation, and lack of recognition of mediators as a profession.

According to Isaak Meier, in Switzerland although 'adjudication has never played a significant role' (p 387), following some resistance to mediation, lawyers are now very supportive. This situation sets a scene for excellent mediation by those who have completed training of at least 200 contact hours. Even so, there is a situation of 'high supply versus low demand' (p 386) of mediators for mediation.

Many of the authors above refer to US research. This is not surprising, because as Kimberlee Kovach notes in the final chapter, 'Mediation in the United States is well established'. This chapter traces the history of mediation through experimental, implementation and regulation phases and explores possibilities for mediation and two of its relatives: collaborative law and therapeutic jurisprudence.

Some would say that *Global Trends* is a guided tour by law academics (which largely it is) for law academic passengers. At first glance it may be the law academics and policy-makers together with students of law and students of



policy to whom it will appeal. Explore it further, however, and the mediation practitioner, like any traveller, will find hidden riches.

The chapters of *Global Trends* epitomise global diversity and could have been as difficult as global diversity to conceptualise. For the reader to integrate the range of styles, circumstances, approach, culture, issues and emphasis, some assistance is essential. Alexander provides indispensable assistance in a number of forms. As well as Chapter 1 mentioned above, each chapter is introduced by an abstract and extended by a plethora of footnotes including many primary sources. Following a detailed Table of Contents, each of the many cases and pieces of legislation referred to throughout the book is listed in a Table of Cases & Legislation providing a ready reference for following trends. To conclude, there is a comprehensive comparative mediation table summarising, jurisdiction by jurisdiction, various constructs including 'Primary fields of Application of Mediation'; 'ADR Regulation' and 'Training and Accreditation'.

Global Trends is a book which provides a comprehensive overview of mediation in 14 jurisdictions. I expect it will serve a multitude of purposes. As well as being a wonderful resource, it provides a context for valuing and challenging the familiar mediation systems of home, wherever that may be. The field of mediation is a dynamic one in many of the countries covered in this book, tending to allow sufficient local adventures as to risk the indigene developing a myopic, even parochial vision of mediation. For the traveller, each chapter provides the experience of a small-scale map of each country: there's the confidence of getting your bearings blended with the implicit knowledge of the enormity of possibilities for exploration. If, in the twentieth century, *Global Trends* could have been subtitled 'The Michelin Guide to Mediation', then in the twenty-first, it would have to be 'Global Trends in Mediation: your GPS'.

For the third edition, which I look forward to, I have some comments for consideration. In terms of content, for the reader with a background other than law, I suggest including an explanation

of the distinguishing features of civil and common law jurisdictions. Regarding the format, and quoting a colleague: 'to do justice to such a comprehensive volume and to the infinite thematic matrices which formed as I read, I would appreciate a more detailed index'.

Maybe the third edition will come in two volumes: I'm now curious to set my GPS for other regions of the world: Asia and South America to start with.

Global Trends in Mediation is a book which contributes significantly to the emergence of a 'collective consciousness' of mediation while enabling a *glocalisation* of the mediation movement: 'think globally, act locally'. It is a book to be re-read for new information, nuances and inspiration as each topical issue arises. The first of my next few *Global* expeditions will be specifically with an eye to accreditation issues and solutions. ●

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developments in ADR

- **National Alternative Dispute Resolution Advisory Council's** (NADRAC) publication, *Legislating for Alternative Dispute Resolution: a guide for government policy-makers and legal drafters* was launched when the Attorney-General met with NADRAC at the 40th council meeting in Sydney. The report identifies the key issues policy-makers need to consider when incorporating ADR processes into new or existing legislation. It achieves this by reviewing relevant statutes and cases and providing a discussion of relevant policy issues. The report can be viewed at <www.nadrac.gov.au>.
- On 23 November 2006, the Attorney-General announced **an expanded charter for NADRAC**. The new charter includes a focus on promoting the use of ADR. It also provides for NADRAC to give advice on restorative justice and the use of ADR in relation to criminal offences. The new charter can be viewed at <www.nadrac.gov.au>.
- The **Chartered Institute of Arbitrators Australian Branch** has launched a new quarterly newsletter, *The Australian ADR Reporter*. The aim of the newsletter is to improve communication between members of the institute and to provide readers with news and information relating to all aspects of dispute resolution. To view the newsletter, visit <www.arbitrators.org.au>.
- The **European Commission** has recently committed to use mediation and other forms of alternative dispute resolution in disputes with contractors, many of whom have made complaints to the Commission Ombudsman. While the Commission states it cannot require contractors to mediate disputes with their subcontractors, the Ombudsman is encouraging the Commission to recommend mediation in such situations, as well as using mediation in disputes over grants made by the Commission.
- The **New Zealand Human Rights Commission** has illustrated the success of its dispute resolution program in the recent case of a claim against an airline by a Muslim religious leader who was removed from a plane as a security risk. After the mediation process, the airline gave the cleric a written apology and financial compensation for missing his presentation at an overseas conference. They have also instituted cultural awareness training and other changes to avoid recurrences.
- The **Chinese Ministry of Justice** is developing comprehensive legislation to regulate the practice of mediation throughout China. The legislation was proposed by the 10th National People's Congress, which recognises the 'pivotal role' mediation already plays in resolving civil disputes and promoting economic development, but sees a need for improved quality, standardisation and greater financial support.



ADR diary

- **NADRAC** will be holding its 3rd **National Alternative Dispute Resolution Research Forum**. The Forum will be held on 13 and 14 July 2007 at the La Trobe University City Campus in Melbourne. It will provide an opportunity for researchers to discuss their research, as well as trends and issues in researching Alternative Dispute Resolution. For more information contact the NADRAC secretariat by phone (02) 6250 6272, by email with the subject 'Research Forum Enquiry' to <nadrac@ag.gov.au>, or by fax (02) 6250 5980.
- The **5th International Forum on Online Dispute Resolution** will take place in Liverpool, England from 19–20 April 2007. The Liverpool ODR Forum aims to provide an overview of the diverse techniques used in ODR, the prospects of ODR and will explore and analyse the necessity for developing and promoting ODR. For more information, contact Graham Ross at <g.ross@theclaimroom.com>.
- The **Australian Commercial Dispute Centre** will also be holding the **Mediation: Skills, Techniques and Practice Course** in Sydney on 13–16 March, and in Coffs Harbour on 2–5 April. An additional course will be held in Melbourne, Victoria, from 27 February–2 March. **Optional Accreditation Days** are being held 6 March in Melbourne, 13 or 14 April in Coffs Harbour, and 13 February and 24 March in Sydney. This mediation workshop includes activities, practice and coaching. For more information or to register, refer to <www.acdcltd.com.au>.
- **CEDR** are holding a 5-day **Mediation Skills Training** in London from 21–23 and 26–27 March 2007. The course will address how to settle disputes effectively, add value to commercial disputes, manage the mediation process and facilitate advanced negotiation, advise others on the features and uses of other effective dispute resolution techniques, and to transform the way you communicate. For more information, or to book a place, contact <training@cedr.co.uk>.
- **Bond University Dispute Resolution Centre**, in conjunction with the **Leo Cusson Institute**, is holding an **Advanced Mediation Course** in Melbourne on 22–25 March 2007. This will be instructed by Laurence Boulle and John Wade. For more information or to book a place, contact phone (03) 9602 3111 or alternatively email <lpd@leocussen.vic.edu.au>.
- **Bond University Dispute Resolution Centre** is also holding a **Basic Mediation Course** on the Gold Coast on 29 March–1 April 2007. This course also has a Foundation Family Mediation stream run in conjunction with AIFLAM (Australian Institute of Family Law Arbitrators and Mediators). This will be instructed by Laurence Boulle and John Wade. For more information or to book a place, contact (07) 5595 2039 or alternatively email <drc@bond.edu.au>.
- The **Australian Centre for Peace and Conflict Studies**, in conjunction with the University of Queensland, is holding a 4-day intensive **Mediation Course** at the university's St Lucia campus. The interactive and skills-focused course is aimed at professionals who either want to start a mediation practice or who need mediation skills as part of their professional duties. The first course for 2007 will begin 12 April, with courses in September and December to follow. For more information, contact the ADR Program Administration on (07) 3346 8742 or at <mediate@uq.edu.au>.

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