

IBA Annual Conference, Prague, 25-30 September 2005

Together with its sister Committees in the newly formed Dispute Resolution Section, the Mediation Committee helped to organize an all-day program on Privilege and Professional Secrecy. This program included several distinguished panels of speakers, the fourth of which was chaired by Mediation Committee Chair John Townsend. The fourth panel focused on the refusal of European Union Law to recognize a privilege for communications between corporate managers and company lawyers. Speakers on this panel included Jacques Buhart of Herbert Smiths Brussels and Paris offices, Jans Eijsbouts, General Counsel of Akzo Nobel, and Emil Paulis, Director of DG Competition. Messrs. Buhart and Eijsbouts advocated for the extension of professional privilege to in-house lawyers under European law. Mr. Paulis defended the Commissions position that an in house lawyers advice is not entitled to legal privilege because the employment relationship prevents the in-house lawyer from being truly independent.

On the afternoon of September 28, the Mediation Committee discussed Mediation and the Law. There have always been very different views on the topic. Some believe that mediation being a voluntary process, no legislation is needed. Some believe that mediation should be compulsory before the introduction of any claim. Others wish the judge to invite the parties to consider mediation and possibly impose a penalty on a party which unreasonably refused to consider mediation.

The discussion chaired by Thierry Garby, co chair of the Committee, was based on a spreadsheet showing the basic concepts of the legislation in five jurisdictions (France, Argentina, the Czech Republic, England & Wales and California). The reporters from each of these countries (Thierry Garby, Roberto Fortunati, Vit Horacek, Jon Lang, Eric Van Ginkel) were invited to comment on the actual efficiency of each system in a lively discussion where the audience was invited to participate.

The outcome can be summarised in one sentence: any system is as good as the people in charge of implementing it. When lawyers and judges are aware of how much mediation can help the parties and are willing to help them resolve their disputes in expeditious and inexpensive ways, mediation do develop. When this is not the case, whatever the rule of law may say, mediation will remain in limbo.

IBA Annual Conference, Chicago, 17-22 September 2006

The Chicago meeting of the IBA in September was the second IBA conference in which the Mediation Committee was able to participate, and it was the first conference during which the Mediation Committee organized an all day program. That program, entitled Mediation as a Management Tool, was co-sponsored by the IBA Corporate Counsel Forum and began with a panel on the Mediation of Disputes in Long Term Relations. This panel, chaired by current Committee Senior Vice Chair Thierry Garby and Committee Treasurer Helena de Backer, featured a stimulating role-play of a mediation followed by lively questions from the audience. Current Committee Chair Siegfried Elsing chaired the next panel on Mediation as a Cost Containment Device, which took a close look at empirical evidence of how Mediation can reduce costs. This topic provided the perfect segue into the final panel of the afternoon on Mediation as an Element of Good Corporate Governance, which was chaired by Mediation Committee Corporate Counsel Liaison, David Burt.

In addition to this all day program, the Mediation Committee co-sponsored a program on Dispute Resolution Mechanisms for Intellectual Property Disputes with the Committee on Intellectual Property and Entertainment Law. The Mediation Committee also co-sponsored a program with the Litigation Committee on Mediation in the Court Process.

In addition, the Mediation Committee worked with the International Centre for Dispute Resolution to encourage it to organize a training program for mediators in conjunction with the Chicago meeting. That program, which the ICDR held in Chicago immediately preceding the IBA meeting, was enthusiastically received by those who were able to participate.

Finally, the Mediation Committee hosted a reception for young international ADR practitioners together with the International Centre for Dispute Resolution's Y&I networking group. This reception provided a unique opportunity for young lawyers to mingle with experienced international arbitrators and mediators in a relaxed and stimulating setting.