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**Fairness in Mediation: Indeterminable or Merely Elusive?** – *Robert Angyal SC*

Many writings about mediation express concern whether agreements reached at mediation are substantively fair. This article considers obstacles to determining whether a mediated outcome is fair. By analogy to Heisenberg’s Indeterminacy (or Uncertainty) Principle, it concludes that fairness is an indeterminable quality. It follows that the search for models of mediation promoting substantive fairness should be abandoned as futile. .... 96

**What Makes a Mediator Effective? An Exploration of the Literature on Mediator Interventions and Personal Qualities** – *Catherine Deverell and Dr Alysoun Boyle*

Since the 1970s, there has been ongoing and unresolved debate in the field of mediation: what makes an effective mediator? Very little is known about mediator effectiveness because of the lack of consensus on key terms and measures; the limited funding and support for research; and limited examination of the role of the mediator. This article reviews the literature on three types of mediator intervention (process interventions, interpersonal interventions, and reframing), and on the personal qualities of empathy and rapport, impartiality, and the mediator’s “presence”, exploring how these might influence the success of a mediation. It is recommended that there be changes in research approaches, enabling empirical studies of mediator effectiveness; and that mediation concepts and theories be re-examined to establish consensus on key terms and measures. Without these innovations, unexamined assumptions about mediator effectiveness will be perpetuated, restricting improvements in the practice of this valuable DR process. .... 105

**Observations from Planners and Lawyers Regarding ADR: The Opportunity of Technology to Support Understanding in Planning Conflict** – *Kathy Douglas, Robin Goodman, Anne Kallies and Aaron Lane*

Conflict in planning frequently occurs regarding proposed changes to the built environment and stakeholders include developers, councils and objectors. This article discusses research into conflict in planning through the observations of two key actors: planners from local councils and planning lawyers. In Victoria, the site of this research, there are presently opportunities to address conflict in planning through facilitated public meetings, negotiation/mediation and compulsory conferencing. Analysis of the data of 30 qualitative

interviews showed that most participants valued negotiation/mediation and compulsory conferencing and some valued facilitations. Notably, nearly all planning participants observed that much of the public do not understand the planning system and this fact may lead to an escalation of conflict. We suggest that technology, via a planning app, has the potential to assist the public to better understand the planning system which can help them in engaging with alternative dispute resolution. .... 115

**Game Theory in Dispute Resolution: A Tool to Optimise Interest-based Outcomes? –**  
*John Lidbetter*

Modern theories of negotiation and mediation consistently endorse a “principled” or “interest-based” approach to bargaining which focuses upon the underlying needs and desires of one’s counterparty. Such approaches are assumed to operate in contradistinction to “game theoretic” strategies, which often aim to optimise one’s own utility. This article suggests that interest-based negotiation and game-theoretic strategies can complement each other – improving parties’ outcomes in negotiation and dispute resolution more generally. Game theory exercises can reinforce the importance of trust, collaboration and analysing alternative solutions. Such learnings are essential to maximising outcomes in negotiations. Consequently, Alternative Dispute Resolution professionals should consider adding game theory learnings into their repertoire in order to improve interest-based outcomes. .... 124

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