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CASE NOTES

- When does an agreement to mediate cease and when are parties bound by an agreement to settle?; and mediation media watch – David Spencer** 3

ARTICLES

Is Hong Kong ready for med-arb? – David Kwok

Hong Kong is in its infant stage of alternative dispute resolution development. Its Mediation Ordinance came into effect in 2013 and an amendment to its Arbitration Ordinance was effected in 2011. The Arbitration Ordinance provides for the use of mediation-arbitration (med-arb). The High Court of Hong Kong considered for the first time the use of med-arb in the case of *Gao Haiyan v Keeneye Holdings Ltd*. This article will discuss this case and the judicial attitude in Hong Kong towards med-arb generally. Moreover, the present statutory scheme allowing for the use of med-arb is also analysed. It will be seen that although the med-arb process is given explicit recognition in the Arbitration Ordinance, the Mediation Ordinance is silent on it, and thus potential problems may arise as an arbitrator carries out the med-arb process in practice. 9

Ethics and the mediation community – Jonathan Crowe

What does it mean to think communally about mediation ethics? This article develops a model of mediation ethics that draws on recent literature in moral psychology concerning the formation of ethical judgments. The model rests on a conception of ethical judgment as a practical skill developed over time by repeated exposure to ethical dilemmas. Ethical practice relies on snap judgments that are refined through reflection and dialogue. The resulting picture of mediation ethics is situational, not rule-oriented; diachronic, not synchronic; and community-oriented, not individualistic. The community-oriented nature of the model points to the importance of recognising mediation as a profession with its own specialties. It invites further reflection upon the role of the mediation community in promoting ethical discourse and formulating guidelines for practice. 20

Family violence in culturally and linguistically diverse communities: An evaluation of a family relationship centre – Helen Cleak, Alikki Vernon, Lola Akin Ojelabi and Tom Fisher

Federal legislative changes in Australia have sought to improve how family relationship centres (FRCs) can be more responsive to culturally and linguistically diverse (CALD) communities when addressing family disputes and family violence. Research on the prevalence of family violence against women from CALD backgrounds is sparse. This article seeks to contribute to the understanding of this issue by describing findings of an evaluation of the FRC at Broadmeadows conducted by the authors. The findings focus on family violence and the appropriateness of the services offered to three CALD community groups, namely Iraqi, Lebanese and Turkish. The final section provides reflections on these

findings and offers suggestions about how FRC services might better cater to the family violence needs of CALD communities by developing more extensive partnerships with community groups and by expanding the range of processes they offer beyond mediation. 26

Conflict coaching in Indigenous Australian settings – sharing the lessons from mediation – *Susan Medway*

Conflict coaching is an individualised conflict management support process used to assist people experiencing conflict. This article suggests that conflict coaching has applicability in Indigenous Australian settings, complementing existing approaches to managing conflict and improving relationships. Conflict coaching in Indigenous settings calls for a certain “awareness” by the coach of matters that are specific to such settings. While there is no extant literature on the use of conflict coaching in Indigenous Australian settings, suggestions by a number of Aboriginal academics and ADR practitioners to improve mediation practice for resolving disputes and managing conflict in Indigenous settings are also relevant for conflict coaching practice. 38

Self-determination in Australian facilitative mediation: How to avoid complaints – *Mieke Brandon*

Since the voluntary Australian National Standards (2008) require mediators who seek accreditation to use a process in which the participants can self-determine their outcome, it is helpful to understand fully what this means in contrast to other dispute resolution processes commonly used. In practice, many practitioners may inadvertently use some facilitative, some evaluative and some settlement-focused skills while advertising their expertise in facilitative approaches in their dispute resolution work. This could lead to misunderstandings between parties and practitioners and lead to dissatisfaction or disillusionment with the service received. This article explores participants’ self-determination in facilitative mediation in connection to a potential complaint being lodged by one of the parties. This is particularly relevant for family dispute resolution practitioners who, once registered, are able to provide parties with a s 60I certificate. 44

Emotion and its role in negotiation – valuable tool or unnecessary hindrance? – *Jayr Teng*

Negotiations can invoke varied emotions, some of which may affect the outcome of the negotiation and the receptiveness of participants to such outcomes. Negotiators are inevitably influenced by their own emotions and should be aware of the influence that emotions can have on their abilities both to negotiate and to be receptive to the outcomes being proposed. This article explores the interplay between mood and emotions and the impact that these can have on the creative bargaining process. It also explores skills relating to difficult conversations and the strategic use of emotions and how emotional intelligence may be utilised in the strategic use of emotions. 51