

Civil disputes addressed by court judgments represent a very small percentage of the civil disputes which arise in Australia or anywhere else.<sup>1</sup> In the last few decades the increase in litigation and the concomitant pressures on the civil court system, have led to a rise in disputes being diverted to Appropriate Dispute Resolution (ADR) processes.<sup>2</sup> Similar to litigation, ADR has come under criticism for not providing adequate *access to justice* for all persons. '*Access to justice*' denotes the capacity of individuals to participate in the justice system, to receive the advantages of existing in a community governed by the rule of law.<sup>3</sup> In particular, the Government has a responsibility to ensure its disadvantaged and vulnerable citizens have *access to justice*.<sup>4</sup>

In-person ADR processes such as mediation, can present barriers to accessing justice for autistic individuals.<sup>5</sup> Autistic people communicate in different ways to non-autistic people.<sup>6</sup> Autism is characterised by differences to non-autistic people in two key areas, communication, and repetitive and restricted behaviour.<sup>7</sup> They also are known to have challenges with social communication and social interaction across multiple contexts.<sup>8</sup> For example, autistic people may have difficulty interpreting implied language,<sup>9</sup> fail to update their understanding of meaning during a conversation based on cues from a communication partner,<sup>10</sup> or find using eye contact uncomfortable.<sup>11</sup> Due to these communication differences, the intention and meaning of autistic people's communication is often misinterpreted,<sup>12</sup> at least by non-autistic people.<sup>13</sup>

Traditional approaches to ADR processes such as mediation, occur by in-person interactions with communication occurring through verbal and non-verbal cues. Autistic persons may experience challenges in interpreting such cues, resulting in substantial disadvantage and vulnerability for autistic persons who participate in such ADR processes.<sup>14</sup> Recently, I led a qualitative research project on the experience of autistic individuals who participated in mediations, and we are currently analysing the data. The evidence we have analysed thus far indicates that, ADR processes such as mediation do not generally accommodate the needs of autistic individuals and in fact tend to heighten stress in participating in such processes. This study signals that the traditional approaches to mediation lack the necessary flexibility to accommodate autistic individuals' needs, such as allowing more time for processing information, having more breaks during a mediation session and offering various modes in which to conduct the mediation.

ADR practitioners are not trained to understand autism, nor how to make adjustments to the ADR process to ensure better access to justice for autistic individuals. There are urgent and significant overhauls required to be made to existing ADR services and processes to mitigate the disadvantages for autistic persons, thereby improving access to justice.<sup>15</sup> There is much more research required to be undertaken in this area and more broadly in the legal system to improve processes and deliver better access to justice for autistic members of society.<sup>16</sup>

Kind regards

Dr Oz Susler



1. Wayne Martin AC, 'Alternative Dispute Resolution - A Misnomer?' *Australian Disputes Centre ADR Address* 6 March 2018. <https://www.supremecourt.wa.gov.au>.
  2. See for eg., Attorney General McClelland, House of Representatives, Civil Dispute Resolution Bill 2010 (Cth) Second Reading Speech, 16 June 2010, 5476.
  3. Mary Anne Noone, Access to Justice Review, Submission 14, 22 February 2016, Government of Victoria, p 1.
  4. See for example, Access to Justice Review Summary, August 2016, Government of Victoria, p 4.
  5. Roland Gerard Keepseeyuk Troke-Barriault, 'Online Dispute Resolution and Autism Spectrum Disorder: Levelling the Playing Field in Disputes Involving Autistic Parties' (2016) 6:2 *Western Journal of Legal Studies*, p.3.
  6. American Psychiatric Association (APA), *Diagnostic and Statistical Manual of Mental Disorders* (5th ed 2013). 49.
  7. American Psychiatric Association, 2013 (n6), 50.
  8. American Psychiatric Association, 2013 (n6), 50.
  9. Alexander Wilson, Dorothy Bishop, (2020)2(14) 'Second Guessing Yourself All the Time About What They Really Mean: Cognitive Differences Between Autistic and Non-Autistic Adults in Understanding Implied Meaning. *Autism Research*, 93-101.
  10. Harshali Wadge et al., (2019) 'Communicative misalignment in autism spectrum disorder' *Cortex*, 115, 15-26.
  11. Dominic Trevisan et al, (2017) 12(11) 'How Do Adults and Teens with Self-Declared Autism Spectrum Disorder Experience Eye Contact? A Qualitative Analysis of First-hand Accounts' *PloS one*, e0188446.
  12. Brett Heasman, Alex Gillespie, (2018) 22(6) 'Perspective-Taking is Two-Sided: Misunderstandings Between People with Asperger's Syndrome and Their Family Members' *Autism*, 740-750.
  13. Catherine Crompton et al., (2020) 24(7) 'Autistic Peer-to-Peer Information Transfer is Highly Effective' *Autism*, 1704-1712.
  14. Roland Gerard Keepseeyuk Troke-Barriault, 'Online Dispute Resolution and Autism Spectrum Disorder: Levelling the Playing Field in Disputes Involving Autistic Parties' (2016) 6:2 *Western Journal of Legal Studies*, p.7
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15. Improvements to the ADR processes should be part of the broader improvements that are required to be made to the justice system including but not limited to policing, the criminal justice system and sentencing.
16. The improved processes in ADR and the broader legal system should also accommodate others including but not limited to, neurodiverse individuals, indigenous people, individuals with a disability, elderly individuals and those from CALD backgrounds to name a few.