

Editorial

The Gift of Corporate Mediation Skills

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This issue of the *Corporate Mediation Journal* offers contributions of varied interest – from applied science to empirical experience and theory. The editors hope the readers will enjoy this basket of articles that contains something of interest for mediators, managers and corporate counsels, attorneys and consultants.

1 The Gift of Corporate Mediation Skills

Corporate mediation is defined as mediation within and between organisations. The deployment of mediation skills *within* organisations can be enormously helpful. These skills may help to define problems or disputes, settle disputes, manage conflict, negotiate contracts, solve problems and formulate policy.¹ Where the issue of policymaking is concerned, mediation skills may help to bring individual paradigms to the surface in a manner which would otherwise not have made it possible to unearth those differences.

Managers, for example, board members working together on a mission, may each have their own perception as to how to best realise that mission, sometimes without even realising that their view is not aligned with that of their fellow board members. So, even without differences having emerged or a conflict having arisen, board members (but this may apply also at other levels of management) may in their own heads be rolling out entirely different scripts than those of their colleagues, yet

believing they are on the same page, pursuing the same mission as their colleagues. To unlock the potential of colleagues really working in concert but also to prevent or remedy tensions or even real conflicts which may consciously or unconsciously be the result of differing paradigms, deploying mediation skills can be enormously beneficial for an organisation.

2 Case Study: When No One Wants to Mediate, Call the Mediator!

In this case study Anna Doyle demonstrates the effectiveness of an intervention where tensions on a board begin to emerge and a health check is needed to see if everyone is (still) aligned. Doyle takes as a starting point a situation at the top level of an organisation that had become complicated as a result of unearthed, differing paradigms on the board. This might have been prevented through mediation, but no one wanted to mediate. This encounter holds lessons for both mediators and managers as we navigate conflict in a post-COVID-19 world.

3 Corporate Mediation and Company Law: State of the Art, Recent Trends and New Opportunities

Valentina Allotti explores the Italian legal framework on corporate mediation and the view that there is still resistance among parties in a dispute to engage in dia-

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1. Boule L. & Nescic M. (2001). *Mediation, Principles, Process, Practice*. London: Butterworths, pp. 9-13.

logue through mediation, not only where corporate disputes are concerned but also more generally. Even where no agreement is reached through mediation, or only a first meeting is held, there can be an improvement in the relations between the parties, which is beneficial for promoting good business relations. One way to expand the use of mediation would, she suggests, be to promote the introduction of mediation clauses in the articles of associations of companies. In addition, emerging trends in company law, at national and international levels, may help to create new opportunities for the use of mediation, not only to resolve corporate-related disputes but also to prevent them. Altogether, we come away richer with ideas of new ways of building a proportionate, appropriate and effective enforcement system, able to balance interests, seek cooperation and encourage win-win solutions.

4 Evaluative Mediation (Part I), an Analysis

The phenomenon of evaluative mediation has invited much debate among both scholars and mediators. At the heart of that debate is the question of a definition of mediation. Considering all prevailing schools of mediation, Martin Brink had previously observed that doctrine will not preclude that mediation will continue to occur in all kinds of shapes and forms. This first part of an exploration of evaluative mediation reinforces that view and goes further. Mediation has always known many shapes and appearances, from meetings with tribe elders in the stone age to diplomatic masterpieces in the space age. Mediators' roles are continuing to evolve on a continuum that surprises as much as it excites. This evolution must adhere to core values if mediators are to remain on track, and there is no objection to us changing roles, as long as we do so with the previously informed consent of the parties.

5 What Roles Do Forgiveness and Reconciliation Play in Corporate Mediation?

This article is a timely reminder that the terms 'forgiveness' and 'reconciliation' are not the most frequently used words at the corporate mediation table. However, research shows that they can play a role in business mediation, looking at the bigger picture. Klaartje Freeke takes the view that not only is it desirable, but it is becoming a necessity, to put forgiveness on the menu if we want to encourage parties to learn to become accountable, to accept apologies and to create a space for achieving sustainable solutions. This may also open a pathway to much needed reconciliation.

6 Book Reviews

Giving Voice to Values in the Boardroom by Cynthia E. Clark

Negotiating International Commercial Contracts: Practical Exercises by Gustavo Moser and Michael McIlwrath