

DeepL: Mediation in the age of ChatGPT:

Will human mediators soon be superfluous?

by Michael Lardy, 21.8.2023

Mediation - a structured process for the constructive resolution of conflicts is a wonderful way to resolve disputes without legal action. The two parties to the dispute work out solutions under the "guidance" of a mediator that take into account the needs of both sides. Legal action becomes superfluous.

The particular strengths of a good mediator lie in the skilful use of language and in attentive active listening, taking into account body language, facial expressions and tone of voice. The good mediator dissects the conflict with good questions¹, uncovering connections with her questions that were not visible at first and that even the disputing parties were often not aware of at first. This recognition of connections and identification of needs promotes the development of understanding between the disputing parties and very often leads to good solutions. The dispute is settled.

Successful mediators are masters of language, observation and empathy! Does a computer program have similar abilities? Hardly! Or?

Until recently, the answer to this question would have been clear. The question itself would not have been worth asking at all, so clear was the answer. At the latest since the AI ChatGPT 4.0 went online, the answer to this question no longer seems so clear. What is ChatGPT 4.0?

ChatGPT is an LLM, a Large Language Model, and when asked by the author of these lines, the AI describes an LLM as follows:

ChatGPT: *A Large Language Model (LLM) is an advanced machine learning model for language processing. It ... has the ability to analyse and generate text. These models are trained on huge text data.*

In summary, ChatGPT is also a master of language and this development is a technological revolution. A revolution that even the AI professionals did not expect so quickly, according to Prof. Hannah Bast, Univ. Freiburg.²

Can an AI replace a human mediator?

One of the most impressive features of the programme is its dialogue capability:

Author: Can you please help me solve a problem?

ChatGPT: *Of course! Please describe the problem to me and I will do my best to help you.*

Author: Thank you, I'm glad.

ChatGPT: *You're welcome! Let me know what I can help you with.*

Author: Well, I have a neighbour who parks her car in a parking space next to mine and unfortunately

¹ Questions can taste like kisses, Carmen Kindl-Beilfuß, Carl Auer Verlag

² #ChatGPT & Co - how intelligent is AI? | Harald Lesch, Marco Smolla & Hannah Bast
<https://www.youtube.com/watch?v=0fq1jIwUv8> (9.8.2023)

always parks way too close to my car. This makes it difficult for me to get into my car. What can I do about it?

ChatGPT: *This sounds frustrating. Here are some suggestions on how you could deal with this situation:*

1. **Direct communication:** *Talk to your neighbour in a friendly way about the problem. Often people are not aware that they are inconveniencing someone. A friendly conversation can work wonders.*
2. **Leave a note:** *If you don't want to talk to your neighbour in person, you can leave a friendly note on her car explaining the problem and asking for more consideration.*
3. **Alternative parking position:** *If possible, you could try to park your car in a different place to avoid possible conflicts.*
4. **Facilitation:** *If the parking is part of an apartment complex or similar facility, you could contact the management or landlord to discuss the problem. They may have regulations that affect parking.*

It is important to always remain polite and understanding, as the neighbour may not have realised that her parking behaviour is causing problems.

Author: Thank you. I think you've given me a number of really valuable suggestions here.

ChatGPT: *You're welcome! I hope one of these suggestions helps and the situation improves for you soon. If you have any other questions or concerns, I'm happy to help. Good luck!*

The AI's responses are not recognisable as those of a computer. What is more important, however, is that the AI does not "forget" the context during the dialogue and at the same time answers in a solution-oriented way. So it is quite useful for solving a small conflict like the one described here.

Another special feature of ChatGPT is its immense knowledge base³. The software has been trained with billions of texts and has a much broader "experience base" than any human. Combined with the ability to process this "knowledge" immensely fast, the AI has a unique ability to recognise patterns and solution paths. A very competent competitor for a human mediator.

Will human mediators soon be superfluous?

Complex, highly escalated conflicts have often developed over a long period of time, have their roots deep in the past, "feed" on needs and interests that have not been expressed for years. Can an AI settle the conflict here and lead the disputing parties to an amicable solution? Here it becomes much more difficult for the computer, because the quality of an AI's answers depends very much on the quality of the input. Active listening is not yet one of the strengths of an AI, because ChatGPT relies on text input.

"Empathy is the soul of mediation" says Christoph Sager⁴ from the *Straus Institute for Dispute Resolution in the USA* and it is precisely this ability that the AI lacks. The computer lacks the emotional intelligence that enables the human mediator to correctly interpret inconspicuous reactions of the mediators (= the two parties to the dispute) such as body posture, change of

³ Volland, LRZ 2023, para. 1, [●], www.lrz.legal/2023Rn1 (9.8.2023).

⁴ Artificial Intelligence (AI) in Mediation - ChatGPT as Mediator 4.0, Sonja Weisheit, Christoph Salger, <https://mediate.com/artificial-intelligence-ai-in-mediation-chatgpt-as-mediator-4-0/> (9.8.2023)

voice, eye movements and to discover what lies behind them with the right questions. This is where AI reaches its limits.

Open questions

There are a number of problematic aspects that stand in the way of using an AI as an autonomous mediator. For example: Is an AI neutral towards the two parties? Neutrality (impartiality) is one of the most important requirements for a mediator.

Spontaneously, one would think, yes of course, because a computer programme, lacking the capacity for empathy, will not find one client more sympathetic than the other, will not take sides with either mediand just because one mediand is friendlier than the other. However, on closer examination it is not that clear-cut.

ChatGPT responds based on what it has learned, and should the datasets with which the AI has been trained disparage a certain social minority, or should this minority feature little in the datasets, this attitude would also become visible in the dialogues. ChatGPT does not evaluate, but calculates probabilities based on what it has learned. This reveals a problem that is difficult to solve: we do not know what data the AI was trained with.

A cautionary example is the AI application COMPAS⁵, an assistance system for judges to assess offenders, which is partly used in the US judiciary. A hotly debated software that has a reputation for massively disadvantaging black offenders. Here, too, the training data sets and algorithm are trade secrets of the manufacturer.

Another critical aspect is the question of data protection and confidentiality. As with a therapist, clients in a mediation must be able to trust that the most personal content will be kept absolutely confidential. If ChatGPT becomes the mediator or is involved in a mediation, all parties involved must agree to this and the input must be anonymous accordingly.

Last but not least, legal, ethical and cultural aspects must be considered individually. Here, the already mentioned problem with the training data sets is repeated: was the AI trained with the whole variety of existing legal norms, ethical norms and cultural aspects or were some cultural groups favoured or disadvantaged?

The quality of the answers depends on the quality of the training data.

Interim result

An AI as an autonomous mediator is not yet a reality and it is uncertain whether it will ever be possible. Too many questions are still open.

Above all, the question arises: who would want a pure AI mediation in the first place?

ChatGPT answers the question as follows:

Author: Can you replace a human mediator?

ChatGPT: *No, I cannot replace a human mediator. A mediator has human qualities such as empathy,*

⁵ COMPAS: on a groundbreaking debate on algorithmic risk assessment, Tim Rätz, <https://link.springer.com/article/10.1007/s11757-022-00741-9> (9.8.2023).

intuition and the ability to mediate between parties, which I as a machine cannot provide. Moreover, mediation often requires physical presence, active listening and interpretation of body language, which I cannot provide.

ChatGPT as a mediation assistant

It would be conceivable to use ChatGPT as an assistance system in the context of mediation.⁶ Various applications are conceivable:

+ What is mediation? A mediator can, for example, give interested mediators the opportunity to find out interactively about the mediation process on her website⁷. Advantage: the answers will be much more individualised than was previously possible.

+ Brainstorming as preparation for the mediator⁸: The AI makes various proposals for solutions that can be discussed by the mediants.

Example:

(For reasons of space, this example is deliberately kept very simple).

Author: Petra and Thomas have a car together and often cannot agree on who is allowed to use the car. Please make four suggestions on how the use of the car can be regulated.

ChatGPT: *Sure! Here are four suggestions to regulate car use between Petra and Thomas:*

- 1. create a timetable: Set fixed days and times for everyone.*
- 2. carpool: ride together when destinations match.*
- 3. alternative means of transport: use bus, train or bicycle.*
- 4. car sharing/rental services: Rent an additional car if needed.*

+ In the near future: Evaluation of documents: relevant text documents are uploaded to ChatGPT and the AI creates a summary or evaluates according to defined criteria.

+ Drafting a mediation agreement: after agreement has been reached on all contentious issues, the mediator dictates the entire facts of the case to the AI and instructs the AI to draft a mediation agreement.

+ In training: by simulating many different mediations, aspiring mediators can learn much faster how to conduct good mediation talks. It is particularly useful that ChatGPT also gives good feedback.

Example:

Practitioner(s): I want to practice consciously how to do mediations. You will be my mediation teacher ...

ChatGPT: *Sure, I can help create and lead such a scenario. For this mediation simulation, you will be the mediator and I will play the roles of Mr Smith and Ms Jones.*

Mr Smith was a driver who caused a car accident and Ms Jones was the passenger in the other car who suffered injuries. Mr Smith disputes the fact that he caused the accident and Ms Jones seeks damages for the injuries she sustained. They both agree to resolve the conflict through mediation

⁶ Digitalisation and Civil Procedure, Thomas Riehm, Sina Dörr, (eds.), De Gruyter, 2023

⁷ ChatGPT in Mediation and Conciliation, Simon J. Heetkamp, Christian Piroutek, ZKM 3/2023

⁸ ChatGPT in business mediation, Martin Fries, <https://www.mediatorausbildung.org/chatgpt-in-der-wirtschaftsmediation/>

rather than going to court.

You enter the room where Mr Smith and Ms Jones are already waiting for you. Both look tense and have their arms crossed.

As a mediator, how would you approach this situation? Please answer and then I will give you feedback.

Practitioner(s): answers ...

These mediation simulations are an absolutely fascinating way to use an AI, and the scenarios that ChatGPT comes up with each time the level of difficulty increases are varied and nuanced.

Conclusion

Mediators do not have to fear for their jobs in the foreseeable future, because AI cannot do many of the things that make for good mediation. As an assistance system, however, an AI like ChatGPT is already a very useful tool that can make mediators' work much easier.

Michael Lardy

Chemistry Studies 1983 - 1988, University of Saarland

Law studies 2020 - , Univ. Salzburg

Mediator & Moderator

www.MichaelLardy.com

mail@MichaelLardy.com