

Doing Justice in ADR: is it what disputants want or a convenient rationalisation?

1. Introduction

The Research

The high density housing sector (Owners Corporations/Body Corporates) was studied (as part of an ARC grant) as a domain for the development of an alternative model of dispute management to that contained in the relevant statutory regime.¹ This formed the basis for a simulation that empirically tested two hundred and fifty-two participants on three levels. These were their preferences, their perceptions of justice and some elements of efficiency. Each of these levels were tested in relation to three processes:

1. mediation followed by arbitration conducted by the same person (med/arb same);
2. mediation followed by arbitration conducted by a different person (med/arb diff); and
3. arbitration followed by mediation conducted by the same person (arb/med).

2. References

Dissertation References

P Condliffe, "Conflict in the Compact City: Disputing Preferences and Justice in Dispute Resolution" (Paper presented at GDN 2009: An International Meeting on Group Decision and Negotiation, Toronto, Canada, 14 - 17 June, 2009)

P Condliffe and B Abrahams, "Providing Online Decision Support for Owners Corporation Disputes" (Proceedings of the 4th IMA Conference on Analysing Conflict Transformation St. Anne's College, University of Oxford, 28 - 30 June 2010)

B Abrahams, P Condliffe and J Zeleznikow, "Managing Owners Corporation Disputes with Negotiation Decision Support and Alternative Resolution Procedures" in G J De Vreede (ed) *Proceedings of GDN 2010, the 11th Group Decision and Negotiation Conference, Delft, Netherlands, 21 - 23 June 2010*, (University of Nebraska at Omaha, 2010) 122.

B Abrahams, P Condliffe and J Zeleznikow, "An OWL Ontology and Bayesian Network to Support Legal Reasoning in the Owners Corporation Domain" (Paper presented at International Conference on Data Engineering and Internet Technology, Bali, Indonesia, 15-17 March 2011)

B Abrahams, P Condliffe and J Zeleznikow, "An OWL Ontology and Bayesian Network to Support Legal Reasoning in the Owners Corporation Domain" in M Poblet, B Abrahams and J Zeleznikow (eds), *Proceedings of the 6th International Workshop on Online Dispute Resolution* (CEUR Workshop Proceedings Series, 2011) 51

B Abrahams, P Condliffe and J Zeleznikow, "A Legal Decision Support Guide for Owners Corporation Cases" in R Winkels, (ed) *Proceedings of Jurix 2010 - the 23rd International Conference on Legal Knowledge and Information Systems, Liverpool, United Kingdom* (IOS Press, 2010) 147.

Other Sources

L Bingham, "Designing Justice: Legal Institutions and Other Systems for Managing Conflict" (2008-2009) 24(1) *Ohio State Journal on Dispute Resolution* 28

J Thibaut and L Walker, "A Theory of Procedure" (1978) 66(3) *California Law Review* 541

P Carnevale and M Leatherwood, "Mediation and The "Chilling" Effect of Med-Arb in a Simulated Labor-Management Dispute" (Paper presented at the 93rd Annual Convention of the American Convention of the Psychological Association, 23-27 August 1985)

W Ross, C Brantmeier, and T Ciriacks, "The Impact of Hybrid Dispute-Resolution Procedures on Constituent Fairness Judgments" (2002) 32(6) *Journal of Applied Social Psychology* 1151

W Ross and D Conlon, "Hybrid Forms of Third-Party Dispute Resolution: Theoretical Implications of Combining Mediation and Arbitration" (2000) 25(2) *Academy of Management Review* 416.

G S Leventhal, , "What Should Be Done with Equity Theory? New Approaches to the Study of Fairness in Social Relationships" in K Gergen, M Greenberg and R Willis, *Social Exchange: Advances in Theory and Research* (Plenum Press, 1980) 27

G S Leventhal, J Karuza and W R Fry, "Beyond Fairness: A Theory of Allocation Preferences" in G Mikula (ed) *Justice and Social Interaction* (Springer-Verlag, 1980) 167

D Shestowsky, D, "Procedural Preferences in Alternative Dispute Resolution: A Closer, Modern Look at an Old Idea " (2004) 10(3) *Psychology, Public Policy & Law* 211.

D Shestowski, , and Jeanne Brett, "Disputants Perceptions of Dispute Resolution Procedures: A Longitudinal Empirical Study" (2008) 130 *University of California Davis Legal Studies Research Paper Series*

R J Bies, "Are Procedural Justice and Interactional Justice Conceptually Distinct?" in J Greenberg and J A Colquitt (eds), *Handbook of Organizational Justice* (Lawrence Erlbaum, 2005) 85-112

Yochi Cohen-Charash, P E Spector, "The Role of Justice in Organizations: A Meta-Analysis" (2001) 86(2) *Organizational Behavior and Human Decision Processes* 278-321

J Colquitt, "On the Dimensionality of Organizational Justice: A Construct Validation of a Measure" (2001) 86(3) *Journal of Applied Psychology* 386

J Colquitt,, Donald E Conlon, Michael J Wesson, Christopher Porter and K Yee Ng, "Justice at the Millennium: A Meta-Analytic Review of 25 Years of Organizational Justice Research" (2001) 86(3) *Journal of Applied Psychology* 425

Cropanzano et al, "Moral Virtues" above n 173, 164; R Folger,. "Fairness as a Moral Virtue " in M Schminke (ed) *Managerial Ethics: Moral Management of People and Processes* (Erlbaum, 1998) 13-34; Kass, above n 152

Leventhal, "The Distribution" above n 12.; Leventhal, "What Should Be Done" above n 216;

E A Lind, "Justice and Authority Relations in Organizations" in R Cropanzano and K Kacmar (ed) *Organizational Politics, Justice, and Support: Managing the Social Climate of the Workplace* (Quorum Books, 1995) 83-96.

ⁱ Australian Research Council (Project ID: LP 0882329) titled 'Developing Negotiation Decision Support Systems that Promote Constructive Relationships Following Disputes'.