

Editorial

From the Editor

Martin Brink

The Corporate Mediation Journal (CMJ) is a periodical about mediation within and between organisations.

Mediation skills have much to offer to facilitate communication within and between organisations. At work we all hope to have good relationships with our colleagues and superiors, but tensions will occur. The same applies to relationships with customers and competitors or even externally in the infrastructural environment of the organisation, with third parties. Mediation skills can make the difference between loss of speed, energy, time, costs on the one hand and on the other, smooth operations and fruitful relationships, both within and between organisations. Mediation skills make it possible to address issues in a non-aggressive manner and to face issues in a less defensive way. They make it possible to conduct the same conversation differently.

In this issue of *CMJ*, professor Hans Strikwerda of the Amsterdam Business School of the University of Amsterdam – the renowned expert of organization and change – writes about corporate culture. In previous issues of *CMJ* the importance of this topic has been highlighted. Professor Strikwerda discusses the various elements that together will create a culture of supporting long term value creation. We need to take his warning to heart and not let working on culture become a non-performative language game without contribution to the achievement of long-term value creation. His analysis may offer insight in options to avoid that pitfall.

Also in this issue of *CMJ*, Bas van Zelst, professor of Dispute Resolution and Arbitration at Maastricht University, discusses Med-Arb – a hybrid dispute resolution mechanism combining elements of mediation and arbitration. Until recently there has been an apparent lack of interest in Med-Arb. Although with the rise in attention for mediation Med-Arb increasingly draws more attention, it still remains unclear to what extent contractual clauses referring parties to Med-Arb

(“Med-Arb Clauses”) and arbitral awards resulting from a Med-Arb procedure (“Med-Arb Awards”) are compliant with European standards on due process of law. The contribution by professor Van Zelst seeks to fill this void.

As in the previous issue of *CMJ*, attention is paid to the negotiation element in mediation. Mediation is a process during which conflicting parties will be invited by the mediator to come to an appreciation of each other’s views and interests. A sincere expression by each party of a genuine understanding of the viewpoint of the counterpart – and also of the reasons causing that viewpoint – is something that a mediator hopes to see occurring in a mediation. An expression of appreciation is not the same as saying that one agrees with what the other is saying. It is one of the aims of the mediation process that the parties will listen to each other, not merely to reply but in order to understand what is being said. On the basis of a mutual understanding of each other’s viewpoint, the parties may then become willing to consider making concessions in order to find a solution to their problem. In a number of cases, differences cannot be overcome without concessions of one kind or another. The question that may then become relevant is, how to make a concession in a responsible manner? Therefore, to manage the making of concessions consciously is important and may help to achieve goals better or to prevent loss. This article looks into the various aspects of concession making and dealing with concessions or the absence thereof.

Claire Mulder interviewed the Dutch attorney and mediator Edward Dijkhoorn, who specialises in mediation in commercial and insolvency cases. He is one of the evangelists of deploying mediation in mediation and mediation skills in cases of insolvency and he explains why mediation is apt as an instrument in insolvency situations.

Mediation continues to gain momentum within and between organisations. This is also clearly demonstrated by the results of the Eighth Mediation Audit performed by the Centre for Effective Dispute Resolution in London, England of which some of the key findings are to be found in this issue of CMJ.

Pleasant reading.