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Editorial: ADRB 'kon gres MH comments

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ADR bulletin

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SPECIAL LEADR Association of Dispute Resolvers ISSUE

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Editorial

ADRB 'kon gres MH comments

'kon gres 2009

Congress: 'kon gres. noun
An assembly for promoting
matters of common interest

Margaret Halsmith

This special issue of the *ADR Bulletin* comprises papers presented at and developed from the LEADR 'kon gres held in Melbourne in September 2009.

LEADR devised an interactive ADR conference experience for presenters and delegates. By integrating the giving and receiving of a variety of ideas, hypotheses and conundrums regarding ADR practice and theory, a rich dialogue was created.

Presenters were asked to include an interactive component in their session. All responded with enthusiasm and flair. Delegates were asked to be forthcoming during sessions in a way which resulted in the role of presenter being broadened to include listening to the audience and the role of the audience incorporating presenting to the presenter. Authors therefore arrived at 'kon gres with a completed paper and left with a draft. Delegates arrived with curiosity, experience and expertise and left with new ideas and frameworks and the knowledge that they had been heard.

This issue of the *ADR Bulletin* presents some of the dialogue-enriched papers. Others will follow in subsequent issues.

The general tenour of the articles conveys the mediators' quest for excellence in participants' mediation experience. The papers ask the reader to reflect upon what it is that mediators *do* for clients; what it is that mediators *provide* for clients. The articles analyse mediation as a craft, evaluating the experience from a client service perspective. That is, these papers shine a light on mediators' concerns for the consequences and outcomes for clients.

Focusing on outcomes for clients, Sourdin challenges mediator and system complacency to explore and encourage recognition of mediators as just one element in a system of dispute prevention, management and resolution. The intention to assist is not sufficient. Systems designed to assist participants are essential.

Boyle's paper uses the confronting image of war to set the scene for considering the experience of the client. She proposes that mediation follow guidelines of peace agreements rather than ceasefires.

Marshall reminds the reader of mediation fundamentals then undertakes a reality check on what mediators really can promise participants, arguing in support of finely honed mediator self-awareness in the interests of providing participants with better service.

Howieson provides intriguing data to highlight the nexus of qualitative and quantitative mediation research and the void in which these data lie, for want of a theory of why mediation works.

Information contained in this newsletter is current as at February 2009

**Editorial Panel****Nadja Alexander***Professor of Law
City University, Hong Kong***David Bryson***Conciliation Officer, WorkCover
Conciliation Service, Victoria***Peter Condliffe***Barrister, Director of Mediate and
Facilitate Australia, Victoria***Margaret Halsmith***Consultant, Mediator, Facilitator,
Trainer, Perth***Robert Hunt***Barrister, Arbitrator, Mediator,
Adjudicator Past President IAMA***Shirli Kirschner***Resolve Advisors Pty Ltd, Sydney***Michael Mills***Partner, Freehills, Sydney***David Spencer***Solicitor and Mediator,
Senior Lecturer in Law,
Macquarie University*

Referring to workplace mediation, Bryson provides an example of the frequent mismatch of mediation and workplace disputes; of mediation taking place in isolation from management and organisational systems. Questions need to be asked and answered before mediation can be assessed as being suitable for participants, constituents and the organisation.

Fleming's and Kazianis's ideas cafe session created a discussion which explored how mediators can assist parties to prepare for mediation in a way which will significantly increase their chances of resolution. Their article, summarising their findings and presenting an affirming check list, will appear in the next issue of *ADR Bulletin*. It reminds participants and mediators alike that 'if you fail to prepare you need to prepare to fail'.

This is an issue which presents the client as the *raison d'être* of mediation and which invites further comment and discussion. ●

*Margaret Halsmith
Chair, LEADR Board*

ADR RECENT DEVELOPMENTS

Mediation against discrimination

Members of a transgender social group in the US have agreed to mediation after threatening to sue a restaurant who refused them entry.

The restaurant claims it refused entry on the basis that their photo identification did not correspond with their appearance. The members of the transgender group are claiming they were discriminated against. They are planning to ensure as part of their agreement that the restaurant staff undergo training in gender sensitivity.

Thai police adopt mediation

The Phuket City Police in Thailand has added a mediation centre to their station. It is expected that the centre will reduce cases proceeding to court by up to 30%. The centre will deal with 'non-compoundable' crimes but will not deal with acts of violence or crimes against the state that are

unable to be settled in mediation.

This centre follows the success of the Phuket Provincial Court's where in 2009, 90.6% of civil cases and 72.35 of criminal cases were successfully mediated.

Mediation in juvenile justice

A recent study of the work of the Dispute Settlement Centre in Connecticut, US has shown that mediation between juvenile offenders and their victims reduces the likelihood of the youth re-offending to only 14.7%.

The program gives juvenile offenders of particular crimes to have the charges against them dropped and forces them to explain their actions and understand the consequences to the victim. The type of cases handled through mediation are generally misdemeanors such as threatening, vandalism, breach of the peace, and some assaults. ●