

# Article

## A Perspective on the Evolution and Flow of Corporate Mediation

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### 1 Introduction

24 This article is a brief state of the union where corporate mediation is concerned, from my perspective. A fair summary of the state of the union is to be found in the work of Rome's *A Guide to Business Mediation*,<sup>1</sup> which still is as apt today as it was in 2010, when he wrote:

Business mediation has been so successful that many large companies have significantly reduced the amount of money and time on litigation. Many corporate counsel and members of their staff have become expert users of the process as well as leaders in the ADR field. [...] Not only large companies, but also medium and small businesses are adopting mediation as their dispute resolution mechanism of choice, or at least the first step in a ladder of dispute resolution processes.

Rome concluded his publication, with the following equally still accurate conclusion:

Despite its successes, commercial mediation has not yet matured.

Noteworthy is that in the publication from which the above quotes are taken, the author speaks of both 'business mediation' and 'commercial mediation', inviting a

closer look at what exactly is intended when we talk about these notions and ask ourselves what is intended when reference is made to corporate mediation. It was one of the objectives of the CMJ to bring the phenomenon of corporate mediation to life as an important ingredient of corporate life. So, let us first look at what corporate mediation has or does not have in common with commercial mediation and business mediation and then see what I believe the state of affairs is, where corporate mediation is concerned.

### 2 Definition

Do definitions matter? Yes and no. Mediation is a broad array of communication skills based on empathy, relativity, mutual respect, self-reflection, confidence, trust and patience, to name but a few of the ingredients that lend substance to a structured procedure, irrespective of what it is called, whereby two or more parties on a voluntary basis try to themselves solve a dispute with the help of a third party.<sup>2</sup> Definitions may be of help to identify the process of mediation in the eyes of potential users of mediation so they will be able to distinguish the process from other means of conflict resolution, for mediators to market their services, and for regulators who sometimes want to stimulate mediation out of noble motivation either or not in combination with a wish to slice government spending on distributing justice.

I will first look at a definition of corporate mediation to help structure what follows in the other paragraphs. An important function of a definition is to help potential

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1 Rome D.L. (2010). A guide to business to business mediation. In *A Handbook on Mediation* (3rd ed.). New York: American Arbitration Association, pp. 783 and 794.

2 For a more elaborate discussion of definitions of mediation, see Brink M. (2018). A Definition of Mediation. *Corporate Mediation Journal*, (2), 40-45.

users of mediation to know what to expect when opting for mediation. A definition is in my view helpful when it serves to identify the core values of mediation, the combination of which I see as the unifying common denominator, explaining the nature of the phenomenon. These are (in any event where it concerns front-end) it is voluntary, confidential, there is freedom to end the mediation at will at any time, impartiality of the mediator and respecting party autonomy. When these core values are preserved and adhered to, mediation may take place in many ways, as many ways as there are mediators.<sup>3</sup> Whether commercial or not, mediation with observation of these core values can claim to be mediation; other anchors to identify and warrant an otherwise abstract process are neither needed nor available, to help every potential user of mediation to know what to expect when opting for mediation. Schools of mediation, working methods, specialisation of mediators are all variations on the theme of mediation as constituted in whatever form or shape, by observation of the core values. Keeping these as compass also makes it possible to benchmark at least a certain level of quality of rendering the service of mediation by mediators. Mediators may be found in all walks of life with their own approaches to helping parties to find solutions to their problems, or to facilitate communication and cooperation between people.

Thinking about the concept of corporate mediation some 10 years ago, it was a challenge to coin a definition helping to distinguish corporate mediation from business and commercial mediation. The liberal use of the notions of business and commercial mediation did not explain much. These notions did not sufficiently distinguish between what can be seen as general practice on the one hand and a more business-like type of mediation with its own characteristics and demands on mediators<sup>4</sup> on the other hand. Mediation, as Anna Doyle points out in her contribution to this issue, can be instrumental for a multitude of applications and so the question was whether the notions ‘business mediation’ and ‘commercial mediation’ were not just a beginning of a distinction between mediation whereby businesses were involved as opposed to all the other applications. Does the fact that a business is involved in a dispute, e.g. business to consumer, make the mediation qualify as business mediation or is that, as I would rather call it, consumer mediation? The fact that a business is involved or there is a business aspect to the situation at hand may be referred to as businesses mediation, but this is so generic an expression that it does not say much.<sup>5</sup> The same applies to commercial mediation, which by its nature will mean business for a mediator. Furthermore, mediation in businesses in the end will be

beneficial to the business when it succeeds to make people work together more harmoniously, but it need not say that the object of a mediation would have anything to do with the business.

The notion ‘business mediation’ is normally used to indicate that it concerns commercial mediation. A definition of commercial mediation is found in the *Canadian Commercial Mediation Act 2010* (c 16, Sched 3, s 3). A commercial dispute is defined as:

... dispute between parties relating to matters of a commercial nature, whether contractual or not, such as trade transactions for the supply or exchange of goods or services, distribution agreements, commercial representation or agency, factoring, leasing, construction of works, consulting, engineering, licensing, investment, financing, banking, insurance, exploitation agreements and concession, joint ventures, other forms of industrial or business cooperation or the carriage of goods or passengers.

Commercial mediation involves a dispute as intended in the above definition and may be a dispute between natural persons without professional background. In the event one of the parties acts in a professional capacity, I see that as business mediation. A professional party is a party acting as representative of a corporate entity, institution or government agency or be a shareholder of a legal entity or a member of an organ of such an entity. ‘Business to business mediation’ involves entrepreneurs (either or not in the form of legal entities) or commercial institutions on both sides of the spectrum.

All in all, if one wanted to distinguish corporate mediation from the all-encompassing generic notions of business and commercial mediation, it was necessary to formulate a definition, which would allow it to be set apart from other applications of mediation skills. In itself that was not so easy, but I believe I did find a good expression of what I saw as corporate mediation by referring to it as ‘mediation within and between organisations’. Not all organisations are businesses, but all organisations have to do with corporate governance (i.e. the way the management and supervision is organised) and in large or small units of people working together to achieve certain objectives, be it either for profit or not, special expertise may be required to have an organisation function well.<sup>6</sup> So, as far as an attempt is made to make mediation recognisable as a (management) tool, the expression *corporate mediation*, pertaining to relationships at work and between organisations, may be helpful and will also be utilised as such in this contribution to CMJ.

3 See Brink M. (2021). Evaluative Mediation (Part I), an Analysis. *Corporate Mediation Journal*, (1), 12.

4 See about subject matter expertise and working methods in my other contribution to this issue about selecting a mediator.

5 Not seldom mediators position themselves as business mediators, hoping that by doing so they will get more financially attractive work.

6 See CEDR (2013). *Effective Conflict Management*. London: ICSA Information and Training Ltd.; Constantino C.A. & Merchant C.S. (1996). *Designing Conflict Management Systems, A Guide to Creating Productive and Healthy Organisations*. San Francisco: Jossey-Bass and Champoux J.E. (2011). *Organizational Behaviour, Integrating Individuals, Groups, and Organizations*. New York and London: Routledge, to mention but a few.

Corporate mediation may involve issues such as liability of board members, the formation or ending of a joint venture, private equity, co-determination, relocation and conflicts between people or departments within the organisation. Runesson and Guy<sup>7</sup> add to these examples self-interested transactions, annual accounts, nominating/appointment of board members, remuneration/bonuses of board members, share valuation, disclosure requirements, non-compliance with corporate governance codes, risk management, bankruptcy/suspension of payments and discharge of individual board members/executives/mismanagement.

### 3 Corporate Mediation State of the Union

Legal Counsel Rob Huijten, at the time head of legal at Bayer Vegetable Seeds, observed in CMJ 2017/1:

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.<sup>8</sup>

26 More and more organisations – as well as individuals – will come to appreciate that litigation or arbitration is costly, lengthy and, however confident one may be, uncertain where the outcome is concerned. 'One goes into litigation as a pig and comes out of it as a sausage', as the saying goes. I like to say that of two parties engaging in litigation or arbitration, one was wrong to do so now that there will be a winner and a loser. Yet, it is not necessarily so that one of the parties was wrong, since 'when both parties are sincere, they are both right'. The thing is that this wisdom normally does not find expression in litigation or arbitration. I believe that over time the realisation will grow on the part of parties that utilising another approach to conflict than litigation or arbitration is beneficial to them and in their own interest. Compare the difficulty biological farmers faced in the early years of their new approach to agriculture. By now consumers realise that eating biological food is not something one does solely to support the farmers in their zest to create a better environment but foremost to support one's own health. Cultural changes like this need time to materialise. So, a further growth of the awareness of the downside of litigation and arbitration and the upside of alternative dispute resolution will

7 Runesson E.M. & Guy M.L. (2007). *Mediating Corporate Governance Conflicts and Disputes*. Washington Corporate Governance Forum and International Finance Corporation, Focus 4.

8 Mulder C., Interview (2017). Rob Huijten: 'Recognition and Acknowledgement Are Both Crucial to Success in the Corporate World.' *Corporate Mediation Journal*, (1), 24.

take time. The Pavlov response to a conflict that is not directly and easily solved, still far too often, is to turn to the lawyers, not to sit down and self-reflect. Another issue is that lawyers are not trained as psychologists and often are (over)confident that they know best how to approach and solve a case.

Mediation takes the courage to self-reflect. Dispute-wise, managers will engage in a SWOT (strengths, weaknesses, opportunities and threats) analysis of their own contribution to the occurrence and persistence of a dispute and take ownership for their part in the situation. It is important to make certain that such a SWOT analysis will be made not only of one's own contribution to the occurrence and persistence of a dispute, but also of the follow-up on the situation. It is important to consider the ideal solution, a compromise, the best alternative to a negotiated agreement and the worst alternative to a negotiated agreement. Dispute-wise, organisations use instruments like an early case assessment tool kit.<sup>9</sup> Part of such tool kits often is discovery so that all relevant elements of a case are collected and analysed not in the last place to allow an evaluation of one's own contribution to the occurrence and persistence of a dispute and to realise a number of advantages. It may prevent further exposure risks, form the basis for a strategy including assessing the brackets for a solution in negotiation or mediation, avoiding costly imposed discovery proceedings, getting the file complete and organised saving much time later if litigation were to occur still and create a consciousness of what all may be(come) involved and so choose goals in the process: will one attach more value to a monetary result, an interest-based solution, repair of the relationship or a transformation of perspective? Part of such an early case assessment tool may be the use of a Hyperion decision tree<sup>10</sup> in order to choose from the spectrum of dispute resolution options.<sup>11</sup> In the United States a large number of organisations,<sup>12</sup> recognising that disputes in business relationships impose costs in loss of resources, focus and relationships, have signed a pledge in the awareness that promptly addressing conflicts before they harden into disputes maintains business purpose, preserves cooperative working relationships, better ensures business continuity and saves costs.<sup>13</sup> Unfortunately a brief sur-

9 E.g. [https://resources.relativity.com/ECA-Demo.html?utm\\_source=google&utm\\_medium=ppc&utm\\_campaign=Early-Case-Assessment-EMEA&utm\\_term=early%20case%20assessment%20tool&gclid=EAlalQobChMI6Onv1ODa\\_AIVyQOLCh3S3gKQEAAAYASAAEgLQh\\_D\\_BwE](https://resources.relativity.com/ECA-Demo.html?utm_source=google&utm_medium=ppc&utm_campaign=Early-Case-Assessment-EMEA&utm_term=early%20case%20assessment%20tool&gclid=EAlalQobChMI6Onv1ODa_AIVyQOLCh3S3gKQEAAAYASAAEgLQh_D_BwE) and [www.britishlegalitforum.com/news/the-basics-of-early-case-assessment-eca/](http://www.britishlegalitforum.com/news/the-basics-of-early-case-assessment-eca/) (last visited January 20, 2023).

10 See e.g. Korobkin R. (2002). *Negotiation, Theory and Strategy*. New York: Aspen Publishers, p. 56.

11 See Folberg J., Golan D., Stipanowich T.J. & Kloppenber L.A. (2010). *Resolving Disputes, Theory, Practice and Law* (2nd ed.). New York: Aspen Publishers, p. 6. Also hybrid solutions might be considered, see Van Zelst B. (2021). When It Comes to Conflict Resolution – Are We Ready to Deploy Hybrid Solutions? *Corporate Mediation Journal*, (2), 29-30.

12 Signatories include Microsoft, Visa, Amgen, CVS Health, ConocoPhillips, Jenner & Block and others.

13 This CPR pledge was discussed by the then president and CEO of the International Institution for Conflict Prevention and Resolution, Noah Han-

vey on my part among corporate legal counsels of organisations which signed the pledge did not show strict adherence to the in itself clear intentions as expressed by the pledge. In terms of culture the pledge has not really gained traction. Neither do outside counsel always take the pledge very seriously, where attorneys at law are still not always aware of the fact that they may serve their clients best by *not* litigating a case. However, this – apart from economic considerations – requires training in negotiation and mediation (i.e. behavioural psychology), in which, as said, lawyers are not educated in university. One of the problems is that many lawyers believe to be skilled negotiators because an important part of their work consists in negotiation, failing to appreciate that it is a science in itself, as Leathes<sup>14</sup> emphasised in his book *Negotiation, Things Corporate Counsel Need to Know but Were Not Taught*. The fact that in many countries nowadays in case of litigation courts will want to know whether mediation has taken place or may even order mediation to take place before proceeding with a case may cause more legal counsels to become more interested in mediation.

Lande<sup>15</sup> in a study among lawyers and managers found:

This study suggests that business attorneys' and executives' belief in mediation on an ideological, not simply a technical, level. These professionals identify themselves in such categories as sceptics, believers, and advocates. While technical characteristics of rival dispute resolution procedures certainly factor into the professionals' ideologies, it seems clear that the ideologies transcend rational technical analyses of optimal modes of handling disputes. Rather, belief in mediation takes on the character of a moral value. For believers, it represents a "best practice", not only in producing technically superior outcomes but of being the "right thing to do".

A ten-year study in Germany showed that the perception of benefits of mediation among managers is much

higher than the actual use of mediation.<sup>16</sup> There still is, and in the foreseeable future most likely will be, a discrepancy between perceptions as to the benefits of dispute resolution procedures and the actual use thereof. Najar<sup>17</sup> proffers that one of the main cultural obstacles to early dispute resolution, and more particularly mediation, is the unwillingness of business people to cooperate in early case evaluation, and manage the paperwork that goes with it. Even today the idea of disclosing information to the opposing party is frowned upon by some lawyers, not to mention business operatives. In all events, in order to include mediation in the early case evaluation, it may be essential to structure throughout the organisations how to deal with a potential dispute. The best way is to make sure that all disputes are handled at one central point – e.g. the legal department – where it will be abstracted from the business manager owning the dispute and at least will not be handled by him or her independently. This is not always a popular way to structure things – since the budget and perhaps also the bonus of the relevant business manager may be impacted – but the best way to ensure that all available options for the most appropriate way to deal with the dispute will be objectively investigated. Another option – which is a sensible thing to do anyway but takes more effort – is to integrate legal departments in the various business units of organisations. All this will require a structure with strong support of the highest level within the organisation, because otherwise the legal department may be by-passed at will ('tone at the top').<sup>18</sup> One corporate legal counsel told me to have suggested to try mediation to a business manager facing a dispute, and to immediately having received the answer 'no'. Upon the follow-up question whether the business manager knew what mediation would entail, the answer was also 'no'. As Najar remarked, 'Sometimes all it takes for a culture shift is a successful mediation.'<sup>19</sup> For both lawyers and managers litigation or arbitration may have a poisonous advantage. If the case is not concluded successfully they are not necessarily to be blamed, but they can point the finger at the opponent not playing fair, or the failure on the part of the court to appreciate the nuances of the case. This legitimising role may well be to blame for the still relatively limited use of corporate mediation within and between organisations. This all too human factor within organisations may only be removed when the top of the pyramid (the Board) will come to appreciate the advantages of mediation and endorse the internalisation of the instrument in the minds of management. As Najar observed:

ft, in *CMJ* 2018/2. The pledge was introduced in January 2021 and revised in Hanft N.J. (2018). *The Power of the CPR Pledge*. *Corporate Mediation Journal*, (2).p. 37-39. The pledge says:

*We subscribe to the following statement of policy on behalf of our company or organization: To preserve relationships in business arrangements, and subject to mutually agreed-upon terms, we will incorporate dispute prevention mechanisms into our arrangements where appropriate. The range of mechanisms may include, for example, reliance upon resources internal to the parties, such as implementation of contractual escalation clauses to defuse conflict within and between organizations, or third-party mechanisms, such as jointly engaging a dispute prevention neutral; all designed to enable early identification of conflict and preventing it from hardening into a dispute. This statement of policy does not commit us to any particular outcome, but only to the willingness jointly to deploy dispute prevention mechanisms to help us avoid disputes and maintain our business relationships and purpose.*

- 14 Leathes M. (2017). *Negotiation, Things Corporate Counsel Need to Know but Were Not Taught*. Alphen aan de Rijn: Kluwer. This book was reviewed in *CMJ* 2017/1, pp. 25-26. Mulder (2017) suggested that mediation would be a core part of a legal degree in the Netherlands; Mulder C. (2017). *Should Mediation Be a Core Part of a Legal Degree in the Netherlands?* *Corporate Mediation Journal*, (1), 17-21.
- 15 Lande J. (2000). *Getting the Faith: Why Business Lawyers and Executives Believe in Mediation*. *Harvard Negotiation Law Review*, 5, 137-227.

16 Kirchhoff L. (2007). *Trends in Conflict Management in the Corporate Sector Results from a 10-year Study Series*. Kirchhoff Institute for Conflict Management Europa-Universität Viadrina Frankfurt (Oder).

17 Najar J.-C. (2014). *Corporate Counsel in the Era of Dispute Management 2.0*. *Business Law International*, 15(3), 237.

18 In Brink, M., *Corporate Mediation Journal* 2017/1, pp. 1-4, the role of the CEO was addressed and the importance thereof in terms of social skills, not only in the interest of the organisation but also of the CEO himself or herself: *Do Not Let Your CEO Even Read This!*.

19 See note 14.



Structurally, corporate culture, communication and a more horizontal involvement of the legal department are the key elements to enabling and integrating a dispute management policy in a company,

to which I add the involvement of the highest management level in an organisation. What is also required is a willingness of managers to manage conflict like any other process. The systemic recognition of mediation does not mean that mediation will always have to be used, but like in any business decision, it will have to be taken along in the array of options when considering dispute resolution.

One very important element of corporate culture, as I see it, is the facilitation of cooperation within organisations, between employees and members of an organisation.<sup>20</sup> Mediation (skills) have an essential role to play in the way people work together within organisations.<sup>21</sup> According to a study by CPP Global, in the United States alone workers spend more than 2.5 hours per week on conflicts. That adds up to an estimated \$359 billion in productivity lost due to workplace conflicts (based on an average wage of \$17.95 per hour). This staggering amount does not take into account the very real costs of employee turnover, retraining costs, lower productivity, absenteeism and negative effects on family life and health.<sup>22</sup> This is just one figure in one country. Much has been written about communication at work.<sup>23</sup> An essential element is corporate culture. In CMJ 2017/2<sup>24</sup> legal counsel Martin Fischer, General Counsel EMEA at Celanese, put it succinctly:

Mediation Is Not a New World or a Scientific Term, It's Something Which Should be Embedded in the Way We Communicate. [...] There is an even greater need for mediation today than before because what is happening across society is also reflected in the corporate world. The tone is tough and there is a lot of polarisation. I believe the corporate world will make greater use of mediation, but as of today there is still a long way to go. [...] ...the big challenge is to see it become firmly established in the corporate world.

20 The notion 'organisation' intends to cover each organisational unity either or not for profit and either or not in the form of a legal entity.

21 Brink M. (2016). Corporate Mediation: A proposition. *Corporate Mediation Journal*, (1), 3-12.

22 [www.progressivewomensleadership.com/what-workplace-conflict-is-costing-you/#:~:text=According%20to%20a%20study%20by,wage%20of%20%2417.95%20per%20hour](http://www.progressivewomensleadership.com/what-workplace-conflict-is-costing-you/#:~:text=According%20to%20a%20study%20by,wage%20of%20%2417.95%20per%20hour) (last visited January 20, 2023).

23 See among many others: Crawley J. & Graham K. (2002). *Mediation for Managers, Resolving Conflict and Rebuilding Relationships at Work*. London: Nicholas Braeley Publishing; Edmonson A.C. *The Fearless Organization, Creating Psychological Safety in the Workplace for Learning Innovation, and Growth*. Hoboken: John Wiley & Sons; Bollen K., Eeuwema M. & Munduate L. (Eds.) (2016). *Advancing Workplace Mediation through Integration of Theory and Practice*. Springer (reviewed by Kraus, M. in *Corporate Mediation Journal* 2017/1, pp. 27-28) and *HBR Guide to Coaching Employees* (2014), Harvard Business Review Press.

24 Mulder C. (2017). Interview Martin Fischer: 'Mediation Is Not a New World or a Scientific Term, It's Something Which Should be Embedded in the Way We Communicate.' *Corporate Mediation Journal*, (2), 62.

When speaking of corporate culture the reference is typically to cognitive culture: the shared intellectual values, norms, artefacts and assumptions that serve as a guide for the group to thrive. The emotional culture is made up of the shared affective values, norms, artefacts and assumptions that govern the emotions that people have and express at work and that they are better off suppressing.<sup>25</sup> Rome was right by observing that more and more organisations begin to see the benefits of mediation not necessarily only as a *process*, but also of the deployment of mediation *skills*. In CMJ 2016/1<sup>26</sup> it was observed that it is a mistake to rely on a cognitive culture with rules and regulations alone. In the end what makes people tick are emotions. We only exist in our relation to one another. Soft skills help to address tough issues. A trustworthy, transparent leadership, and sufficiently confident to be willing to self-reflect and sufficiently confident to allow or even invite contradiction will contribute to a psychologically safe environment in which people will feel recognised and be motivated.

A CEO who is open to mediation (skills) may soon experience the advantages of the culture it can breed. Hidden risks lurking inside the organisations may become known, and early warning signals may be delivered without fear for repercussion. The bottom line is that deploying mediation skills within and between organisations is the smartest way of getting things done better, more accepted and without much of the resistance, friction or conflicts that otherwise occur so often. Strikwerda<sup>27</sup> points to the relationship between culture and long-term value creation. He believes executives and members of (supervisory) boards ought to understand culture beyond the word-symbol and see it as an element of the larger system, see the constituent elements of the phenomenon of culture, in order to turn potential conflicts and disappointments into constructive, explorative learning debates and solutions.

Yet, mediation skills are not given by nature to everyone, so it requires deliberate effort and training to create an emotional culture.<sup>28</sup> In CMJ 2017/2 Lau and Maslowski<sup>29</sup> explain not only the importance Intel Corporation attaches to productive conflict as an essential part of creativity and innovation, but also that it takes deliberate policy efforts to create a culture where help is available in case of conflicts between co-workers, peer managers, team members, and supervisors and subordinates. They explain that Intel is on a journey trying to continue to broaden and expand collaborative media-

25 Barsade S. & O'Neill O.A. (2016). Manage Your Emotional Culture. *Harvard Business Review*, January-February, 58-67 and Detert J.R. & Burris E.R. (2016). Despite Their Best Intentions, Managers Tend to Shut People Down. *Harvard Business Review*, January-February, 81-88.

26 Corporate Mediation: A Proposition?, CMJ 2016/1.

27 Strikwerda H. (2018). On the Concept of Corporate Culture. *Corporate Mediation Journal*, (1), 7-11.

28 See also Weis D.S. (2017). Business Schools Should Adopt More Conflict Resolution into Their Risk Assessment and Management Curriculum. *Corporate Mediation Journal* (1), 13-16.

29 Lau P. & Maslowski J. (2017). Intel's Corporate Story, Transforming Unproductive Conflict into Collaborative Solutions. *Corporate Mediation Journal* (2), 33-36.

tion within the organisation. This programme has the full support of the board. Also at the highest level special attention for the emotional culture of the organisation may bring many benefits. Where issues of policy-making are 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. 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.<sup>50</sup>

A word of warning is in place. Even the most experienced deployment of mediation skills in the workplace may overlook that sometimes the effect of even skilful communication goes deeper than the functional role only. People are sensitive creatures and even skilful use of mediation skills may not be a panacea for every situation – as neither it is in conflicts between organisations; the learning and deployment of mediation skills within and between organisations is what can be done to help a better environment between people and organisations function better and be a place where people can thrive. Various modulations where mediation skills might be deployed without it being formal mediation are an ombuds function, confidential in-house counsellor, in-house mindfulness adviser or, as Anna Doyle referred to her function as internal mediator and ethics officer at Eurocontrol, a ‘safe space’, where people could turn to unburden their mind or seek help to become empowered again. She explained that to have an internal mediation service is one way of taking the pulse of the organisation and temperature of what is going on under the radar from different perspectives – human, social, technical, political, economic and organisational. It can also promote corporate awareness and an enlightened approach to informed decision making.<sup>51</sup>

## 4 To Conclude

It is hard to say whether the realisation that in case of potential conflict within and between organisations, it is better to be *partners* with a problem than *parties* with a problem will continue to grow. As parties with a problem it is all about who is right, while as partners with a problem, it will be all about jointly finding the best solution to a problem, whereby it helps to work in the realisation that if it cannot be done the way it ought to be

done, it is best to do it the way it can be done. In terms of this state of the union, I think it is fair to realise that there still has to be gained much more experience with mediation by many more people involved in organisations – from top to bottom – all over the world over a long period of time. To really alter the culture of dispute prevention and resolution in the increased polarisation that globalisation has brought with it is a major culture challenge. Yet, there is a greater want than ever to realise that we are all dependent on one another to create peace, sustainability and wellbeing for oneself and others. Mediation will hopefully like water find cracks and holes to sip into organisations, and by and large let mediation skills become the factor to decide where people will want to work and which organisation will be most successful. The challenge is to have the notion of mediation (skills) become familiar from top to bottom in organisations. In this respect corporate mediation still has a long way to flow.

30 Doyle A. (2021). When No One Wants to Mediate, Call the Mediator! *Corporate Mediation Journal*, (1), 3-6.

31 Doyle A. (2017). The Corporate Mediator – Supporting People, Fights, Flights and Flows. *Corporate Mediation Journal*, (1), 5-10.