
Index

Adaptability

institutions, in, 108

Adjudication

mandatory, in construction housing industry United Kingdom, 161

Adversarialism

business and politics, in

moving beyond, 106

natural tendency towards, 106

new approaches to, 105-112

Alternative dispute resolution (ADR)

large, destructive conflicts, 49

processes, 29

professional standards in, 209-210

United Kingdom, in, 157-165

Arbitration

Arbitration Act 1996 (UK), 162

central purpose, 163

Auditor General

oversight by, 34

Australian Public Service

functions of, 33

Australian Standard of Dispute Management Systems, 110

Booknotes

ADR and the helping professions, 173-180

disputes and dispute resolution at work, 113-120

Frontiers of Conflict Resolution, 49-57

Book reviews

Practitioners Certificate in Mediation Court Handbook, 169-172

Brief therapies

analogy, use of, 94-95

introduction to, 88-89

miracle question, 93

neutrality and, 92-93

reframing and, 88-95

scaling question, 94

symptom prescriptions, 93

techniques, 88, 90

Bullying *see* Workplace bullying

Circle Sentencing, 239

Civil Procedure Act 2005 (NSW)

court's mediation program, changes to, 127-129

Common law

confidentiality at, 31, 84-85

Commonwealth

bodies comprising, 33

legislative power, 33, 135

Community Engagement Roadmap, 109

Compatibility

innovation, perception of, 27

Complexity

innovation, perception of, 26

Computer mediated communication (CMC)

contradictions in research, 222-223

definition, 222

email as, 222

Confidentiality

common law, at, 31, 84-85

family counselling, in, 150-151

family dispute resolution, in, 151-152

government, party representing, 29-37

public interest, balancing, 36-37

marketing mediation, ethical dilemma for, 79-87

marketing tool, as, 80-82

mediation, 29-30

contractual assurances of confidentiality, 83-84

general extent of confidentiality, 30

government, 32-36

party representing Australian government, 29-37

reality checking, 82

statutory assurances of confidentiality, 82-83

theory of, 80

mediation agreement, clauses in, 32

statutory protection of, 31-32

types of, 71

Conflict

conflict indicators, 49

growth industry, as, 21

latent, 49

relational, 54

violent, 55

Consensuality, 217, 219

Constitution

judicial mediators, constitutional validity, 130-131, 135-139, 189-191
separation of powers, 33, 135

Costs

controlling, 161
third party orders, 158

Diffusion of Innovations model, 22, 26**Distributive bargaining**, 71, 72-74

assumptions, 73
characteristics, 73
criticisms, 74
history, 72
process, 73-74

E-negotiations, 221-222

email, using, 221-230

Email

anonymity, reducing, 225
computer mediated communication, 222
intention, attribution of, 225-226
negotiations and, 223-230
 study of, 226-219
rapport building, 225
self-disclosure, 223-224
shared membership, 223-24

Emotion

expression of, 214
validity of emotional content, 214

European Union

court-annexed mediation directive, 159

Executive

accountability of, 33
executive power, 33, 135
mediation, representation in, 33
oversight bodies, 34

Facilitation

institutional conflict management or consensus building, 106

Family consultant

confidentiality and admissibility of discussions, 153-154
definition, 153

Family counselling

admissibility of communications, 151
confidentiality in, 150-151
definition, 150
privilege in, 151

Family dispute resolution

- admissibility of communications, 152-153
- confidentiality in, 151-152
- external ADR, court referral to, 155
- FDR certificates, 146-148
- generational change in, 140-156
- genuine effort to resolve issues, 148
- lawyers, obligations of, 154-155
- mandatory, 140, 142, 143-146
- new scheme, 143-155
- non-court based, 150
- violence or abuse, exemptions for, 149

Family law

- amendments to, 140
- best interests of children, 142
- contravention situations, 143
- determination stage, 143
- legal advice
 - before obtaining, 141
 - obtaining, 141-143
- parental responsibility, 140
- parenting orders
 - presumption of equal shared parental responsibility, 142
- resolution stage, 143
- stages of typical family law matter, 140-143

Family Relationship Centres (FRCs)

- establishment, 141
- parenting plans, 141

Framing

- experiences, of, 90-91

Freedom of information

- government records, access to, 35-36

Government

- mediation and confidentiality, 29-37
- public interest, balancing, 36-37

Harvard School of Negotiation, 27

Histories

- discourses, validating, 213

Hong Kong

- enforcing contractual dispute resolution clauses, 5-9

Immunity

- advocates, 102
- lawyers, 102
- mediators, 99-100

Impartiality

neutrality and, 97-98, 215

Industrial relations

arbitration in *Employee Relations Act 1992* (Vic), 38-39

compulsory, 41

voluntary, 38

Employee Relations Act 1992 (Vic)

amendments to, 39-40, 46

post-ERA developments, 46-48

voluntary arbitration, 38-39

Victoria, in

1975 review, 40-41

1979 legislation, 41-43

1 March 1993, from, 43-46

wages board system, 40

Institutions

adaptability, 108

collaborative approaches, 107

complexity in, managing, 107-108

institutional conflict management or consensus building, 106

Integrative negotiation, 71, 75-77

assumptions, 75

characteristics, 76

process, 76-77

International arbitration

nature of disputes arising, 163

procedural reform, 163-164

Judges

case management targets, 134

non-judicial power, exercising, 136

Judicial mediators

Canada, in, 131

case against, 188, 191-195

case for, 195-197

casenotes, 185-186

constitutional validity, 130-131, 135-139, 189-191

function and role, 130-131, 137

note on, 188

statutory provisions, 133

United Kingdom, in, 160-161

Judicial power

courts, of, 33, 135

definition, 135

delegation to non-judicial officers, 189-190

Ladder of Citizen Participation, 109

Lawyers

- duties of skill and care, 101
- exclusion clauses in agreements to mediate, 103-104
- fiduciary relationship with client, 101
- immunity, 102
- indemnity insurance schemes, 103
- lawyer-driven problems in mediation, 206-207
- liability of, 101
 - limitation of, 102-103
- mediators, as, 96-104
- negligence, 102
- officer of the court, 101, 104
- practising certificate, 101
- standard of care, 102-103
- status of legal practitioner, 101

Legal professional privilege

- overview, 31
- public policy rationale, 31

Litigation

- amount of, 132
- private funding of, 158
- statistics, 132

Marxist theories, 212-213

Media

- negotiation
 - adversarial reports by, 26
 - how often press reports negotiation, 22
 - issues press associates with negotiation, 22
 - selective reports of, 21
 - use of word by, 20-28

Mediation

- ADR process, 29
- agreement, reaching, 200-201
- bad faith participation, 201
- civil and commercial United Kingdom cases, in, 158-159
- confidentiality *see* **Confidentiality**
- definition, 29, 97
- evaluative, 97
- facilitative model, 96
- failure to reach agreement, 200-201
- follow-up to, 200
- government, representation of, 29-37
- hidden agendas, 201

- insulting and destructive communication, 203
- lawyer-driven problems, 206-207
- nature of, 96-97
- parties walking out of, 203
- party representing Australian government, confidentiality, 29-37
- party-driven problems, 201-203
- popularity of, 79
- post-modern practice, as, 208-220
- power in, 211-213
- private, 29-30
- private sessions, demands for, 202
- procedural fairness, rules of, 138-139
- rigidity in, 158-159
- town planning issues, 125-127
- voluntariness, 29

Mediators

- accusations of bias against, 202
- angry people, dealing with, 202
- conflicts of interest, disclosing, 101
- ethical standards, 101
- exclusion clauses, 103
- immunity, 99-100
- judicial *see* **Judicial mediators**
- lawyers as *see* **Lawyers**
- liability of, 98-99, 104
- mediator-driven problems, 203-206
- private agenda, acting on, 205
- private sessions, demands for, 202
- requests to, for advice or opinion, 201-202
- threatening parties, 203
- training, 209-210

Modernism

- nature of, 210-211

National Mediation Conference

- language at, 166-168

Negligence

- lawyers, 102

Negotiation

- defining, 21, 70
- distributive, 71, 72-74
- integrative, 71, 75-77
- interdependence between parties, 71
- media, in, 20
- newspapers

- adversarial reports by, 26
- how often press reports negotiation, 22
- issues press associates with negotiation, 22
- selective reports of, 21
- use of word by, 20-28
- positional, 21, 74
- principled, 21, 25
- problem-solving, 22
- purposes, 70
- ubiquity of, 21
- value creating, 71
- Negotiation theory**
 - contemporary theory, 70-78
 - defining, 221-222
 - foundation, 70-78
- Neutrality**
 - brief therapy and, 92-93
 - complexity, 215
 - concept of, 97-98
 - contextual, 215
 - disinterestedness, 97
 - impartiality, 97-98, 215
 - independence, 97
 - modernist discourse, 215
 - post-modernist interpretations, 215-217, 219
 - understanding, 216
- New Zealand**
 - enforcing contractual dispute resolution clauses, 5-9
- Newspapers**
 - negotiation
 - adversarial reports by, 26
 - how often press reports negotiation, 22
 - issues press associates with negotiation, 22
 - selective reports of, 21
 - use of word by, 20-28
- Observability**
 - innovation, perception of, 27
- Ombudsman**
 - oversight by, 34
- Politics**
 - adversarialism in
 - moving beyond, 106
 - natural tendency towards, 106
 - new approaches to, 105-112

collaborative approaches, 107

Post-modernism

ideology of, 211-215

language, 211

mediation as post-modern practice, 208-220

neutrality, 215-217, 219

Power

complexities of, understanding, 210

contextual and situational, 212

mediation, in, 211-213

positivist theories of, 211

theoretical issue, 210

Practitioners Certificate in Mediation (IAMA), 169-172

Pre-trial conferences

subjects canvassed at, 133

Principled negotiation, 21, 25

Procedural fairness

courts as providers of mediation services, 138

judicial officer breaching rules of, 139

mediators breaching rules of, 139

Psychotherapy

techniques of, 174

Reasonable chances of success, 9-11

Reframing

example demonstrating, 91

mediation, in, 91-92

problem, negotiating, 91

therapeutic action, in, 91

Relative advantage

innovation, perception of, 26

Responsible government

principle of, 33

Restorative justice

process, 233

Risk

assessment tools, 110

categories of, 110

management, 110

Scissors, paper, rock

new form of dispute resolution, 186-187

Separation of powers, 33, 135

Settlement

promotion of, 159-160

rates of, 132-133

Terrorist actions

- coercive strategy, 50
- definition, 50

Town planning

- mediation, 125-127

Trialability

- innovation, perception of, 27

Tribunals

- mediated agreements, enforcing, 65-69

United Kingdom

- ADR in, 157-165

Values mapping, 111

Victim offender mediation (VOM)

- cost, 237-238
- mandatory referral to, 233-234, 236
- private or public justice, 239
- restorative justice, 233
- screening and training, importance of, 237
- success of, 235-236
- voluntariness, 234-235

Without prejudice privilege

- communications made during mediation, 84
- overview, 31

Woolf Reforms 157-158

Work

- disputes and dispute resolution, 113-120

Workplace bullying

- conflict resolution of, 12-19
- human resources issue, 12
- non-traditional paradigm, 18
- stress, causing, 12

Zero-sum bargaining, 73