



Current Trends, Process and Practice in Mediation and Alternative Dispute Resolution

▸ A REVIEW OF THE LITERATURE



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Department of Labour
PO Box 3705
Wellington
New Zealand

www.dol.govt.nz

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INTRODUCTION

The growth of mediation over the last 20 years has promulgated quantities of literature both pragmatic and theoretical as practitioners and academics have grappled with the critical issues facing the development of mediation practice and alternative dispute resolution (ADR).

The briefing required that this literature review be focused on current national and international trends in mediation and dispute resolution and comment on any processes and practices that support professionals in the delivery of quality dispute resolution services, particularly those within a statutory context. The purpose of this literature review is to attempt to capture “the state of the art” as academics and practitioners currently regard it and has focussed on material produced between 2000 and 2007. The review has been written with a practical application in mind and is designed to set the context for discussion.

Although this review attempts to address the works of seminal thinkers, time constraints and limited access to information mean that some works will not have been included. In a review of the book “Managing Workplace Conflict: Alternative Dispute Resolution in Australia” by Van Gramberg, Tillett (2006) points out that given the importance of employment for most people and the number of disputes that arise, he is surprised at how little attention seems to have been paid to the resolution of workplace disputes in the literature of Alternative Dispute Resolution (ADR) in Australia and this would seem to apply to New Zealand as well.

What became apparent in the process of the review was the need to identify themes to help refine the material. With this in mind two themes were selected; the first relates to an explanation of the models and styles of mediation that are currently being promoted in the literature in an endeavour to capture some of the current thinking around the practice of mediation and ADR. The second theme relates more specifically to global trends and reflective thinking about the future emerging in the field of mediation and dispute resolution practice.

MODELS OF MEDIATION

The first step in examining national and international mediation and ADR trends is to examine the current thinking around mediation models

Boulle (1998) distinguishes between four models of mediation, the settlement, facilitative, therapeutic and evaluative and makes the point that mediators in practice might demonstrate use of two or more models.

Briefly summarised, the main objective of settlement mediation is to encourage incremental bargaining towards a central point between the two parties' positions, the mediator works to bring the parties off their positions to a compromise. In the facilitative model mediators are encouraged to focus primarily on helping the parties identify and express their interests and needs, assuming that this will bring to the surface common ground and highlight areas for trade-offs and compromise. Evaluative mediators try to provide disputants with a realistic assessment of their negotiating positions according to legal rights and entitlements and within the anticipated range of court outcomes, a style that is common where parties are in conflict over a single issue - often money. Finally the therapeutic model, which has a focus on dealing with the underlying causes of the problem with a view to improving future relationships between the parties.

Facilitative mediation (sometimes known as problem-solving mediation) is widely practised amongst the mediation community. Its primary focus is on the problem itself and mediators encourage parties to explore data and experiences related to the problem. The approach is pragmatic, focuses on underlying interests and needs and is well expressed in the influential work by Moore (1996). Critics of this approach argue that when mediators practising the model probe for issues underlying the conflict, they focus on information that relates to the problem itself rather than exploring broader issues relating to the parties' identities and relationships.

In the prominent work by Bush and Folger (1994) on Transformative Mediation the authors contrast their perspective on the practice of mediation with the more traditional problem-solving approach and explore the transformative potential of mediation. According to Bush and Folger the goal of problem-solving mediation is generating a mutually acceptable settlement of the immediate dispute. They see problem solving mediators as often highly directive in their attempts to reach this goal - they control not only the process, but also the substance of the discussion, focusing on areas of consensus and "resolvable" issues, while avoiding areas of disagreement where consensus is less likely. According to them although all decisions are, in theory, left in the hands of the disputants, problem-solving mediators often play a large role in crafting settlement terms and obtaining the parties' agreement.

The transformative approach to mediation does not seek resolution of the immediate problem, but rather, seeks the empowerment and mutual recognition of the parties involved. Empowerment, according to Bush and Folger, means enabling the parties to define their own issues and to seek solutions on their own. Recognition means enabling the parties to see and understand the other person's point of view - to understand how they define the problem and why they seek the solution that they do. Often, empowerment and recognition pave the way for a mutually-agreeable settlement, but that is only a secondary effect. The primary goal of transformative mediation is to foster the parties' empowerment and recognition, thereby enabling them to approach their current problem, as well as later problems, with a stronger, yet more open view. This approach, according to Bush and Folger, avoids the problem of mediator directiveness which so often occurs in problem-solving mediation, putting responsibility for all outcomes squarely on the disputants.

The narrative approach to managing and mediating conflicts was offered by Winslade and Monk (2000). This approach attempted to re-examine traditional approaches to conflict mediation by examining the stories (or discourses) we tell about our conflicts. The authors introduced theory that challenges assumptions that our interests are "natural" and argue that what people want does not stem from internal desires or interests. Instead people construct conflict from narrative descriptions of events and the stories we tell about these events condition our interests, both socially and culturally. Within the mediation framework a safe place is set up for disputants to tell their personal stories about the conflict and their relationship to it. The mediator then works to break down the conflict into its component parts and stories, and works to uncover the assumptions that each party brings to the conflict. Once the biases and assumptions about a conflict are uncovered, alternative approaches are considered and new stories about the conflict are created the aim being to move disputants from seemingly intractable conflict situations to new stories based on understanding, respect and collaboration.

There has been significant international debate since the publication of "The Promise of Mediation" (Bush and Folger 1994) and "Narrative Mediation" (Winslade and Monk 2000). These models have been positioned as alternatives to the interest-based approach that has dominated mediation practice especially in business and legal matters. Many mediators continue to identify with a particular model in their practice; others have found that their styles are an amalgam of various models. At Carleton University in Ottawa, Canada, Insight mediation is the model that is taught and practiced- it draws on the work of Canadian philosopher Bernard Lonergan and his theory of insight. According to Picard and Melchin (2007) mediators who practice this type of mediation look for direct insights (moments of clarity, the "Ah ha!") and inverse insights (those new insights that a mediator achieves by displaying curiosity and by challenging assumptions and expectations) into what the conflict means to each party by discovering what each party cares about and how that threatens the other party.

The Transformative and Narrative models maintain that probing for information about the problem keeps parties locked into a conflict and to achieve resolution a shift must be made away from the problem. In contrast, Picard and Melchin found when they looked at their own mediation practice they could, by focusing on the problem and by exploring the parties' concerns about the conflict, breakthrough to a deeper understanding of the relational issues of the problem. Using highly developed questioning and listening skills the mediator works to foster communication among the disputants to explore the full dimensions of the conflict. Insight mediators work under the assumption that conflicts are maintained by feelings of threat and the Insight mediator works to help parties examine and understand their underlying values and threats, both real and perceived. In comparison to the Transformative model, which the authors maintain focuses on the interactions between the parties (looking for opportunities to foster empowerment and recognition), and the Narrative model where the mediator works to co-construct a new non-conflict story (and spends little time probing the "problem" story), the Insight model takes parties through an in-depth exploration of the presenting problem rather than around it.

Whilst the Insight model does share some similarities with the problem-solving model, the difference between the Insight model and the Interest-based "problem-solving" model is, according to Picard and Melchin, that the Insight model is relationship-centred rather than problem-centred and assumes that parties must not only explore the problem, but move through and beyond it to understand "the deeper cares, concerns, values, interests and feelings that underlie the problem". In their view this model is well suited to conflicts where there is an ongoing relationship and, because of the newness of the model, they invite researchers and practitioners to evaluate its usefulness in a variety of contexts.

Another perspective is offered by Danesh and Danesh (2002) who use the consultative intervention model to offer a critique of institutionalized mediation. The three defining features of this model are that it is pro-active, unity-centred and educative, features which they argue are missing from the predominant mediation models. A pro-active effect offers three possibilities, firstly a disputant could leave a conflict resolution process with a better understanding of how to deal with the psychological and physical toll that conflict can have on individuals and their relationships. Secondly, disputants can learn how to better manage future conflicts without resorting to external intervention. Thirdly, disputants may learn how to approach future conflict in a way that lessens the appearance of conflict in the first place. Tied into this is the premise that our approach to conflict, the intensity of it and the way we pursue conflict resolution, is tied into our worldview – proactive conflict resolution requires making participants aware of the connection between their worldview, the conflict they are in and their approach to the resolution of that conflict. According to Danesh and Danesh conventional mediation is not designed to engage at the level of worldview.

Engagement in a consultative intervention model gives disputants the opportunity to learn about themselves and others, and how conflicts emerge, (a worldview self-education as they are encouraged to become aware of and reflect upon their own worldview), education as “challenge and transparency” meaning that the process itself educates disputants by challenging them to evaluate themselves, and their alternatives. According to the authors it is important that this process be transparent so disputants recognize the worldview underlying their approach to conflict. Encouraging disputants to consider how they can build a degree of trust and unity between themselves as a group rather than focusing on themselves as individuals, may result in conscious reflection and facilitate a more harmonious, meaningful process as disputants reflect upon the nature of conflict and their own behaviour in trying to settle the matter at hand. The authors contrast this with the interest-based approach (Moore 1996) where the job of the mediator is to help individuals to avoid “the particular idiosyncratic problems that are pushing the parties toward impasse” and focus them instead on an institutionalized model that aims at resolving the specific differences between them (Moore, 1996: 76). Finally, the authors consider that in combining these components, the consultative conflict resolution model should “invite participants to consciously reflect on the range of predominant worldviews and the relationship of those worldviews to approaches to resolving conflict”. The current challenge according to the authors is to recognize a condition of unity as the broader purpose of conflict resolution.

In a new article by Kressel (2007) the Strategic style of mediation is approached in which the mediator attempts to attend to the underlying dysfunction that is fuelling the conflict. The author maintains that although this style is illustrated in divorce mediation, there is little documented research or discussion about it. The author cites a number of writings that, in his view reveal little evidence of mediators who believe it is important to search for and address underlying causes of conflict and in fact most of the empirical studies focus on a “professional bent” to encourage discussions around interests rather than positions or a non-directive facilitator who aims to improve communications and understanding, regardless of agreement making.

The characteristics of the Strategic style are summarized as having a focus on latent causes, having a highly active mediator who is clearly the leader of the problem-solving process rather than a non-directive facilitator and a circumscribed, pragmatic focus. Mediators surface problems that are immediately relevant to solving a practical problem in an efficient manner. The author considers that the strategic style is a result of mediators’ training in disciplines with well-developed traditions of latent cause thinking, repeated experiences involving disputing parties with ongoing relationships and organizational contexts that support reflection about latent causes – such training is not typical of lawyers, labour mediators and the community mediators who govern the world of ADR. Finally, the author raises a number of empirical questions: “How common is the strategic style? In settings for which the strategic style as well as other styles are appropriate, how flexible are mediators in moving between styles, either from case to case or within a given dispute, as the

parties' motivation and circumstances alter? In settings for which the strategic style as well as other styles are appropriate, in what ways is the strategic style more effective or less so?"

Some recent literature from the USA and the creation of the Harvard Negotiation Insight Initiative led by Erica Ariel Fox has seen a progressive move towards managing conflict at a deeper level and encouraging mediators to explore the "spiritual" side of mediation.

Cloke (2002) offers another vision of mediation practice and conflict resolution. The work aims to examine the essence of the process rather than the procedure and sets out to challenge mediators to question their own assumptions about how conflict should be handled and notes that mediation is about "respect, honest and empathetic communication, trusting collaborative relationships, responsibility, forgiveness and closure." (Cloke: 119). Every conflict and every resolution, says Cloke, "has a spiritual dimension and energy... Boldness, spirited issues in mediation, it is necessary to become aware of and cultivate spiritual experience within ourselves, which means pursuing mediation as a spiritual task." (Cloke: 125).

In the more complex "The Crossroads of Conflict" (2006,) Cloke encourages mediators and parties in conflict to improve their dispute resolution skills by travelling "the path of transformation and transcendence of wisdom, spirit and heart" (p1). Cloke does not address litigated disputes and so the direction that is set out in the book would be more difficult when disputes have reached court or with people who do not have an ongoing relationship.

And so within the modern mediation movement there is a variety of models being practiced and researched. Paleker (2003) remarks that a lack of clear process definition leads to disparate practices and Alexander (2003) goes on to comment that whilst disparate practices reflect mediation diversity, they also pose a real problem for quality control and mediation promotion amongst consumers.

GLOBAL TRENDS IN MEDIATION

Mediation growth and application is very much influenced by the context in which it takes place. Alexander (2002) points out that mediation and ADR has grown rapidly in many common law jurisdictions such as USA, Australia, Canada and England and less quickly in civil law jurisdictions such as Germany, Austria, Denmark, Belgium, Germany Switzerland and Yugoslavia with the exception of the Netherlands and South Africa. ADR plays a unique role in South Africa due to the fall of the apartheid system and the ensuing human rights and discrimination issues. Alexander suggests that despite the differences in developmental stages, universal themes exist around such issues as the debate on standards for mediation practice and accreditation; how to determine the suitability of a dispute for mediation; flexibility v regulation; how to mobilize mediation practice in the shadow of the court. In regards to process, the debate continues about the practice of mediation versus the theory of process - this being more obvious in the court-related mediation where lawyers or judges play a role. Another key issue is whether the policy aims of mediation such as improving access to justice, reducing court waiting lists and increasing consumer satisfaction with the legal system have been and can be met.

At the practice end of the spectrum, she observes that mediators, regardless of accreditation training, tend to mediate in a way that reflects their previous training whether as lawyers, engineers, social workers, psychologists or academics. The debate continues as to whether lawyers, or those with a socio and psychology background, make better mediators. Although the design of best-practice formula for mediation models and systems cannot be significantly dependent on the nature of the legal system in which it operates, Alexander points out that there is a risk in merely reproducing policy and making international comparisons without asking which success stories will or will not translate.

Further reading of *Global Trends in Mediation 2nd Ed (2006)* as a resource may be warranted as this book, although not available at the time of this review provides; coverage of both common law and civil law jurisdictions; attention to the diversity of legal cultures and systems on four continents; an analysis of mediation models, standards, laws and practices; a wider spectrum of mediation laws and approaches worldwide than is traditional in comparative studies. Contributions are from senior dispute resolution academics or practitioners.

ACCREDITATION AND STANDARDS

The debate over standards and accreditation of mediators has not dimmed and work has progressed in the development of these. In 2001 the US Uniform Mediation Act was adopted which promotes the use and uniformity of mediation in the USA and more recently in a comprehensive Report to the Commonwealth Attorney General NADRAC (National Alternative Dispute Resolution Advisory Council) (Australia) provided a framework for the ongoing development of standards for ADR, including guidelines for developing and implementing standards, a requirement for a code of practice which takes account of essential areas and enforcement of that code through appropriate means. It makes further recommendations in relation to complaint handling, self-regulation, statutory provisions, accreditation, means for attaining and maintaining practitioner standards, infrastructure, resources and improved data quality.

NADRAC believes that there are strong arguments for having ADR standards in place. In summary, ADR standards would promote the following objectives:

- To enhance the quality and ethics of ADR practice
- To protect consumers of ADR services
- To facilitate consumer education about ADR
- To build consumer confidence in ADR services
- To improve the credibility of ADR as an alternative to litigation
- To build the capacity and coherence of the ADR field.

EMPLOYMENT DISPUTE RESOLUTION (EDR): THE CASE FOR MEDIATION

The USA has a different context for employment disputes from that of New Zealand given the presence of statutory employment dispute resolution processes in this country. Transformative mediation gained wide recognition in the USA when the U.S. Postal Service (USPS) embraced it in 1996 after a pilot in 1994. According to Bingham (2004) in her comprehensive review survey of the research on employment dispute resolution conducted in recent years, EDR in the USA is affected by its setting in the private, non-profit or public sectors. In the public sector mediation predominates and Bingham provides a raft of survey data to indicate that mediation is being experimented with in personnel and employment disputes. In the article she maintains that dispute system design determines many aspects of an EDR programme and focuses on in-house system design for employment conflict.

According to Bingham there is little systematic employment research comparing the impact of different models of mediation on participant and organizational outcomes. The USPS mediation programme REDRESS has however generated comprehensive data. REDRESS which stands for (Resolve, Employment, Dispute, Reach Equitable, Solutions, Swiftly) is the US Postal Service's alternative dispute resolution mediation program with around 1500 neutral mediators offered on roster. REDRESS mediation is a voluntary alternative dispute resolution program offered to employees nationwide as part of the Postal Service's Equal Employment Opportunity (EEO) complaint process. The REDRESS mediation program is generally offered to employees at the EEO informal counselling stage. REDRESS is also at times offered at the formal complaint stage. Data collected from 180,000 exit surveys provides evidence of consistently high participant satisfaction with the programme.

Bingham's article also considers the case for arbitration, the timing of the intervention and the nature, training, qualifications or demographics of the neutrals. She concludes by suggesting that the growing body of research indicates a case has been made for mediation as compared to arbitration in the field of employment disputes. According to Lipsky and Avgar (2004) the growth of ADR in employment relations over the last 25 years has been called a "quiet revolution". They maintain that the next generation of researchers must examine the societal implications of ADR and ask the question "Has the transformation of employment dispute resolution in the United States strengthened or weakened employee rights and our system of social justice"? This question might also be asked in the New Zealand context.

In Ontario, Canada, mandatory mediation is required in all case-managed actions in the Regional Municipality of Ottawa-Carleton. Brown (2002) comments that Ontario's experience with mandatory mediation is new. However, she makes the point that the statutory framework in Ontario strongly suggests that facilitative rather than evaluative mediation (an approach that she maintains promotes positioning and polarization) is the approach to be applied in the court-connected mediation process. Her article quotes research completed by Dr Julie MacFarlane "Culture Change? A Tale of Two Cities and Mandatory Court-Connected Mediation" and indicates that some of the legal fraternity would like to re-shape the mediation process to offer the

process of evaluation. She submits that whilst for some, an evaluative model of mediation would suit their needs; it is better clearly labelled as an alternative process (suggesting “neutral evaluation” rather than ‘evaluative mediation’) that is separate and distinct from mediation. Evaluation should be recognized as a completely different activity that requires different mental processes, techniques and skills. By clearly distinguishing the process, a consumer would have clarity about what to expect from the dispute resolution process. With time she suggests it will become apparent whether certain classes of cases are better suited to one particular style of mediation.

FUTURE FOCUS

Perhaps the most provocative work to date is *Mayer's (2004)* "loving critique of our field" arguing that we have fallen too easily into a limited set of roles and purposes. After more than 25 years in the field he believes we are at a crossroads in which we could either stagnate or re-examine who we are, what we do, how we do it and how we think about it. Mayer claims that for those whose roots lie in mediation and related practices, many aspects of conflict engagement are missed. He makes four major points. Firstly, we need to try to break the association we make between conflict resolution and mediation. As we focus on "making the deal" which hopefully leads to a win/win outcomes we underplay the role of power and values for example as we try to reach agreement. Secondly, Mayer warns that neutrality can be problematic and that our self-definition as third party neutrals is a myth. We need to be fair as we try to facilitate conflict resolution processes, but that is not the same as being neutral. Thirdly, Mayer believes we should be engaged in all aspects and phases of conflict therefore we have to stop thinking of ourselves as a profession of conflict resolution and begin to think of ourselves as a profession of conflict engagement. Our role is to help people enter into conflict in a powerful, wise and honest way. Finally Mayer believes we can only move forward if we adopt a new way of thinking about our identity as a field and as practitioners within that field. He suggests we think of ourselves as conflict specialists. This includes integrating a variety of roles in our practice such as conflict ally, advocate, organizer, strategist and coach. Mayer maintains that when we see ourselves differently, those engaged in conflict will also see us in a different light, as we change our view of ourselves this will both reflect the market for our services and shape it.

Academics and practitioners have been reflective in exploring the field of mediation and ADR through ongoing debate and at the Keystone Conference (2006) 106 senior mediators, leading thinkers, writers and teachers met to consolidate their collective wisdom and to give best counsel and advice to the next generation. Their purpose was (1) to take stock of where the field has come over the past three decades; (2) assess the current landscape and field's current strengths and weaknesses; and (3) prepare a statement of best counsel and guidance to the next generation of policy-making and policy-influencing practitioners. In short the conference urged the next generation to focus on the following:

Stop dithering and get organized: The next generation must move beyond introspective definitional debates and accept it is not a unified profession and get on with the hard political tasks of organizing it. *Alexander (2002)* points out that Austria is so far the only country to recognize the independent profession of mediation through an Act of Parliament.

Put the House in Order: Sectorised interests in family, environmental and labour mediation are strong but bridges have not been built across these application areas. There is a concern that the existing organizations are not unifying the various strands of mediation.

Influence the World: Look for new ways to engage the popular and political cultures; -there has been too much introspection.

Step up the Quest for Diversity: The population of conflict resolvers is still overwhelmingly white. The field needs to reflect the diversity of our society.

Reaffirm the Fundamentals of Mediation: Many mediation practices seem fragmented; there is still a need to affirm the fundamentals of mediation, for example its voluntary nature, confidentiality and informed consent.

Expand the Intellectual Boundaries of Mediation: Much of the writing and research about mediation is unoriginal and too focused on the role of the mediator. Other fields for example neurobiology or behavioural economics should be informing the theory and practice of mediation.

Utilize new Technologies: Experimentation and use of new cyber and cellular technologies should be encouraged

Encourage Practical Research: Much of the research in the mediation arena has been conventional. A new generation of research is needed to understand how and when various forms of mediation are and are not effective and how various dispute resolution processes can be used most effectively and efficiently.

Emphasize Cultural Competencies: The multi-ethnic and cultural diversity of our societies require better understanding of the dynamics relating to communication, negotiation and resolution.

Use our own Procedures: Do we use mediation ourselves as we struggle with our own conflicts – are we role modelling and setting an example?

The literature seemed to point to a gap between articles written by those who practice ADR and articles written by those who teach and study it - some online searching revealed the "Broad Field" project whose purpose over three years was to cross-fertilize the many and separate areas that make up conflict resolution. The basis of the argument supporting the project was that the field, rather than drawing upon one another's contributions and innovations, has felt the impact of flourishing specialities, increasing caseloads, academic structures and those disciplines who feel they "own" the field. "BroadField" convened interdisciplinary discussions on topics that are seen as cutting edge, the outputs from these discussions have been used to develop interest in longer-term and more intensive mutual engagement, particularly in the field of research. A large number of articles not available for this review have been published in Negotiation Journal, Conflict Resolution Quarterly, Penn State Law Review, Marquette Law Review followed by the recent publication of the Negotiator's Fieldbook (2006).

Where will mediation and ADR be in 30 years' time? *Hoffman (2006)* outlines three hopes, three fears and three predictions. Firstly his hopes: our diverse society needs diverse dispute resolvers. ADR practice will not achieve its full potential until our skills are shared with the broadest spectrum of people in our society. Then, Hoffman argues, we need a renaissance of idealism, rather than passively waiting to be invited to the party, we need to take some initiative and we need universal instruction in training and negotiation so that the average person on the street will know about conflict resolution tools and methods. As for his fears; firstly that arbitration (especially in the US) is becoming more mandatory and that if this continues then important rights will be lost and the public's confidence in ADR will be diminished, Secondly, the longer we go without a consensus about legally enforceable standards of practice and eligibility to serve as a mediator, the more vulnerable we are to regulation that is uninformed. His third fear is that the lack of public funding of community mediation and other ADR services means that the poor in our society will have woefully inadequate legal services. Finally his three predictions for the future: technology will probably change the way mediation and ADR is practice with the growth of email, voicemail, conference calls, web boards and video-conferencing. Secondly we will become multi-disciplinary practitioners forging links with those from other disciplines who share our concerns and thirdly the door is opened for dispute resolvers to enter into a world of intuition, meaning and spirituality.

CONCLUSIONS

The available literature points to a future where practitioners and academics are beginning to understand the need to consolidate and to work collaboratively on progressing the practice and theory of mediation and ADR, to unify sectorised interests and to ensure that the diversity of society is represented amongst practitioners. Some of the literature has pointed to the debate about the need for ongoing and enforceable codes of practice and the NADRAC Report on standards and accreditation for mediators and those in the ADR industry is closer to home than much of the literature which emanates from the United States. The message seems to be, regardless of the context in which the ADR professional practices and regardless of the preferred model of mediation there is a sense that mediation and ADR needs to look underneath the conflict and to move into a realm that explores conflict at a deeper level for disputants. The challenge as Mayer (2004) points out – is that the field of conflict resolution needs to broaden its role definition and become conflict engagers.

BIBLIOGRAPHY

Alexander, N (2002). *Mediation in the Modern Millennium. Conference Paper XVITH Congress of the International Academy of Comparative Law.* The University of Queensland, Brisbane.

Alexander, N (2003). *Global Trends in Mediation.* Walters Kluwer Law and Business. Short synopsis accessed at http://eprint.uq.edu.au/archive/00003168/01/Global_Trends_in_mediation_Riding_the_Third_2003.pdf.

Baruch Bush R A. and Folger J.P (1994). *The Promise of Mediation: Responding to Conflict Through Empowerment and Recognition.* San Francisco, Jossey-Bass.

Bingham, L.B. (2004). *Employment Dispute Resolution: The Case for Mediation.* Conflict Resolution Quarterly, Vol 22, no 1-2

Boulle, L. Jones, J. Goldblatt, V. (1998), *Mediation: Principles, Process, Practice* (New Zealand Edition), Wellington, Butterworths.

"Broad Field" Project accessed on <http://www.convenor.com/madison/broadfld.htm>

Brown, C.J. (2002) *Facilitative Mediation: The Classic Approach Retains its Appeal* Accessed on mediate.com

Cloke, K (2001). *Mediating Dangerously: The Frontiers of Conflict Resolution.* San Francisco, Jossey-Bass.

Cloke, K (2006). *The Crossroads of Conflict: A Journey into the Heart of Dispute Resolution,* San Francisco, Jossey-Bass

Danesh H.B. and Danesh R. (2002). *Consultative Conflict-Resolution Model: Beyond Alternative Dispute-Resolution.* International Journal of Peace Studies, Autumn/Winter Vol.7 No. 2.

Hoffman, D.A. (2006). *The Future of ADR Practice: Three Hopes, Three Fears, and Three Predictions.* Negotiation Journal, October, 467-473.

Keystone Conference Final Report (2006). *Consolidating Our Collective Wisdom: Best Counsel and Advice to the Next Generation.* October 8-11, Keystone, Colorado accessed at www.mediate.com.

Kressel, K. (2007). *The Strategic Style in Mediation.* Conflict Resolution Quarterly, Vol.24, no.3, 251-283

Lipsky, D.B. and Avgar, A.C. (2004). *Commentary: Research on Employment Dispute Resolution: Toward a New Paradigm.* Conflict Resolution Quarterly, vol.22, no 1-2, 175-189

Mayer, B.S. (2004). *Beyond Neutrality: Confronting the Crisis in Conflict Resolution*, San Francisco, Jossey-Bass

Moore, C.W. (1996). *The Mediation Process: Practical Strategies for Resolving Conflict* (2nd Ed). San Francisco, Jossey-Bass

NADRAC . (2001) *A Framework for ADR Standards, Report to the Commonwealth Attorney-General*. Accessed at <http://nationalecurity.ag.gov.au/adr/HTML/introduction.html>

Paleker M (2003) "The Changing Face of Mediation in South Africa" in *Global Trends in Mediation* . 301-340 accessed on http://eprint.uq.edu.au/archive/00003168/01/Global_Trends_in_mediation_Riding_the_Third_2003.pdf.

Picard, C. and Melchin, K.R. (2007): Insight Mediation: A Learning-Centered Mediation Model. *Negotiation Journal*, January, 35-53

REDRESS information accessed on www.usps.com/redress/

Tillett, G. (2006) Booknote: Disputes and Dispute Resolution at Work. *Australasian Dispute Resolution Journal* vol 17

Winslade J and Monk G. (2000) *Narrative Mediation: A New Approach to Conflict Resolution*. San Francisco, Jossey-Bass.