



ILCEA

Revue de l'Institut des langues et cultures
d'Europe, Amérique, Afrique, Asie et Australie

40 | 2020

**English for Specific Purposes (ESP) and the
Underlying Dynamics of Power, Empowerment and
Disempowerment**

Power and Persuasion in Online Dispute Resolution

Pouvoir et persuasion dans le domaine du règlement en ligne des litiges

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Electronic version

URL: <http://journals.openedition.org/ilcea/10462>

DOI: [10.4000/ilcea.10462](https://doi.org/10.4000/ilcea.10462)

ISSN: 2101-0609

Publisher

UGA Éditions/Université Grenoble Alpes

Printed version

ISBN: 978-2-37747-204-8

ISSN: 1639-6073

Electronic reference

Ruth Breeze, « Power and Persuasion in Online Dispute Resolution », *ILCEA* [Online], 40 | 2020, Online since 04 June 2020, connection on 13 June 2020. URL : <http://journals.openedition.org/ilcea/10462> ; DOI : <https://doi.org/10.4000/ilcea.10462>

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1. Introduction

- 1 In many different contexts across the world, people are turning away from national courts and tribunals to forms of Alternative Dispute Resolution (ADR), since it purports to offer parties an opportunity to avoid many of the costs, delays and complications often associated with conventional court proceedings. The trend towards ADR has attracted considerable attention from legal scholars, and also from researchers in the area of professional discourse (Ng, 1999; Heisterkamp, 2006a, 2006b; Breeze, 2012, 2016, 2019). It has been suggested that the comparatively flexible and less hierarchical nature of ADR, as compared with court procedures, is likely to have observable effects on the way the different parties interact with each other and on the discursive strategies deployed (Vázquez Orta, 2013; Breeze, 2016).
- 2 One form of ADR that is currently gaining popularity is mediation. Mediation is understood as a structured but dynamic process in which a mediator aids two or more parties to resolve a conflict, and many small-scale disputes or small claims are now being handled through voluntary mediation procedures. In mediation, the disputing parties are encouraged to participate actively in a process in which the needs, interests and rights of the parties are the first priority. The process is usually private and confidential, and is essentially voluntary, built on the assumption that the parties who enter mediation have some degree of willingness to seek a solution. The role of the mediator is a key factor in this: mediators are understood as facilitators, that is, they do not recommend parties to take a particular course of action, but rather help them to analyse their position, wants and needs (Heisterkamp, 2006a, 2006b; Gotti, 2014).
- 3 One interesting recent innovation in the area of ADR as a whole is the emergence of various forms of Online Dispute Resolution (ODR), in which Internet-based platforms

are used to conduct different types of ADR using affordances that range from quasi automation of the dispute resolution process, to the semi-replication of face-to-face ADR sessions through video and shared screen facilities. In concrete, in the case of mediation, the last few years have seen the development of online mediation platforms that allow parties to take part in expert-led mediation without leaving their own homes. However, this raises the question as to whether the online version truly represents the same kind of mediation as was previously developed in face-to-face contexts. Without taking a stance on this, we can surmise that the move to an online platform may involve losses as well as gains for the parties, the mediators, and the process as a whole.

- 4 To begin our exploration, it is useful to look briefly at the existing research on the introduction of ODR in areas other than mediation. Early research in this field focused on the quantity and quality of activity that takes place in ODR environments, and the participants' own evaluation of this experience (Hillis, 1999; Katsh & Rifkin, 2001). In particular, it was noted that the interaction in ODR is subtly influenced by the presence of a theoretical 'fourth party': the software tools that structure the ODR process, which have emerged from a consensus among professionals as to how the dispute resolution process should be shaped and guided. In the words of Gaitenby, ODR platforms are the product of "individual and collective consciousness empowered by a multitude of social, cultural, and technical tools" (2006: 371). However, to gain deeper knowledge of interactions within ODR, researchers need to adopt a discourse analytical approach, to explore how people interact in and with online environments, and to investigate how power and persuasion are exercised within these constraints. Such research will also provide further insights into how the platform itself constrains or facilitates certain types of action on the part of the arbitrator/mediator to structure the interaction and move it towards an outcome (Poblet & Casanovas, 2007). Ultimately, it should shed further light on the mysterious workings of the so-called 'fourth party'.
- 5 In this paper, we take the example of online mediation, starting from the bibliography on mediation discourse to build a model of the way face-to-face mediation functions and how the mediator assumes a series of roles to move the interaction forward. We then examine three case studies conducted using the US-based online Virtual Mediation Lab, exploring to what extent the same dynamics can be observed as described in the bibliography, and what identifiable differences emerge. The points of contrast detected are corroborated by examining statements from online interviews with the participants in online mediation and other analyses from the bibliography.

2. Roles in face-to-face mediation

- 6 In mediation, the leading role is played by the mediator, usually a trained specialist (though often not a lawyer) who follows specific principles materialised in concrete discursive strategies in order to perform his/her mediating actions. As Gotti (2014) has shown, mediation sessions follow a common procedure, which usually follows the sequence of moves and steps indicated in Table 1.

Table 1. – Move-step structure of mediation sessions (based on Gotti, 2014: 306–7).

1. The opening move
 - 1.1. Introducing mediator(s) and participants
 - 1.2. Presentation of mediation, its purpose and rules.
 - 1.3. Assurance of confidentiality
 - 1.4. Confirming parties' agreement to the mediation process
2. Presenting the issues
 - 2.1. Each party makes an opening statement
 - 2.2.* Each party summarises the other party's position
 - 2.3.* Mediator helps parties to formulate their main goals
3. Working towards a solution
 - 3.1. Proposing/rejecting solutions
 - 3.2. Mediator helps parties to formulate proposals and reactions.
 - 3.3.* Dealing with conflicts or outbursts (if necessary)
 - 3.4.* Caucuses (private sessions between mediator and one party)
 - 3.5. Formulating acceptable solutions
4. The ending move
 - 4.1. Ensuring that parties understand the terms of the agreement
 - 4.2.* Asking the parties to sign the final form (if appropriate)

* Steps marked with asterisk are not always included.

- 7 It should be noted that this structure, which underlies most mediation sessions whether online or offline, implies the fulfilment of various distinct roles on the part of the mediator and the other participants. Following Goffman's classic work (1959), we know that in professional interactions people take on established social roles, which serve to give coherence and consistency to these encounters. In the relatively informal situation of mediation, where participants meet with a specific common aim (to resolve the dispute) but disagree in many respects, the definition of what the session is and the maintenance of its structure depends almost entirely on the mediator's skills in performing his/her roles. Mediators are responsible for directing the interaction along the lines suggested in Table 1, and nudging the participants towards a productive outcome. The parties, on the other hand, enter the process with a variety of different dispositions: given that they have to consent to take part, there is an expectation that they will behave more or less cooperatively, but since they may have negative or hostile reactions (e.g. "outbursts"), these have to be factored into the overall structure, and carefully "managed" by the mediator.
- 8 To understand the key roles of the mediator, it is important to consider the way in which mediation is conceptualised (cf. Goffman's "definition of the situation", 1956: 2). Although, like litigation, mediation is a way to resolve disputes, it differs from traditional court proceedings in that it is primarily presented as a way to help the parties themselves to find a solution, and the mediator is not regarded as a judge who passes judgment. Although the spirit of mediation is flexible, the mediator is not a negotiator, and the aim is not necessarily to work out a solution involving give and take, but rather to encourage the parties to question their own suppositions and aims, and to see the other person's point of view. None the less, the mediator still has authority over the way that the mediation process is carried out, and endeavours to support and guide the parties in their communication with each other. For this reason, we can identify various overlapping roles: a managing or organising role, something we

could term an authoritative educational role, a role as coach or facilitator, as well as roles as listener and intermediary. In practice, it can be difficult to draw clear lines between these roles or, seen from another perspective, more than one of these roles could be exercised at any given time. However, it is still useful to examine each of these roles briefly, in order to build a framework for analysing the case studies. In what follows, I have used the descriptions provided by Gotti (2014), but organised them slightly more systematically:

- **Managing role:** the mediator clearly has a managing role, in that he/she has to set up the session, and at different points along the interaction may have to ensure that there is a balance between the two parties' contributions, often materialized by exercising control over the turn-taking within the sessions. Mediators also have to deal with outbursts, and they have the option of dividing the two parties when the conflict becomes too bitter. Mediators have to nudge the parties towards a solution and bring discussions back on track after diversion/crisis. Mediators may sometimes have to facilitate consensus by making suggestions. Ultimately, if the session is successful, they have to draft a balanced agreement.
 - **Educating role:** the educating role overlaps with the role as manager, but differs in its focus, which is didactic rather than merely organizational: at the beginning of the session, the mediator has to educate the parties by providing his/her own description of the mediation process, explaining to them how the session is to be conducted, instructing them about how they are to communicate with each other, and suggesting what the outcome should be and how this should be materialized (i.e. as a written agreement). This both strengthens the mediator's authority and helps him/her to manage the proceedings. Mediators may also adopt an educational role in the way they relate to the parties when outbursts and disputes occur (see above).
 - **Coaching role:** the educational role also overlaps with a specific role as coach or facilitator: mediators provide encouragement and support to both of the parties throughout the process. On an individual level, they help them to sort out their own feelings, formulate what they want, and find ways of expressing their feelings or wishes that are appropriate to the circumstances. In particular, they may also encourage each party to reflect on the other party's position and feelings.
 - **Listening role:** to perform the above roles well, mediators need to be receptive and show empathy, understand the parties' feelings. Being able to listen to others is a key aspect, for which mediators usually receive particular training. This should also help them to develop empathy.
 - **Intermediary role:** although this is not their principal function, mediators are often able to communicate privately with each of the parties, and may sometimes need to convey information from one party to the other when the parties are unable or unwilling to communicate with each other directly.
- 9 From the perspective of power, two points may be made. First, if we compare mediation with more formal proceedings such as litigation, the fixity of the roles and the degree of authority of the mediator/leader are both considerably reduced. However, despite the considerable rhetorical emphasis on the neutrality of the mediator's role, we should not assume that the mediator allows a free hand to the parties. As Gotti comments,
- [...] by providing summaries and reports of the parties' positions with a different stance or an appropriate shift of footing, mediators are able not only to clarify arguments and give their desired direction to the discussion, but also indirectly to make arguments and advocate standpoints without overtly taking over the

responsibilities for advocacy or decision-making, which are instead apparently left with the disputants. (2014: 323)

- 10 In general, all of this would tend to mean that the style of communication in mediation is more egalitarian than in formal proceedings, with a more even power balance, and that the mediator needs to exercise his/her authoritative roles subtly, through persuasion rather than top-down authority. In this respect, Heisterkamp (2006b) has drawn attention to the importance of a further concept from Goffman (1981), namely “footing”: in the framework of a given interaction, participants may adopt different statuses of involvement and express different degrees of commitment to their own remarks. As Heisterkamp (2006b: 306) has shown, face-to-face mediators are adept at shifting from individual to group footing, a technique they use both to project neutrality and to rope participants into a collective viewpoint.
- 11 Secondly, the special power balance within mediation is also linked to the voluntary nature of the parties’ participation, which means that on the one hand, they have accepted a commitment to try, at least, to work towards a solution, and on the other, that they can withdraw at any time if they wish to do so. Mediators can draw on this background understanding in order to exercise persuasive influence over the parties by reminding them of their commitment and ensuring that they remain within the process.

3. The transition to online mediation

- 12 The transition from face-to-face interactions to interactions through multimedia affordances has been widely studied in other areas of social life. In general, a change in the media through which interaction takes place usually has an impact on the actual procedure or organization of the exchange. Two important issues often arise when technological affordances are used: the creation of a greater sense of distance, and the constraints affecting the degree of interactivity or spontaneity possible. For example, submitting a complaint to a hotel website is essentially different from complaining in person, and the absence of a visible interlocutor or immediate response may lead dissatisfied customers to express themselves more uninhibitedly. Technological changes of this kind have the potential to alter the social experience of a particular event, perhaps allowing users to be more detached, but perhaps sometimes also amplifying negative emotions (Madianou, 2012). According to some experts, media use may actually erode face-to-face interpersonal skills, and even optimistic commentators perceive the presence of a certain tension between the technical and the affective in a range of contexts (Wajcman, 2002). However, in all this it is important to avoid digital determinism. Recent theory has moved away from a simplistic cause-effect view, and shown how people evolve new ecologies of media use as affordances become available (Ito et al., 2010). The media transform the way we communicate, but the way we communicate also has an effect on the design and ongoing development of the media we use (Silverstone, 2005). For this reason, it is important to look in more depth at real examples of online mediation, to examine how the medium may be influencing the participants’ attitudes and behaviour, and the mediation process as a whole.
- 13 In what follows, I will examine three online mediation sessions available on the Virtual Mediation Lab (VML) website (2019). This is a platform created by Giuseppe Leone and offered as a mediation forum for family, workplace or commercial disputes. The three

cases analysed here are presented on the website for training purposes, and thus offer a positive model of the way ODR sessions should be conducted. My analysis will focus on the mediator roles, looking at examples that illustrate the roles and footing typical of the mediator in this context. This will be followed by a brief consideration of the group dynamics in these sessions, and by a synthesis of the user guidelines and follow-up interview videos, with a view to shedding light on ways in which the online format may have affected the mediation session. In our conclusions, we will draw out various ways in which the power balance appears to be influenced by the online delivery, and discuss the possible implications of these findings.

- 14 Before proceeding to examine the cases, let us consider the nature of the Virtual Mediation Lab (VML) interface and its affordances for interpersonal communication. The platform offers a number of screens, one each for participants, one for the mediator, and others to be used by trainers or observers, or possibly by third parties. It also has a shared screen on which the mediator can write down points to be covered or draft the final agreement. We should not underestimate the importance of the fact that the platform works through extensive use of video. Previous commentators have noted that non-verbal communication plays a key role in face-to-face dispute resolution: body language, facial expressions, tone of voice, sighs, and so on, are essential in the way participants convey and understand messages (Rule & Villamor, 2004). A system of mediation based purely on words, particularly written words, could have very different results from the same essential interaction conducted face-to-face (such systems exist, e.g. Smartsettle, but they are not the topic of this paper: see Breeze (2019) for further discussion). Unlike the more automated forms of ODR, the VML allows parties and mediators to operate in a quasi-normal manner in terms of interpersonal communication, and there are no algorithms in operation that can automate or speed up the process on the basis of solutions to previous disputes or cost-benefit analyses. However, it is likely that some other aspects of conducting mediation using the VML do effect certain changes in the way it is done, and the way it is perceived, and these will be investigated below.
- 15 The three cases analysed are presented in full on the website. They are:
- Case 1. A workplace discrimination case (105 minutes) between Linda (an employee who feels that she should have been promoted) and Vanda (her supervisor).
 - Case 2. Family case (52/95 minutes) between Paddy and Norah concerning some valuable books left to them in their grandmother's will.
 - Case 3. A commercial case (72/115 minutes) between Vanda and Jean, two business partners with different plans for the future of their business, with two co-mediators.

3.1. Mediator roles in ODR

- 16 In general, the analysis of these three cases allows us to confirm the presence of the same mediator roles as observed in the case of face-to-face mediation. In what follows, I examine the presence of these roles in the different stages of the three cases, where appropriate indicating how the exercise of power can be perceived in these examples.

3.1.1. Managing role

- 17 The mediator typically begins the session with introductions, in which participants establish what they are going to call each other:

Good morning everyone, my name is Barbara and I'm one of the mediators [...] and we generally in mediation use first names so I'm first names with you, Vanda, how about you? (Case 3, Step 1.1)

- 18 We may note here the idea of reducing social distance and mitigating imposition by using first names, a habitual strategy in conventional face-to-face mediation (Gotti, 2014: 309). However, as previous researchers have also noted, the form of “self-labelling” exercised here is one of the ways in which mediators establish the tone for the proceedings and assert their own authoritative role (Heisterkamp, 2006a). Similarly, later on in the initial explanation, the mediator explains the workings of the caucus, again, showing her authority, but also reassuring the participants, as in this example from Case 2:

I may ask to speak to each of you privately, and that is called a caucus, and during that private discussion everything we talk about stays between the two of us. I don't share any information with the other person unless it's something that you want me to share with them. (Case 2, Step 1.2)

- 19 Another instance of the managerial voice can be heard when the mediator spells out certain legal aspects of the mediation session:

If there is no agreement and you decide to pursue this further in a court action, by signing the agreement, you are not able to call me as a witness or use my notes or in any other way involve me, and that's due to the privacy and confidentiality of our session. (Case 2, Step 1.2)

- 20 At certain moments in these opening moves, the mediator makes her authoritative role quite clear, as in this example towards the end of step 1:

Everything we talk about is private and confidential except in an instance where there could be abuse. That is something that I need to report. (Case 2, Step 1.3)

- 21 The mediator also takes the leading role in setting the interpersonal scene and tone for the mediation, particularly when he/she concludes the initial explanation, and ushers in move 2 with a cordial invitation to the parties to explain their concerns:

This is a time when you can share what has brought you here, what your concerns are, and what your thoughts are for a resolution. (Case 3, Step 2.1)

- 22 Mediators also make suggestions and push participants towards an outcome, as in the following extract from Case 2. Heisterkamp notes that mediators often try to use a neutral or collective footing in “an attempt to animate utterances from a collective rather than a personal perspective” (2006b: 306). One instance of that strategy can be observed here, where the mediator oscillates between inclusive “we” to suggest consensus, and the more personal use of “I” and “you” to add emotional force to the approval that she is giving to the participants' progress:

What we could do is ... have three opinions to work with, so that one can maybe be a tie-breaker ... but I think you're on the right track, to each get your own opinion on it. So does that sound like a plan? (Case 2, Step 3.5)

- 23 Importantly, given the time constraints in these sessions, the mediators seem concerned to move the parties on to a final solution, or at least suggest some other way of ending the present session:

We've spent a lot of this time just describing the situation and doing some groundwork. Would you be interested in coming back for another longer session? (Case 3, Step 3.5)

- 24 When the session draws to a close, the managing role also becomes prominent, often with recourse to a written agreement of some kind, or at least a plan for the next

session. At the end of Case 3, the mediator writes up a revised agenda on the screen, emphasising points that have not been resolved, and proposing that these should be the starting point for a new session. Again, the mediator adopts the collective footing established through extended use of “we” in “we could explore” (Heisterkamp, 2006b), although we may note that this is destabilised through the sudden reversion to exclusive “we” and “you” in the second part, where “we offer you that opportunity” sets up a barrier between “we” (the mediators) and “you” (the parties):

So here it is up on the screen again. So looking at the money, the consequences of not reinvesting and the consequences of not succeeding at the current job [...] so these are certainly things that we could explore in another mediation session, and we offer you that opportunity, we would be certainly willing to continue with you [...]. (Case 3, Step 4.1)

3.1.2. Educating role

- 25 We can observe that in all three cases, the mediator takes care to explain aspects of the mediation process that may not be obvious to the participants. This may include explaining aspects of the mediator’s own role, as in the following example, where the mediator uses the first person singular “I” to establish and underline her impartiality:

As your mediator, I am an impartial person here to help facilitate the conversation between the two of you. I don’t make any judgements about what’s right or wrong, I don’t make any decisions for you, I’m not an attorney or a judge and I don’t give legal advice. (Case 2, Step 1.2)

- 26 This also happens when the mediator sets out his/her expectations as to the kind of behaviour that is appropriate for the two parties. Notably, in this case the mediator adopts a specific footing as representative of the institution (the mediation platform) that has established these rules:

We ask that you negotiate in good faith ... share all pertinent information, follow the rules of common courtesy ... be very respectful. (Case 3, Step 1.2)

- 27 Notably, the mediator also uses the collective “we” to provide indications about how to deal with the technology, an aspect of ODR where the educator role is particularly important:

When we’re doing an online mediation like this, there is an audio and video delay of about one second. (Case 3, Step 1.2)

3.1.3. Coaching role

- 28 It is evident that the mediator encourages appropriate attitudes, nudging the participants in the direction of consensus, as in the following example directed to both parties, where the mediator strongly emphasises the common ground, a rhetorical strategy often used in other types of ADR to move participants towards consensus (Breeze, 2016). Interestingly, this message is reinforced here by repeated use of “you both” and “both of you”:

You’ve both expressed that same motivation, you’ve both expressed ... what I’ve heard you say that you have in common ... Sounds like you both recognise the value that you bring to this and both of you are concerned about what will happen if you don’t come to an agreement. (Case 3, Step 2.3)

- 29 As might be expected, however, the coaching role is more often observed in the individual caucus, where the one-to-one format allows the mediator to exert subtle pressure on the party, and the party is more likely to show flexibility because he/she

does not have to risk losing face in front of the other disputant. In the case cited here, the mediator encourages one party to be more receptive to the other party's proposals, or to be more expressive about what she herself really wants. By posing these as binary options, the mediator cleverly succeeds in getting a response that breaks the deadlock and moves the proceedings on:

Do you think there's some room for a compromise or is there something more that you can tell me about the situation? (Case 2, Step 3.4)

- 30 The mediator's prompts are often rather subtle, as in the following exchange from a caucus in Case 1, where the mediator gives the party time to formulate a doubt that is in her mind, and then asks if she could bring that up in the three-way session. The mediator's suggestion is framed as a neutral question, so ostensibly the party has the option to refuse, or to think of some other solution, but the party accepts this proposal:

Party: I'm starting to feel like she said she was discriminated against and I don't know why [...] she didn't say why, I'd like to know why she thinks she was discriminated against.

Mediator: Ok, is that a question that you'd be interested in asking her when we're back in open session?

Party: Yes, yes, I could ask her that, sure. (Case 1, Step 3.4)

3.1.4. Listening role

- 31 In general, it is noticeable that the mediator proceeds rather cautiously, taking special care to stress that he/she is willing to listen, and slowing the interaction down to ensure that a party has had enough time to express him/herself fully:

Was there anything else you'd like to add before we go over to Paddy? (Case 2, Step 3.2)

- 32 Mediators also frequently employ questions designed to ensure that participants are not holding something back. The use of vague and inclusive "we" in the following extract leaves the responsibility for any omission with the collective as a whole, rather than with the party who has not brought the points up. Moreover, it also has the effect of "animating the collective viewpoint" (Heisterkamp, 2006b: 310) and nudging the discussion back into the common arena:

Do you have any questions or is there anything that we have not addressed? (Case 2, Step 3.2)

- 33 It is also interesting that since the mediator is in charge of the pacing of the session, he/she can deliberately slow down the interaction when the second party wants to respond immediately to the first party's position. In the following instance, the mediator uses the well-known technique of "reflecting" the first party's position back to her, using a different wording.

Mediator: I wanted to make sure that I've captured what you thought about it. ... You're concerned that bringing along other people as partners would hinder that, is that correct?

Party 1: Yes, yes.

M. to party 2: Please, go ahead. (Case 1, Step 2.2)

- 34 Although this "reflecting" function could be thought to be simply part of the "listening role" we may note that these reformulations are more than mere "reflections" of the participants' own contributions: this strategy offers considerable potential for the mediator to introduce subtle changes in the wording of what was said, or to slightly modify the underlying attitude or implications. The mediator's "reflections" are quite

clear and concise, and may indeed contain an element of simplification that helps to move the interaction along:

Your thoughts were for Paddy to keep the books and give you half the value ... does that pretty much sum it up? (Case 2, Step 3.2)
 So you feel as though you would prefer to have an expert involved in this? (Case 2, Step 3.2)

- 35 It is thus clear that this type of “active listening” is a fundamental tool at the mediator’s disposal, which can be used in the service of pushing the proceedings forward towards a solution.

3.1.5. Intermediary role

- 36 These cases offer a few examples of the intermediary role, which is always carried out with the permission of the party concerned, as in the following exchange:

Mediator: Would you like me to pass that along to her? The other option would be for you to tell her yourself.

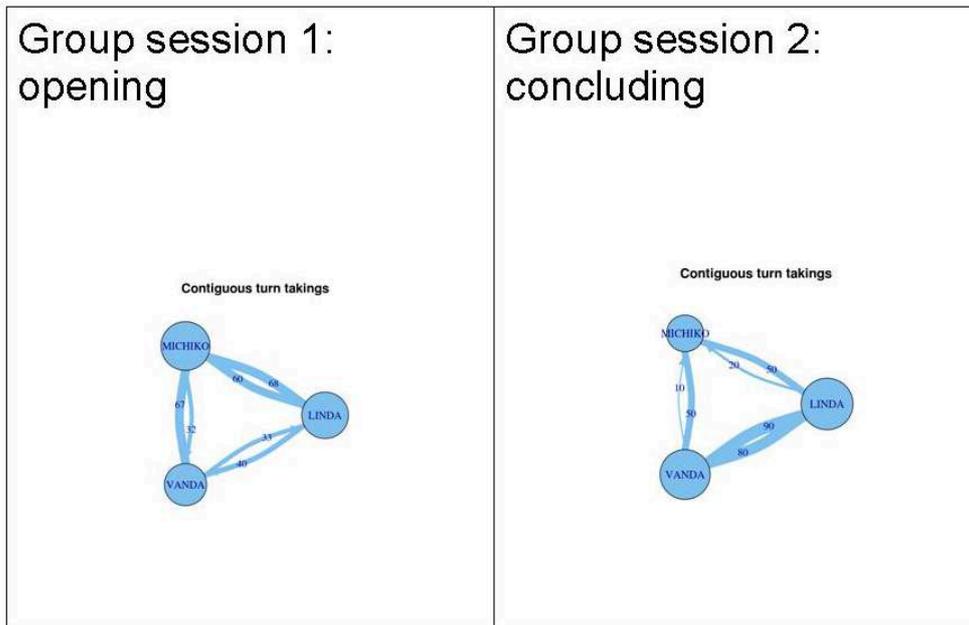
Party: That might be more comfortable for you ... since you’re a neutral party ... (Case 2, Step 3.4)

- 37 However, this tends to be the exception. As we have seen above (see 3.1.3), the usual tendency is for the mediator to suggest to the party that he/she might mention this in the next group encounter.

3.2. Interpersonal dynamics

- 38 Regarding the overall dynamics of the mediation session, the mediation generally begins with a group session with all three participants on the screen, followed by caucuses between the mediator and each party separately, and ending with a second group session in which both parties are present. It is noticeable that the mediator exercises more control over the interaction in the opening session, where the mediator explains the procedure and asks questions to each party individually. Figure 1 illustrates these dynamics in Case 1, in which Michiko is the mediator and Vanda and Linda are the parties: the thickness of the blue lines indicates the number of contiguous turns between the people concerned (data generated from the Interactional Discourse Lab, see Choi, 2015). As Figure 1 shows, Michiko is very much in control in group session 1 (the opening part of the mediation before the caucuses), where the parties exchange very few turns with each other. However, in group session 2 (the closing part, after the caucuses), Vanda and Linda are far more active as speakers, and exchange many more turns with each other.

Figure 1. – Representation of turn-taking between Michiko (mediator) and the two participants in Case 1.



3.3. Media effects: participant interviews

- 39 Two sources of information are available for us to learn more about the experience of ODR on the VML: the general guidelines provided on the VML website, and the video interviews with participants after each mediation session. The instructions for mediators provided on the VML website are specifically geared towards the online setting. For example, the perspective of security and confidentiality is highlighted, and the mediator is requested to ask the participants at the start of the session to guarantee that no one else is in the room, and that they will not video or audio record any part of the session. Regarding practical matters, the mediator is instructed, when online, to always address the parties by their name at the start of each statement—information that would naturally be provided through eye contact and body language in face-to-face settings. Moreover, mediators are warned that interruptions should be discouraged in online sessions, and that short lapses of time between turns are normal: there is an audio and video delay of about one second, which slows down the interaction. Participants may be encouraged to take notes while the other person is speaking, and share their ideas when it is their turn to contribute. Other pieces of practical advice include tips for using the webcam appropriately (i.e. look at the camera rather than at the screen, in order to simulate eye contact).
- 40 In the feedback interviews after the three case studies, the participants are asked about their impressions when using the platform, and how this experience differed from their previous face-to-face sessions. Several participants highlighted the slowness of the video platform, which is probably the result of the slight delay in transmission and the ban on interruptions. Rather than finding this frustrating, they actually rated it positively:

[...] the whole tempo is slower which gave me more time to think. So I could come up with some more options. I felt that silence was good for both of [the

participants] to continue speaking a little bit more, maybe if they were hesitant [...] the silence was helping them to draw that out. (Mediator, Case 1)

- 41 One participant commented on a sensation of unreality at the beginning, when she felt disconnected, as if she were “watching a video”; however, she acknowledged that this disappeared as she got into the session. Moments of frustration were not associated with the slow relay, but only with occasional technical issues, such as when the screen froze.
- 42 The only two negative issues identified in these interviews concerned structural problems: the arrangement of the different participants on screen, and the organisation of the caucuses. Regarding the former, one participant commented that the current screen organisation, with the mediator at the top and the participants at the bottom, suggested a power imbalance from the outset. Her suggestion was that new arrangements should be considered that reflected greater neutrality. The caucuses also had the potential to undermine the participants’ confidence, not because the participants did not want to meet the mediator alone, but because of the uncertainty resulting from the online format when one is excluded from the screen. As one participant pointed out, it is disconcerting for one party not to know how long the caucus with the other party is likely to last. In face-to-face mediation, it would be natural to give the other participant a rough idea of how long it would take, since those involved would go into another room leaving the third person on his/her own. But on screen the second participant is simply cut off, without any indication of the probable duration of the caucus. The proposal is made that in future versions of the software it could be possible to put parties on hold in a virtual waiting room to simulate the message “Do you mind waiting outside?”

4. Discussion: power and persuasion across the transition to ODR

- 43 The above analysis illustrates how online mediation appears to involve the same main roles as face-to-face mediation, but also points to some possible differences in the way the interaction between participants is mediated. Several of these differences have implications for the power balance within the mediation process, with reinforcement of the mediator’s roles as manager, educator, coach and listener. In broad terms these relate to increased control over the interactional dynamics on the part of the mediator, a slower pace of the interaction linked to restrictions on spontaneity, and a greater sense of distance. Although these features are interrelated, it is worth exploring their implications separately.
- 44 Looking first at the issue of control, we have seen that mediators on the VML certainly exercise subtle control through the managing, educating, coaching and listening functions, in a similar way to the mediators analysed in face-to-face mediation sessions by Gotti (2014, and section 2, above). However, we can observe that the online platform actually enhances the control mechanisms available to the mediator in several ways:
1. Conflictive participants can be separated more easily, at the touch of a button;
 2. The slower delivery speed and the interaction centring on one speaker at a time mean that participants have to pay more attention to what is being said or written by the mediator;

3. The formality of the initial presentation (strangers meeting on a screen) probably adds to the authority of the mediator, as does his/her authoritative explanation of how the proceedings are to be conducted;
 4. The interactional dependence on the mediator is increased by the fact that it is the mediator who takes on the task of explaining the technical functioning of the platform to the parties.
- 45 Finally, we can also surmise that the mediator's control over the platform allows greater control over the activity of persuasive "reflection", helping him/her to induce participants to accept particular reformulations of their own aspirations. As Raines has noted, "reframing is probably easier in an online environment, since the mediator can take the time necessary to compose an appropriate response to an inflammatory statement from a party" (2005: note 35).
- 46 Secondly, the question of pace is rather interesting, and can be understood in various different ways. For some participants, slowing down the interaction is a way of encouraging listening, promoting reflection, and even enhancing self-expression. One positive aspect is that these mediators have more time and "space" to coach the participants individually, because they do not have the pressure of people travelling and waiting. Caucusing is easier in online settings, because the parties are not necessarily going to be aware of or inconvenienced by the amount of time the mediator spends with the other party. Moreover, the parties themselves appear to appreciate the time they are given to formulate their responses and speak unhindered. In an earlier study of attitudes to ODR, Hammond (2003: 276) found that the longer time available allowed participants to be "more thoughtful" in their submissions, and to express themselves more rationally, with less emotion. Thus a possible loss of spontaneity is outweighed by an increase in reflection and enhanced communication.
- 47 Thirdly, the sense of distance afforded by the online platform may also be interpreted in various ways. In a similar context, Ben-Ze'ev devised the term "detached attachment" (2003: 459) to highlight a change towards greater "emotional closeness and openness" (2003: 454) that comes about precisely because of the greater anonymity or control afforded by cyberspace. However, the participants in our sessions also note a certain loss of empathy caused by the problems with eye contact and the slight delay in initiating or perceiving paralinguistic responses. This can be linked also to the curbing of spontaneity, since it is not practicable on this platform for participants to interrupt each other or speak at the same time. These phenomena link with the controversy discussed by Poblet and Casanovas (2007) concerning whether emotions tend to be filtered out in ODR, and whether this is actually good or bad for the dispute resolution process. In fact, some previous scholars believe that ODR has the positive effect of filtering out negative emotions that might hinder dispute resolution (hostile behaviours, threats, inhibiting trust formation, etc.). Some also consider that positive emotions (desire to collaborate, empathy, etc.) can be maintained in this context. However, others have expressed mistrust of ODR, on the grounds that it will be harder for the parties and the mediator to assess the strength of the others' feelings, confidence or flexibility (Poblet & Casanovas, 2007). The evidence from the present study is that emotions are dampened to some degree, and that the discussion remains on a more rational level, which may, on the whole, be positive when it comes to reaching lasting solutions. The sense of distance resulting from the use of the platform is a contributing factor to the question of emotionality, but probably not an enduring one: we recall that one participant reported a sense of alienation when starting the

session on screen, but that this faded as the session progressed. We may surmise that the increased comfort of being able to conduct/undergo mediation from one's own home probably acts to counteract this sense of distance to some extent.

- 48 To conclude, it is clear that the transition to online formats does not radically alter the mediation process, but rather implies a series of small changes that tip the power balance somewhat in the favour of the mediator. Further research is needed to explore how similar phenomena may be occurring in different areas of professional life.

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ABSTRACTS

The area of Alternative Dispute Resolution (ADR) is growing worldwide, as it provides parties with an opportunity to avoid the costs, delays and complications often associated with traditional court proceedings. Some forms of ADR involving smaller disputes are now increasingly being carried out on online platforms. In this emergent field of Online Dispute Resolution (ODR), it has been noted that although the theory is essentially the same, in practice the interaction is also influenced by the presence of a theoretical 'fourth party', the software tools that structure the ODR process, which bring about small changes in the way the dispute resolution proceedings are conducted, and possibly lead to alterations in the power balance between participants.

This paper provides a detailed case study of the way power and persuasion are exercised in one ODR platform, namely the Virtual Mediation Lab. We examine the discursive relationships that are constructed between the mediator and participants, and how this may be influenced by the use of an ODR platform. My conclusions provide a reflection on the issue of power in ODR, discussing ways in which the mediator subtly exercises persuasive influence: the structure of the online platform places greater power in the hands of the mediator, ultimately exerting stronger coercive effects on the participants in ODR processes.

Les modes alternatifs de règlement des conflits (MARC) est un domaine qui ne cesse de croître à l'échelle mondiale puisqu'il permet d'éviter les coûts, les délais et les complications afférents à la procédure judiciaire traditionnelle. Certaines formes de MARC relevant de litiges de moindre envergure se réalisent désormais sur des plateformes en ligne. À propos de ce domaine émergent de règlement des litiges en ligne (RLL), on peut noter que, bien que la théorie reste essentiellement inchangée, dans la pratique l'interaction est influencée par la présence d'un « quatrième parti » théorique, à savoir, les outils logiciels qui structurent le processus du RLL et qui peuvent apporter de petites modifications dans la façon dont la procédure relative au RLL se conduit, entraînant éventuellement des modifications dans le rapport des forces entre les participants.

Cet article porte sur une étude de cas détaillée qui démontre la manière dont le *power* et la persuasion s'exercent sur la plateforme RLL, Virtual Mediation Lab. Nous examinons les relations discursives qui se construisent entre le médiateur et les participants et comment celles-ci peuvent être influencées par le recours à une plateforme RLL. Nos conclusions présentent une réflexion sur la question du pouvoir dans les RLL et examinent les subtilités de la façon dont le médiateur exerce une influence persuasive : vu que la structure de la plateforme en ligne place un plus grand pouvoir dans les mains du médiateur, il peut exercer un effet coercitif sur les participants impliqués dans les processus du RLL.

INDEX

Mots-clés: règlement des litiges en ligne, modes alternatifs de règlement des conflits, médiation, communication numérique

Keywords: Online Dispute Resolution, Alternative Dispute Resolution, mediation, digital communication

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