

Transformative and Facilitative Mediation Case Studies: Improving Relationships and Providing Solutions to Interpersonal Workplace Conflict

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Abstract

Case studies were used to examine the efficacy of transformative and facilitative mediation to address workplace conflict. This approach provided participants with an opportunity to reframe their negative perceptions of each other and to shift their interpersonal dynamics into more favourable territory. Furthermore, most of the parties cited in these cases were able to generate practical solutions which addressed both parties' underlying needs. In the majority of cases, anecdotal feedback suggests that both the participants and their respective employers were satisfied with the outcomes generated via mediation. The findings of this study suggest that the combined use of both a transformative and facilitative mediation model has the potential to be more effective than a settlement based mediation model, in scenarios involving interpersonal conflict where there is an ongoing working relationship.

Introduction

This paper examines the efficacy of a combined transformative and facilitative approach to mediation in resolving workplace disputes. Some of the case studies presented, had they not been referred for mediation, may have entered the domain of the Industrial Relations Commission or the courts. Fortunately, a less costly and more timely resolution process – namely mediation – was used by the parties. All of the agreements achieved were negotiated between the participants themselves. Third parties such as legal representatives were not involved in this process.

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Much of the empirical evidence evaluating the success of mediation has focused on measuring the satisfaction levels of the participants.² A study conducted by the Indiana Conflict Resolution Institute in 1999 found that postal workers who participated in mediation were generally more satisfied with the process, the mediator and the outcome when transformative mediation was used by an external mediator, as opposed to when a directive/problem-solving model was used by an internal mediator.³

Transformative mediation has been described by Bush and Folger⁴ as a means of offering opportunities for personal growth and recognition between parties in conflict. They are critical of the problem-solving or settlement based approach to mediation, which they argue fails to address the origins of conflict between parties. Bush and Folger assert that the key ingredients of transformative mediation are 'empowerment' of the individual and the ability to relate to others beyond oneself, which they describe as 'recognition'⁵. It can be argued that the transformative component of mediation originates from the parties' willingness to reappraise and reinterpret the intentions or behaviour of the 'other', in a less malevolent manner. This re-evaluation can facilitate an attitudinal shift into positive territory. This process can be guided by a mediator who utilises counselling techniques such as externalising the problem, reframing and shifting the dominant narrative, or through questions posed by the mediator that respectfully challenge and test the existing perceptions of the parties via a process of inquiry and genuine curiosity.

A mediator seeking to externalise the problem might summarise two parties in conflict by using the following language: "Your shared focus on meeting deadlines has got in the way of you both making time to talk to each other about your concerns, which has left you second guessing each other's intentions." Reframing or renaming the problem in language that is less critically loaded reduces the likelihood of a defensive response from either party. Through these methods or techniques, the mediator can 'destabilise the stories of blame'⁶ creating the potential for the participants to transform their perspectives of each other. It can be argued that the settlement based model of incremental bargaining mitigates against opportunities for this type of outcome, as the focus is on problem solving.

2 For examples: J Daniel, Assessment of the Mediation Program of the US District Court for the District of Columbia, Administrative Conference of the United States, 1995 <<http://www.crinfo.org/action/search-profile.jsp?key=14982&type=print>> at 21 June 2006; C Depner, K Cannata, I Ricci, 'Client Evaluations of Mediation Services: The Impact of Case Characteristics and Mediation Service Model', (1994) *Family and Conciliation Courts Review*, 32 (3) 306 – 325 at <<http://www.crinfo.org/action/search-profile.jsp?key=13978&type=print>> at 21 June 2006; L Bingham, The National Redress Evaluation Project Annual Update: Is Mediation Transforming Workplace Conflict at the United States Postal Service? Unpublished paper, Indiana University, cited in J Rendon and J Dougherty, 'Going Postal: A New Definition and Model for Employment ADR', (2000) *The Houston Lawyer*, <<http://www.txtmediator.org/toolkit/Going%20Postal.htm>> at 15 May 2006.

3 Rendon and Dougherty, above n1.

4 R Bush and J Folger, 'Transformative Mediation and Third - Party Intervention: Ten Hallmarks of a Transformative Approach to Practice' (1996) 13 (4) *Mediation Quarterly*, 277.

5 Ibid, 266.

6 K Douglas, 'Mediation as Part of Legal Education: The Need for Diverse Models', (2005) 24(1) *The Arbitrator and Mediator*, 8

The transformative and facilitative approaches to mediation contrasts with settlement based mediation, where the goal is to shift the position of the parties through a process of incremental bargaining in order to achieve a compromise.⁷ The settlement based approach may be effective for one-off disputes in circumstances where there is no ongoing relationship.⁸ However, if the parties are entrenched in positions fortified by anger or there is a desire for “payback” or revenge, the settlement based approach has the potential to become stalled, as the emotions underlying the presenting issues remain unaddressed or unacknowledged.

For the purpose of this study, it was important to conceptualise a mediation framework that encompassed an understanding of the factors that potentially influence mediated outcomes, although all of these variables and their influence on outcomes were not directly assessed.

A consistent mediation framework was used in this study which incorporated the components described below:

The Mediation Blueprint – includes information about the mediation process (eg initial liaison with the parties, an explanation of the process, how to prepare for mediation, confidentiality issues, completion of relevant documentation prior to mediation, etc). In this study pre-mediation activities played an important role in preparing the parties for mediation and assessing whether the case was indeed suitable for mediation. As there are no consistent standards within the mediation profession, the “blueprint” implemented by mediators undoubtedly varies; indeed, some mediations may be conducted in the absence of any structured framework.

The Mediation Model – provides a theoretical framework and in some cases a structure for the mediator (e.g. settlement, facilitative, transformative model, etc). The model used by a mediator may well be influenced by their professional background (eg law, construction, engineering, nursing, social work or psychology) and the content of the training course undertaken by the mediator. Whether or not it is desirable for a mediator’s approach to be informed by a theoretical model is a question beyond the scope of this study.

Mediation Techniques – are often associated with particular mediation models. For example, incremental bargaining is associated with the settlement model, summarising and reflective listening are associated with transformative mediation.⁹ Identifying the wants and needs of the parties is associated with facilitative mediation.¹⁰ The techniques underlying transformative mediation, which arguably have a theoretical basis in the discipline of psychology, are not necessarily skills that are acquired immediately via short mediation training courses.

7 L Boulle, *Mediation: Principles, Process and Practice*, Sydney: Butterworths, 1996, 29.

8 Ibid, 48.

9 Bush and Folger, above n 4, 272.

10 Boulle, above n 6, 29.

Definition of Mediation

Many conventional definitions of mediation do not tend to accommodate the personal growth objectives of transformative mediation, as discussed above by Bush and Folger. For example, mediation has been defined as a process whereby 'participants, together with the assistance of a neutral third party(s) systematically consider alternatives and reach a consensual settlement that accommodates their needs'.¹¹ The transformative model with its emphasis on recognition and achieving shifts in perspectives between the parties is less well served by this definition. This study was informed by the need to recognise both the problem solving and transformative objectives of mediation.

Transformative mediation is defined as an approach or intervention that focuses on addressing the underlying source of tension between the parties and improving the relationship.¹² Facilitative mediation seeks to address the needs and interests of the parties¹³ and the mediator assists with the formulation of an agreement by 'asking questions, validating and normalising their points of view'.¹⁴ A combination of both transformative and facilitative models of mediation were used in the cases described in this study.

Third party neutrality and even-handedness are regarded as important factors in successful mediation between parties in conflict.¹⁵ It has been argued that mediators bring with them their own biases which inform their view of the world.¹⁶ Perhaps rather than focusing on the elimination of personal biases, a more useful goal is to minimise their impact on the mediation process by demanding from ourselves a level of consciousness or self awareness.

Mediation Framework

As described earlier a uniform mediation framework which incorporated individual pre-mediation meetings; the dissemination of information about the mediation process; rules regarding the conduct of the mediation; confidentiality issues; opening statements; agenda setting; exploration of issues; private sessions; a negotiation phase; an agreement and finally, follow up phase was used. Both the transformative and facilitative models informed the practice of the mediator in the cases cited in this study.

The pre-mediation meeting is an important part of the mediation process as it encourages participants to identify their concerns and consider the perspectives of the other party. This initial engagement has the potential to influence the tone and content of the parties' opening statements during the mediation. This in turn impacts on the openness of the parties to hear and engage with each other. An opening statement which is harshly critical of the other party as opposed to one which names the problem behaviour is likely to elicit a defensive response that is less conducive to an atmosphere where transformative possibilities can occur.

11 R Altamore, 'Alternative Dispute Resolution and People with Disabilities', (2005) 24(2) *The Arbitrator and Mediator*, 41-52.

12 Boule, above n 7, 29.

13 Ibid, 29.

14 Z Zumeta, 'Styles of Mediation: Facilitative, Evaluative and Transformative Mediation', (1998), *Journal of the Du Page County Bar Association*, <<http://www.dbca.org/brief/sepissue/1998/art20998.htm>> at 15 May 2006.

15 B Turner and R Saunders, 'Mediating A Planning Scheme Amendment: A Case Study in the Co-Mediation of a Multi-Party Planning Dispute', (1995) 6 *Australian Dispute Resolution Journal*, 284-295.

16 For example, JA Scimecca, *Theory and Alternative Dispute Resolution: A Contradiction in Terms?* in HRM 540 *Theory of Conflict Resolution Guide Module*, 1998 Charles Sturt University, 217.

The agenda setting component assists in facilitating a positive “building block” for future interactions via cooperation between the parties, who negotiate and prioritise their issues for discussion. During the exploration phase of mediation, parties are encouraged to consider the impact of their behaviour on each other and to clarify misconceptions arising from poor communication. Finally, informal trust building steps such as ‘catching up for coffee’ can be included in the agreement regarding future interactions.

Definition of Successful Mediation Outcome

This study defined a mediated outcome as a written agreement or verbal undertaking concluded as a result of mediation by the participants. In this study, with one exception, all agreements were concluded in writing. A successful mediation outcome was defined as an agreement concluded at the end of the mediation process which incorporated either transformative or practical outcomes. Data was also gathered about the durability of the mediated agreements.

A transformative outcome was defined as a commitment by the parties to improve their communication and relationship with each other. An example of a transformative component incorporated into a mediated agreement was a commitment by the parties to regularly meet in an effort to rebuild their relationship. Not all of the transformative shifts that occurred during mediation were necessarily incorporated into the agreement outcomes. Although the mediator observed these shifts they were not systematically recorded, which was a limitation of this study. For example during one of the mediations there was an acknowledgement of an apology which arose from one participant’s recognition that her behaviour had a negative emotional impact on the other party, yet this was not included in the formal agreement.

A practical outcome was defined as a mediated component which was largely functional in nature which did not predominantly focus on shifting the interpersonal interactions between the parties. A practical outcome does not refer to the mediation model or process, but rather refers to an outcome that addresses the needs of both parties. For example, in one of the cases cited in this study, an agreement was reached whereby a supervisor agreed not to give instructions to staff whilst serving customers (which they reported was both distracting and irritating) and instead, agreed to give this feedback at other times.

Method

This study consisted of 20 cases (some of which involved single and multiple complainants) which were referred to Carolyn Manning Consulting Services for mediation. The mediations all involved interpersonal conflict between individuals within the workplace. The mediations were either conducted at the worksite or off-site. In the majority of cases where agreements were reached, participants gave their consent for the final agreement to be forwarded to a nominated employer representative and a copy was retained by the mediator. The results of this study were based on outcomes documented in the written or verbal agreements that were concluded following mediation and these were assessed for their content in regard to practical or transformative outcomes.

Each case referred for mediation was informally assessed for its suitability and this involved a process of consultation with key stakeholders. The employers who referred their staff for mediation included private hospitals, State government authorities, the manufacturing sector, aeronautical and petroleum industries and an Aboriginal cooperative.

Results

In all of the cases, complainants were staff members (as opposed to managers) and an ongoing relationship was expected. In most cases, complainants were female and respondents were males occupying managerial roles. In 75% of the cases, there was a single complainant and a single respondent. There were two cases involving single complainants and multiple respondents, and three cases with multiple complainants and one to two respondents. In the most complex case, there were 34 complainants (all staff) and 2 respondents (both managers).

The presenting nature of the disputes were as follows:

Table 1 – Breakdown of Disputes

Nature of Dispute	Percentage (%) of cases
Interpersonal conflict	45
Poor communication	30
Bullying	15
Sexual harassment	10

In seventy percent of all cases, the dispute was of three or less months duration. In three of the cases, the conflict was of a duration greater than 10 months.

In twelve of the 20 cases employer intervention was known to have occurred prior to mediation. For the remaining eight cases, employer intervention was not recorded, yet it was assumed that some attempt had been made to resolve the conflict.

Of the 20 cases, 17 resulted in an agreement formulated at the time of mediation. In the remaining three cases, the mediation was not completed for the following reasons:

- The complainant discontinued her involvement in mediation as she preferred that the matter be resolved by senior management.
- The parties could not agree on the presence of external parties at the mediation.
- The respondent participated in the pre-mediation meetings, however the complainant decided to decline to participate in mediation.

The following table shows the distribution of transformative and practical components in the 17 agreements.

Table 2 – Composition of Agreements

Agreement Composition	Percentage (%) of cases
Practical only	18
More practical than transformative components	12
Even number of practical and transformative components	35
More transformative than practical components	23
Transformative only	12

Of the 17 agreements, 82% included transformative components, and 88% included practical components. Examples of transformative outcomes in the agreements included the following:

- A commitment to work respectfully with each other.
- Communicate effectively with each other and make time to hear each other.
- To build a good relationship and put the past behind them.
- A commitment to rebuild the trust and rapport enjoyed in the past.
- A shared understanding that personal happiness in the workplace was important and both parties agreed to work towards this goal.

There was no systematic follow up process to determine the durability of the mediated agreements, however, limited data was available for 15 of the 17 cases. Feedback was obtained from either the employer or the participants in the mediation. Of the 15 cases, all of the agreements were in place and operational after a minimum of two weeks. One month later, 12 of these agreements were still operational and all but one of these included transformative components in the agreement. In three of the cases where follow up occurred after 12 months, all of the agreements were still in place and all had transformative components in the agreements.

Discussion

These results support the effectiveness of combining transformative and facilitative mediation models to address interpersonal conflict within the workplace setting. In this study, mediation presented participants with an opportunity to shift their perceptions of each other in a way that enhanced their relationships within the workplace. This outcome was achieved in many of the cases but not all. A total 82% of the agreements included transformative components and 70% had a combination of transformative and practical components. The majority of agreements were still in place two weeks following the conclusion of mediation. It can be argued that transformative outcomes arising from mediation where there is a re-alignment of perceptions, which both parties view as positive, has the potential to trigger behavioural changes in workplace interactions (eg increased cooperation in the workplace, sharing ideas, resources, etc) which are desirable for both the employee and employer.

In the workplace, parties generally have a vested interest in maintaining a positive working relationship; however, if one party believes that their employer may discipline or transfer the offending party, then mediation may seem less attractive to the complainant. Although it may be desirable for relationships to be 're-examined and realigned',¹⁷ this form of resolution is not always practicable if the goal of the parties is expressed as a demand for punitive solutions to be delivered via management. Although separating the parties in conflict may be an appealing short term solution for many employers, tensions and differences are likely to flare up again in future contexts such as at meetings, lunch rooms, corridor interactions, functions, etc.

A factor which may influence whether a referring agent (eg employer) secures a mediator who is skilled in transformative or facilitative mediation as opposed to a settlement only trained mediator, is the parties' potential for an ongoing working relationship. It has been argued that settlement based mediation is less suited to workplace conflict as it does not address the underlying tensions between

17 Burton (1986) cited in A Tidwell, *Conflict Resolved*, Great Britain: Biddles Ltd, 1998, 9.

parties. This raises the question as to whether mediators should undertake work outside their area of expertise, training and proficiency and whether a “one model fits all approach” to mediation is necessarily best practice.

Due to the limitations of this research it was not possible to conclude whether the combined transformative and facilitative model used in this study produced better outcomes than a settlement focused mediation model. However the findings of this study suggest that a combined transformative and facilitative approach to mediation produces results which contribute to the maintenance of ongoing relationships within the workplace.

Any future research examining transformative and/or facilitative mediation should consider assessing shifts in the perception of participants both prior to and after mediation and evaluate participants’ satisfaction with the mediation process. Another focus for future research could be to compare the effectiveness of these models (ie transformative and facilitative models) with a settlement based mediation model through the measurement of participant satisfaction levels, comparison of outcomes and durability of agreements. Any future findings arising from new research incorporating these recommendations, has the potential to further contribute to the body of knowledge regarding the application of appropriate mediation models in the context of workplace disputes.

In conclusion, this study has demonstrated the efficacy of using a combined transformative and facilitative mediation model to resolve workplace conflict. However, the model alone is not necessarily sufficient to generate transformative or facilitative outcomes – rather, it is the interaction and interventions of the mediator and those which occur between the parties themselves within this framework that creates transformative opportunities.

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