

AUSTRALASIAN DISPUTE RESOLUTION JOURNAL

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CASE NOTES

- Whether an arbitration agreement is rendered inoperative by a settlement agreement and, mediation media watch** – *David Spencer* 135

ARTICLES

- ADR process design: Considerations for ADR practitioners and party advisors** – *Clair Berman-Robinson and Helen Shurven*

Understanding and evaluating particular features of conflict and dispute resolution methods can assist effective dispute resolution, by helping match particular disputes to suitable processes. This article discusses factors to consider in conflict analysis, including party goals and dispute features, and identifies broad classes of dispute resolution methods and their suitability across various matters. It also highlights the role of party advisors in alternative dispute resolution processes, with a particular focus on mediation. The article proposes that to be an effective dispute resolution practitioner or party advisor, it is essential to be perceptive, adaptable and flexible, and to develop a process designed specifically for the parties and circumstances of the particular dispute. The article outlines design factors which will be useful in further tailoring processes to the circumstances. 140

- Working in ADR with disputants on the Autism Spectrum** – *Rebekah M Doley*

Working effectively in the field of Alternative Dispute Resolution exposes the practitioner to a range of mental health concerns potentially impacting disputants. An under-explored area is the impact for disputants with Autism Spectrum Disorder (ASD) on the mediation process. For these individuals challenges in executive functioning, social behavior, and non-verbal communication are often evident from childhood through to adulthood. It is a hypothesis that gaps in skill development impact on the conflict style favoured by the individual with ASD which, in turn, will impact on an approach to dispute resolution. This article is concerned with the role of the mediator in working with a disputant who has ASD, focusing on the cluster of symptoms that were previously known as Asperger's Syndrome and outlines strategies by which mediators might seek to support these individuals to effectively engage in successful dispute resolution. 150

- Collaborative practice and poverty: Contextualising the process and accommodating the market** – *Daye Gang*

Collaborative practice is an innovative form of dispute resolution used predominantly in negotiations after a marital separation. Because it is a model of private negotiation which currently operates outside of the public system, poor people have limited access to the benefits it can bring. This article builds on existing appraisals of collaborative practice as a post-separation settlement option, discussing opportunities and risks for a quantitatively larger and qualitatively different market. Finally, it places collaborative practice within the current legislative framework and considers how it could be financially and ethically developed to accommodate needs specific to, or prevalent among, poor clients. 158

ADR and technology – *Stefan RM Lancy*

This article seeks to analyse developments in existing Online Dispute Resolution (ODR) technology and emerging technology systems' interaction with more traditional ADR practices and discusses some of its limitations, strengths and future usages. In particular, whether or not, in its current state, it will override existing processes in ADR or if it will simply be incorporated into them and add to their efficacy, delivery and acceptance in the broad online community as well as legal arenas. This article finds that, in considering new developments and emerging ODR technology, that at this stage technology forms an important, valuable tool in ADR's arsenal and is aiding its development and acceptance but is as yet unable to fully replace or fundamentally alter existing dispute resolution mechanisms. 168

Applying global standards in using ADR to settle domestic violence cases in Nigeria – *Chukwunweike A Ogbuabor*

Whether ADR is appropriate in the domestic violence context and whether ADR should extend to domestic violence disputes are important questions because despite the increasing use of ADR within the justice system, it also raises some fundamental questions about the meaning of justice and the role of law in contemporary society. This article argues that notwithstanding the public law issues surrounding the use of ADR to settle "criminal cases" as exemplified by violence of any sort, ADR should be explored in the domestic violence context because, more often than not, the dynamics of domestic violence show that neither the prosecution nor incarceration of the abusive partner is the need of the victim. In utilising this process, minimum international standards must be complied with to ensure the integrity of the process and outcome. Does current Nigerian law on the resolution of domestic violence comply with international standards in the use of ADR in the domestic violence context? 179

Institutional culture in international arbitration – *Fernando Dias Simões*

Arbitral institutions play a major role in the continuous growth and success of international arbitration. Every arbitral institution has its own culture – a particular way of doing things that distinguishes it from others. This article discusses the concept of "institutional culture" and examines three different elements that contribute decisively to the culture of arbitral institutions: location and legal culture, background of arbitrators, and the language of arbitration. In order to succeed in the highly competitive market of international arbitration, arbitral institutions need to be transparent and flexible so as to accommodate a diversity of cultural and legal backgrounds and expectations. 188

Protection of trade secrets in mediation – *Constanze Solveigh Wedding*

If a trade secret is involved in a dispute, the owner of the trade secret may aim to keep that secret confidential and try to settle the dispute through ADR instead of public litigation. It poses the question how confidentiality in a private dispute resolution proceeding, particularly towards the opposing party, is provided. This article reviews the protection of trade secrets in mediation under Australian law, discussing case law, statutory provisions as well as professional guidelines. It concludes that trade secrets are reasonably well protected in mediation. However, confidentiality protection is found scattered all over Australian law. A more uniform and consistent legal framework in Australia is desirable in order to establish a higher degree of confidentiality in mediation. The application of an "in camera proceeding within an in camera proceeding" may create such a high degree of confidentiality protection as exemplified in a case study. 198