ADR Bulletin
ADR Bulletin

Volume 9 | Number 7 Article 2

5-1-2007

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Recommended Citation
(2007) "Interview with Dr Tom Altobelli, Federal Magistrate," *ADR Bulletin*: Vol. 9: No. 7, Article 2.
Available at: http://epublications.bond.edu.au/adr/vol9/iss7/2

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Views from ADR practice

Interview with Dr Tom Altobelli, Federal Magistrate

***Dr Tom Altobelli** is a Federal Magistrate and former Associate Professor of Law at UWS, solicitor and mediator.*

When did you first become involved in mediation, what attracted you to this field and what were your expectations at the time?

I did my first training in about 1989, and undertook my first mediation in about 1990. I was a disillusioned litigator looking for a more satisfying way of helping my clients reach enduring settlements, especially in family law. I was also looking personally for a more constructive role in conflict resolution.

What do you see as the major changes in this field during your involvement?

Its acceptance and respectability in the legal profession … the growth of a significant body of home grown research and writing in the field … the rapid expansion of training and teaching, both professional and academic ... the acceptance of mandatory forms of ADR … the emergence of a profession of ADR practitioners, many of whom can now make a living out of it.

On the theoretical side which book or article stands out as having influenced your thinking on mediation?

Too numerous to mention — for the first 10 years I just devoured everything I came across. Some of the smaller hands-on books such as Dewdney and Charlton became the most used on my bookshelf.

In terms of your mediation practice, which skill or skills do you think are most essential?

Without a doubt, ranked 1–3, it is: listening, listening, listening.

What about the role of mediation and ADR in the broader social perspective? Some argue that it is essentially a system-maintenance process which preserves the status quo?

Rubbish. Whoever said this has never actually mediated and experienced first hand the sheer wonder of change in peoples' lives when they take control of their dispute and find enduring solutions to it.

What about at the personal level? What challenges or dilemmas most affect practitioners?

Good question. In my day the challenges were: Do I take the risk? What will my colleagues think of me? Should I stick my head out onto the chopping block?

My sense is those who did back then have thriving practices today. Today the market is more crowded, is more regulated and is more competitive. It is harder to get started and yet the market is significantly larger than it was a decade ago. The challenge today is to break into the marketplace and provide a distinctive service to a discrete segment of the market. My advice — just do it, but don't give up the day-time job.

As to the future, where do you see DR heading?

I see it having a much more prominent role, especially in family law contexts. I also see even greater implementation of mandatory ADR. The inexorable process of institutionalisation continues, with both positive and negative aspects.

What is your most memorable mediation moment (no names please)?

It was a family law mediation conducted in a locked courtroom, with two prison guards on the inside and two Commonwealth police on the outside. It was a custody dispute between two grandmothers and the child's father. The father was in custody because he had murdered the child's mother. He sat in the dock, with manacles on his feet. Each party was accompanied by family members in support. Two (very reluctant) male Farsi interpreters had to be used because of tribal dialects and historical mistrust. The cultural and emotional issues were enormous, as was the shadow of violence and crime.

Should that dispute have been mediated in the first place? It was. It settled. With my co-mediator Ann Pryor we managed to break through all those obstacles using that process called mediation. In a truly magical moment the remembrance of which even today sends a shiver up my spine we managed to get through to the maternal grandmother that we understood her pain. The grandmothers settled between them — they agreed that the paternal grandmother would have custody of the child.

What is your most forgettable mediation moment (no names please)?

I lost it, I lost my cool — I got angry and showed it participants at a large multi-party local government mediation. The moral of the story is, to be very careful about mediating at 10pm after you have been working all day — the reserves of patience have run down. Mediators are human too.

What are the four most useful things a mediator should take into the mediation room?

- Open ears
- Open eyes
- Open heart, and
- Open mind.

What is the most unusual place you have ever had to mediate (if no answer then fine)?

Outside a brothel. (Certainly more respectable than inside a brothel!) It was a local government matter.

What song best sums up your approach to mediation?

I'll get back to you on this ... ●

Tom Altobelli was interviewed by David Spencer from the editorial panel of the ADR Bulletin.

Published by ePublications@bond, 2007

developments in ADR

- The ***European Parliament*** passed a legislative resolution on 29 March 2007 on certain aspects of mediation in civil and commercial. The Parliament encouraged Member States to apply the Directive provisions in respect of cross-border cases of consumer mediation with a view to facilitating the proper functioning of the internal market. This will also include cases where a court refers parties to mediation, or where a national law prescribes mediation. The Parliament passed the legislative resolution as a means to encourage the development of and adherence to voluntary codes of conduct by mediators and organisations providing mediation services.
- The ***UNCITRAL Working Group II (Arbitration)*** held its 46th Session in New York from 5 to 9 February 2007. This session was dedicated to revising the UNCITRAL Arbitration Rules. Issues considered by the Working Group included the wording and location of the model arbitration clause. It was agreed that the wording of the clause should reflect the fact that the Rules have a contractual rather than a legislative nature. The 47th session of the Working Group will be held in Vienna, Austria on 10–14 September 2007. For more information, visit <www.uncitral.org/uncitral/en/commission/working_groups/2Arbitration.html>.
- The ***WA Chapter of LEADR*** is trialing a new mentoring scheme for graduates of LEADR training. This proposed six month scheme will link graduates with a member of the LEADR executive who mediates matters that are compatible with the trainee's area of interest. The trial will be evaluated towards the end of the year. For more information, visit <www.leadr.com.au>.
- ***JAMS, a New York based mediation group***, and the ***Hong Kong International Arbitration Centre*** (HKIAC) have announced a strategic alliance. The mission of the alliance is to promote more effective resolution of international business disputes through arbitration and mediation in both the United States and in Asia. JAMS CEO, Steve Price, acknowledges that alliances between international mediation groups are increasing due to the 'growth of arbitration and mediation as key business tools in the United States, Asia and in other parts of the world.' The alliance provides that both JAMS and HKIAC will coordinate on administration of arbitration and mediation cases in both regions. For more information, visit <www.jamsadr.com>.
- A ***new educational website*** on conflict resolution is now available for educators, policymakers, practitioners and students. The website includes worldwide developments in dispute resolution education and training, curriculum modules, administrative policy examples and access to current and pending legislation. For more information, visit <www.creducation.org>. ●

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