

# Interview

## Rob Huijten: 'Recognition and Acknowledgement Are Both Crucial to Success in the Corporate World'

Interview by Claire Mulder

### Rob Huijten <sup>1</sup>

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#### Why did you seek training in mediation?

I completed my mediation training because I truly believe that combining legal expertise with specialist training in alternative dispute resolution (ADR) enables you to facilitate better outcomes and provide real added value to your employer. Furthermore, I believe that by doing this I could add value in a role as internal mediator at my company, specifically for human resources

disputes. Our company believes that its employees are its most valuable asset, and as a result they wanted to develop the capability for mediation in-house.

#### Why did you want to start using mediation skills?

I have been a company lawyer for over 20 years, working for a number of companies. My experience has taught me that the 'harder' methods of trying to get your way in law do not always create the best outcomes. Going down the 'hard' route often creates friction in important relationships and hinders the ability to work together in future. Most of the parties that you meet with (both inside and outside the company) are people that you will need to work with over a period of time. Disputes will inevitably happen because constructive relationships also sometimes involve friction. When conflict occurs, it is helpful to have options beyond litigation to create the best possible outcomes. Successful mediation/negotiation can build stronger relationships for the future as parties become confident that they are working with good partners.

#### Which mediation techniques do you most often use?

I use a wide range of techniques, not always consciously as I apply them when it feels right. This may sound vague, however, if you start to think 'I will now apply the mirroring technique', you then run the risk that the dialogue appears artificial; it could even become a barrier to successful communication. To me, corporate mediation is all about 'flow' and not about clinging to specific skills in a rigid way; rather it is about really learning and being willing to understand the interests of different parties so that they can come together and

1. Head of law at BAYER Vegetable Seeds.

build strong, successful relationships. As an example, seeking to understand other parties (mirroring) can be extremely helpful. In society today, I sense that there is at some level a social trend towards individuals not seeking to acknowledge the other's point of view. While for a variety of reasons it may seem easier not to acknowledge the other's perspective, it is frequently counterproductive as people will come back to this lack of acknowledgement at a later point, probably with much more force. Mirroring helps to get beyond this. I believe that we should invest in helping people to build an open, understanding dialogue with their colleagues and partners even if it is not convenient.

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### **Can you give me an example where mediation has improved business outcomes?**

At the annual event of the Vereniging Corporate Mediation (VCM) in 2016, I used the example of a case we had in North America. Several years ago we sold a large quantity of onion vegetable seeds to various growers, and there was an unfortunate mix up in the variety we sold them; the growers had ordered tulip-shaped onions but in fact we sold them flat round onions. Though it might seem a small difference, this was important to the growers as it affected which buyers they could eventually sell the onions to (or not). The problem was only detected when the crops were growing in the fields and the matter could not be reversed; so it initially looked as though we would resolve the situation with a long and costly litigation in US courts. From a legal perspective, we were confident that we were well covered – in the contracts the customers had signed, it stated that they would recover at most the purchase price of the seeds we sold them. However, this did not create a good outcome for the growers as in the meantime they could lose an entire season of sales. After some discussion, we decided to actively engage with the growers and hear what they sought from us. We also wanted to be clear ourselves about what we could do to help the growers: we decided to try to mediate the issue and involved a loss adjuster in the process. As we were mediating with a relatively large number of growers, we quickly realised that not everybody was looking for the same solution. We therefore designed tailor-made solutions for each grower. In some cases, we provided new seed free of charge, in other cases we also helped with providing labour or machinery. We used settlement agreements and other best-practise mediation tools to handle this complex operation. Looking back, I am pleased to say that our agreements delivered more value than we would ever have expected. We were initially facing major damages: today we can say that we have kept all of the growers as our customers, we are still selling to them and onions are still one of our biggest crops in the company. Had we not saved these relationships, we would both have lost the customers to the competition and spent a signif-

icant amount of time and money in court. Following the success of these agreements, we have adopted this approach as a standard procedure in other cases.

### **Do you believe that mediation can generate better business outcomes?**

Yes. Without wishing to sound soft mediation seeks to acknowledge and understand the interests of another party. Of course, there are always other hard factors involved, financial interests etc. However, recognition and the acknowledgement that you take the other party seriously are crucial to success in business. If you fail to appreciate this or try to reach an outcome without this recognition, it can often take you further away from what you are actually trying to achieve.

### **How often do you use mediation? Where do you use mediation?**

I strive to share and apply these techniques on a day-to-day basis internally and spread them in the teams. In fact, I would say I do many more informal mediations than formal ones, for example, when meeting with our customers etc. Although not formally labelled as 'mediations', I think we are talking about tens of real cases a year.

### **You mentioned that you are training your team. How are your department and other departments gaining expertise? How do your team and other teams react to it?**

Officially, I am the only one who has completed this training. However, I try to lead by example using these skills in a natural way where they add value. I met Martin Brink, chair of the VCM, recently and discussed it with him too. The label 'mediation' sometimes provokes an initial reaction in people, especially in lawyers and business men, that it is not suitable, too soft, not relevant etc. I therefore think that it is good to start with mediation awareness under the motto 'let's try something different' and later deploy mediation skills in a natural and fluent way. How do you achieve this? When faced with a problem, it can be helpful to explore what different solutions may look like and sketch them out to your colleagues. Once you have found a resonance with people, how do you actually move forward in concrete terms? From here, you can start to incorporate mediation tools and techniques. Of course, the proof of the pudding is in the eating: when people see how the use of mediation can be of real value in a situation, then they start to internalise it in their own processes and even ask you for it. This takes time, but I am happy with the progress we are making.

### **Do you think you have influenced colleagues beyond your department?**

I believe that the right way to influence colleagues across the firm is through the way in which you and your team conduct yourselves. We seek to engage with colleagues as true partners, understand teams' problems and build genuine relationships. In truth, this is not always easy for people with a strong legal background. If

you go to law school, from the beginning you are taught to understand the rules and how they are applied. When you become an attorney, you work to defend the interest of the party that you represent – most lawyers do this with great energy and excel at this. However, it is easy to lose sight of the bigger picture that laws originate from norms, values and interests. Lawyers and businesspeople often have a competitive streak – they naturally desire to ‘beat’ or ‘out-flank’ the competition. However, in today’s society we are all part of something larger than ourselves and ‘the world is a village’ after all. So you need to work with your customers, suppliers, partners and others on a respectful manner; you may need them in future. The corporate world is no different.

#### **Since you started to use mediation, have you seen a change inside your business?**

Yes, I believe that employees have become better at recognising a broader perspective beyond their own interests and appreciating that it is both acceptable and desirable to value these perspectives. Through success you can demonstrate that people build more value through a deep understanding of their partners’ interests. We are a company, and we are trying to be commercially successful. However, getting closer to your customers, understanding their needs and bringing value to them are the key components to building real value with your company.

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#### **Does your company embrace mediation?**

Has mediation been embraced in the narrow sense of the term in the company? Probably not (yet). However, I would say that we have made big steps and the legal function is instrumental in making this happen. I also am not convinced that it is necessary to embrace in the formal sense if applying the mediation of techniques does the trick and gets the results.

#### **Do you integrate mediation into your business decisions?**

Yes, for example, I work with our in-house lawyers to try to apply insights from mediation and ADR into our contracts. I have found that in our company (and previous companies I worked for) the R&D environment is a good place to formally incorporate mediation. In general, R&D departments are more open to the use of mediation and other resolution mechanisms to solve an issue. In other areas of the business, we apply mediation more softly. In areas such as sales or production, we use insights from mediation without using the formal language. These departments generally prefer solutions that are court or litigation based. Personally, I think we may need less reliance on this ‘legal stick’ approach but it is work in progress.

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#### **Do you also use external mediators?**

Currently we do not, but we may consider it in future. In my view, successful mediation with external mediators depends on two things. Firstly, the knowledge of the mediator about the specific field the mediation takes place in is very important. Having specific domain expertise is critical to successful mediation. Secondly, it is important to consider the cost of mediation. You can use independent mediators or mediators linked to a group, such as the Arbitration Institute in Rotterdam, or mediators who practise according to the rules of a group such as WIPO (the World Intellectual Property Organisation). If you start a lengthy mediation process, then it can become sufficiently expensive that it no longer makes sense to go down this route. Mediation may not be cost-effective for every situation. For us, domain expertise, speed, cost, solution-orientation and confidentiality are the most important factors.

#### **What future do you see for mediation in the next 10 years?**

I believe that corporate mediation has only just touched the beginning of its potential. Mediation in the corporate world has everything to gain as it is not used widely enough. A never-ending series of legal disputes do not create value in my view. Given the interconnectedness of today’s world, it is clear to me that corporate mediation has a great role to play in future.

#### **What do you think of the *Corporate Mediation Journal*?**

I believe that the Journal is an excellent tool to help people in mediation discover and reflect on the experience of other mediators and share best practices. Corporate mediators need a forum to learn from each other and apply effective solutions in their own work. I hope that the Journal will highlight the effective use of mediation in other companies. I am part of a round-table of the VCM Association. The combination of practising mediations, meeting other mediators through the VCM and reflection through the *Corporate Mediation Journal* is very valuable to me.