

How can Different Frameworks enhance Facilitative Workplace Mediation?

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Abstract

Participants in workplace mediation seek an outcome through a safe, confidential, independent and equitable process. That mediation process requires an approach that meets the needs of the participants, and explores concerns, needs and interests to help transform attitudes in the workplace to more functional behaviours. Solution-focused, transformative and narrative frameworks can be particularly appropriate to create changes to more respectful relationships as well as managing conflict differently in the future. This article addresses the different frameworks which can be used in facilitative workplace mediation. The choice of frameworks used by the mediator depends on to what extent the mediation is process focussed to address the relational and emotional needs of the mediation participants so they can make their own decisions to resolve matters between them.

Introduction to Workplace Mediation

In essence, workplace mediation is a process to deal with a workplace relationship that is in conflict. This article explores the range of approaches to mediating that address interpersonal conflict in a workplace context. Such interpersonal conflict occurs where there has been a breakdown in the workplace relationship between two employees (sometimes more). Workplace mediation's purpose is to help participants address and resolve the issues that created their differences and negotiate how they can work in a professional and functional manner with one another in the future. The focus is often about repairing and restoring a relationship and creating a functional workplace relationship within an organisational system. Workplace mediation is often called on following a grievance made to the Human Resources section of an organisation. Grievances are frequently about conduct which causes the employee to feel aggrieved or injured, which is described by employees as 'bullying' behaviour whether it does or does not meet the legal definition of workplace bullying under Australian legislation.¹ Human Resource managers often conclude that behaviour is not bullying within the legal definition but

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¹ *Fair Work Act 2009* (Cth) s 789FD states:

(1) A worker is bullied at work if: (a) while the worker is at work in a constitutionally-covered business: (i) an individual; or (ii) a group of individuals; repeatedly behaves unreasonably towards the worker, or a group of workers of which the worker is a member; and (b) that behaviour creates a risk to health and safety.

rather behaviour that is about how the employees interact. A referral to mediation gives employees an opportunity to try to understand each other's behaviour and styles of working to rebuild mutual respect.²

What is the Goal of Workplace Mediation?

Workplace mediation aims to provide a process by which employees can explore their interests, values and differences, and together agree on an approach to move forward from their conflict towards a different future. At the end of the mediation, participants may have an outcome of agreed solutions for their future interactions. This may result in a written agreement recording the resolutions reached from the mediation, and with the participants' agreement may be given to their manager. The optimal result from mediation would be that the participants' relationship is improved or even transformed. Transformation in a workplace relationship may occur through the participants feeling heard and understood not only by the mediator but also by each other during the mediation process and receiving some recognition for their individual or joint concerns and interests. This may result in significant changes in attitudes in the workplace and more functional behaviours.

How do Facilitative Mediators Work in Workplace Conflict?

The overarching role of a mediator is that of an independent facilitator assisting participants to become self-determined in coming to informed decision-making to achieve an outcome that fulfils their joint interests. The NMAS standards for facilitative mediation practice state that, 'mediators assist participants to make their own decisions in relation to conflicts or differences among them'.³

The facilitative mediator⁴ has a range of frameworks or approaches to help meet the interests of the participants so they are able to deal with their conflict situation. The frameworks addressed in this article are: Solution-focused, Transformative and Narrative. These frameworks focus particularly on creating changes to relationships, promoting more respectful interchanges and managing conflict differently in the future. The selection of these approaches reflects the important role of the mediator in assisting the participants to talk directly with each other and, through the use of a range of skills and techniques, provide an opportunity to acknowledge what each has to discuss so mutual understanding helps them to move from the past, present and into the future.

² In this article the focus is on the area of workplace mediation that deals with interpersonal conflict, hence we use conflict instead of 'dispute' and participants in mediation instead of 'parties'. We also focus on the private arena of mediation rather than the Commission or Tribunal legal systems that deal with legal claims eg unfair dismissal in the Fair Work Commission. What we discuss, however, in terms of the psychological needs of the participants to mediation will be relevant to the matrix of issues in the resolution of disputes in the legal systems.

³ See Section 10.1 National Mediator Accreditation System (NMAS) 2015.

⁴ National Mediator Accreditation System (NMAS) 2015 for the Australian National Mediator Practice Standards for the use of a facilitative process, n 3, 2, at Footnote 1.

Mediator Focus

Before discussing the features of the frameworks, we need to consider the type of focus a mediator has. As a result of a pre-mediation interview (conducted separately with each participant to establish the suitability of facilitative process), mediators determine the most appropriate process for the participants to be able to try to work cooperatively towards an outcome depending on the nature of the conflict.⁵

Since conflict resolution has been informed by a wide range of disciplines and professions, Cloke states that mediators may have developed ‘a holistic, pluralistic and eclectic approach.’⁶

How the process evolves or is structured depends on the mediator’s framework for practice. This would be based on the mediator’s training, background expertise, their approach and individual style of working. Zumeta suggest that some mediators seem to be more process focused and others are more outcome focused.⁷ It is important for mediators to gain insight, through reflective practice, on where they see themselves on the continuum between process and outcome focus (see Figure 1 below). This will help them be able to respond more effectively to the needs of different participants. Some mediators may need to consider how they could become more flexible in meeting the needs of participants to express their concerns, needs and interests.

Mediators also need to bear in mind the emotionality, power dynamic or imbalances and competencies of the participants in mediation to be able to move or not move from past problems to future possibilities.

Process focused		Outcome focused
<i>Control over process</i>	←————→	<i>Control over content & process</i>
<i>Non-directive</i>	←————→	<i>Directive</i>
<i>Flexible objectives</i>	←————→	<i>Rigid objectives</i>
<i>Relational</i>	←————→	<i>Settlement</i>
<i>Client centred</i>	←————→	<i>Model bound</i>
<i>Facilitative</i>	←————→	<i>Evaluative</i>

Figure 1: Contrasting process and outcome in a Continuum⁸

⁵ Different participants’ will have different issues and concerns to discuss so the mediator can assess whether the mediation is held jointly, as a co-mediation or solo, shuttle, by phone or online. In this article we assume that the mediation process is held in a joint session with potentially some separate sessions to be included as appropriate.

⁶ Kenneth Cloke, ‘Let a Thousand Flowers Bloom: A Holistic, Pluralistic and Eclectic Approach to Mediation’ (Winter 2007) *ACResolution* 26.

⁷ See Zena Zumeta, ‘Styles of Mediation: Facilitative, Evaluative, and Transformative Mediation’ (Web Page, September 2000) available at <<https://www.mediate.com/articles/zumeta.cfm>>.

⁸ See Mieke Brandon and Linda Fisher, *Mediating with Families* (Thomson Reuters, 4th ed, 2018) 27.

There is a school of thought that solution-focused, transformative and narrative approaches can be particularly appropriate for resolving conflict where relationships may need to be maintained, such as in workplaces, all types of family mediation and some neighbourhood disputes.⁹ An increasing number of practising mediators are now advocating these three approaches.¹⁰

Not all workplace conflicts are suitable for facilitative mediation and not all employees have the competencies, attitudes or motivation to rebuild a working relationship. The diversity in approaches to mediation provides opportunities for choice by participants, as practitioners align with certain models in dispute resolution based on their experience and ongoing professional development, which may or may not fit with the expectations and interests of the participants. Mediators have an obligation to fully inform the participants how they approach their practice and must be transparent about how their way of working with a certain framework may benefit the participants' situation. The process should be fit for the type of conflict and context in which the conflict has occurred. In many instances, solution-focused, transformative and narrative approaches are used simultaneously by practitioners who have greater experience; in practice they assess what might work best with particular participants, rather than working according to one model only. Flexibility in deciding to use narrative, transformative or a solution-focused framework is important when considering the relational, emotional and cultural background of participants. Next we describe the frameworks in a more detail to provide some insight into how these may appeal in some situations and how these may benefit certain clients.

A Transformative Approach

Bush and Folger explicitly outlined a framework for the practice of transformative mediation. They stated that, 'mediation's greatest value lies in its potential not only to find solutions to people's problems but to change people themselves for the better, in the very midst of conflict'.¹¹ Transformative mediation was developed to counteract power disparities and cross-cultural difference.¹² The transformative approach to mediation does not seek resolution of the immediate problem, but rather, seeks the empowerment and mutual recognition of the participants involved. Empowerment, according to Bush and Folger, means enabling the parties to define their own issues and to seek solutions on their own.¹³ Recognition means enabling the parties to see and understand the other person's point of view to understand how they define the problem and why they seek the solution that they do.¹⁴

⁹ Zumeta (n 7).

¹⁰ Brandon and Fisher (n 8) 28-37.

¹¹ Robert A Baruch Bush and Joseph P Folger, *The Promise of Mediation: The Transformative Approach to Conflict*. (Jossey-Bass Publishers, 2nd ed, 2004); see also the summary written by Mariya Yevsyukova, available at <<http://www.beyondintractability.org/bksum/bush-promise>>.

¹² Mark Davidheiser, 'Mediation Multiculturalism: Domestic and International Challenges' (Web Page, January 2005) available at <https://www.beyondintractability.org/essay/mediation_multiculturalism>.

¹³ Bush and Folger (n 11).

¹⁴ Brad Spangler, 'Transformative Mediation' (Web Page, October 2003 (updated in 2013)) available at <https://www.beyondintractability.org/essay/transformative_mediation>.

Transformative mediators consider conflict in a relationship as ‘disrupt[ing] and undermining the interaction’ between employees and hope ‘to counteract power disparities and cross-cultural differences’.¹⁵ Through using empathic listening, reflecting-back and summarising, the mediator gives the participants the opportunity to reflect upon both what they have said and what they actually meant to express. The mediator uses open ended questions to invite participants to express what is important to them and remains optimistic about the participants ‘here and now’ interactions. The only goal in transformative mediation is ‘to enhance the quality of interaction by fostering clarity in their deliberation’.¹⁶ The mediator follows the parties’ leads and then helps them clarify for themselves (and each other), what their real concerns are and how they want to see them addressed. Sometimes, ‘recognition by the other is all that is really needed to reach mutual satisfaction.’¹⁷ It is believed that the ‘transformation of the interaction’ itself is what matters most to employees in conflict-even more than settlement. In this approach the goal is to help participants gain empowerment and recognition between them so the interaction shifts to more constructive exploration of their concerns.¹⁸ This encourages open communications between them to share perspectives and decision-making for their work relationship in the future. Transformative mediation is predominantly process focused; as participants ‘own’ their conflict and ‘own’ their solution.¹⁹

Bush and Folger describe participants as empowered when they change from feeling unsettled, fearful and confused to feeling calmer, more decisive and stronger in realising what matters to them, what goals they hold and why they hold them, and what options they have to achieve them.²⁰ They do not see a lack of outcome as a ‘failure’.²¹

Hallmarks of Transformative Practice

- the focus is empowerment and recognition
- the mediator leaves responsibility for the outcomes with the participants
- the mediator takes an optimistic view of the parties' competence and motives
- the mediator is tuned into the expression of emotions and explores workers' uncertainty.
- while the mediator realises that resolving conflict takes time, they continue to remain mindful and focused on the dynamics happening in the moment.²²

¹⁵ Robert A Baruch Bush and Joseph P Folger, *The Promise of Mediation* (Jossey-Bass, 2005) 277.

¹⁶ Louise P Senft, ‘Mediation from a Transformative Approach’ (Winter 2007) *ACResolution* 19, 20-21

¹⁷ Spangler (n 14).

¹⁸ Robert A Baruch Bush, ‘Handling Workplace Conflict: Why Transformative Mediation?’ (2001) 18 *Hofstra Labor and Employment Law Journal* 369.

¹⁹ Spangler (n 14).

²⁰ Bush and Folger (n 15) 85.

²¹ *Ibid* 266-275.

²² See also Heidi Burgess and Guy Burgess with Tanya Glaser and Mariya Yevsyukova, ‘Transformative Approaches to Conflict’ (Web Page, 1997) available at

- participants stay together to work things out between them and give each other ‘recognition’ as only they can.²³

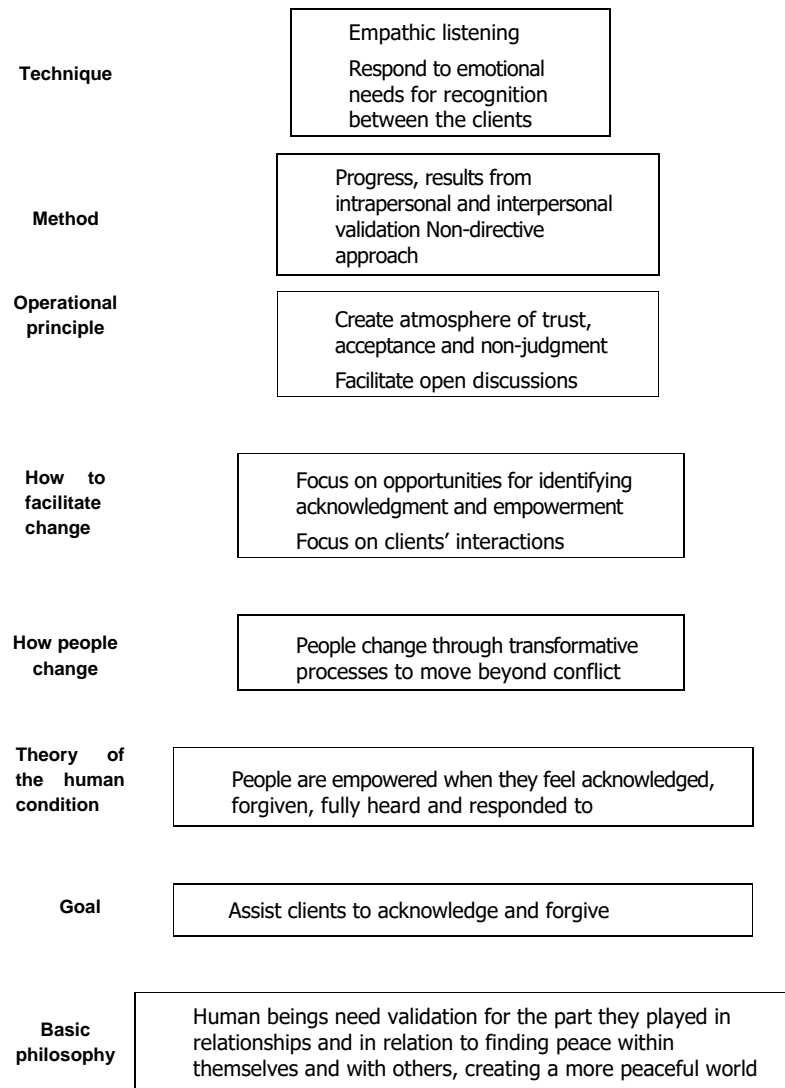


Figure 2: Transformative Framework²⁴

A Narrative Approach

Messages we have heard while growing up and how we talk about ideas through conversation or discourse shape what we think about ourselves and the world around us. When people in a workplace are in a conflict over something, Winslade and Monk state that an ‘account of an event is intrinsically linked to one’s point of view’, and one’s point of view can ‘never be totally objective.’²⁵

http://peacebuildingforlanguagelearners.pbworks.com/w/file/attach/73357055/Burgess_Transformative%20Approaches%20to%20Conflict.pdf.

²³ Spangler (n 14).

²⁴ We acknowledge that Figure 2 is updated from Brandon and Fisher (n 8) 41-42 and adapted from Brill 1995. Reproduced with permission of Thomson Reuters (Professional) Australia Limited (3 September 2021).

²⁵ John Winslade and Gerard Monk, *The Narrative Approach to Mediation* (Jossey-Bass, 2000) 41.

In a narrative approach to mediation, conflict can be understood as the collision of different constructs or stories brought by participants to the mediation session. ‘The story, however, is just a small selection of data strung together [according to Hansen,] so the lived experience may become the dominant story in which the problem is embedded.’²⁶ These stories become like ‘theories of responsibility, through which the players in a dispute attribute responsibility for the events that have happened.’²⁷ Hansen states that ‘[i]n workplace mediation the stories participants tell may have become rehearsed or characterised as one having become the ‘victim’ and the other the ‘villain,’ one ‘disempowered recipient the other as powerful controller’.²⁸

When the participants in workplace mediation become wedded to their negative perspectives on the conflict-filled relationship story, ‘the mediator can invite them to change to an alternative story, one that highlights their preferred way of dealing with each other, indicating their hopes for a different way of relating, one in which they could be respectful and cooperative.’²⁹ This is an opportunity for the participants to deconstruct the original story of their conflict situation, perhaps based on their cultural context, gender, socio-economic grouping, ethnicity, family environment, sexual preference, spiritual background or status and role within the workplace. This is likely to open up other ways of thinking, and a way of deconstructing sets of ideas rather than ‘truths’ for ‘unstoried’ possibilities. This may create an atmosphere in which collaborative and respectful cooperation can occur. By constructing alternative stories, a mediator may move towards externalising the conflicts by referring to ‘it’ or ‘this’ or ‘your conflict’. This is called discursive listening as the mediator (who may have themselves been held captive of the imagined problem) addresses the conflict as a ‘third party’ in the participants’ relationship, to try to shift the emotional hold the conflict may have held on them before. Once the dispute is ‘it’ the participants can start to co-author a new narrative to overcome ‘it’ to move forward to a more functional workplace relationship.³⁰

The three distinct phases of narrative mediation are ‘engagement’, ‘deconstruction of the conflict story’ and ‘reconstruction of an alternative story’. They provide the foundations for problem solving, which can lead to improved communication between the employees towards a better relationship.³¹ Narrative mediators also often follow-up an agreement with letters to the mediation participants or with another session to continue the process of supporting the new narrative.³² ‘Written agreements

²⁶ Toran Hansen, ‘The Narrative Approach to Mediation’ (Web Page, September 2003) available at.<<https://www.mediate.com/articles/hansenT.cfm>>

²⁷ Ibid.

²⁸ Ibid.

²⁹ Brandon and Fisher (n 8) 34.

³⁰ See Hansen (n 26).

³¹ Brandon and Fisher (n 8) 36-37.

³² Winslade and Monk (n 25) 24.

are a natural extension of the new narrative and, in a very real sense, become a part of it as a new plot development.’³³ Hansen suggests that these outcomes become a way of strengthening the commitment to the new narrative.³⁴

Winslade and Monk state that a follow-up is considered ‘not just a ‘checking up’ [but rather] a search for new developments that might not have been predicted ...’. This provides the participants with an opportunity to deconstruct the stories of their conflict situation which originally may have been constructed from within their cultural context, such as ethnicity, socioeconomic grouping, gender identification and sexual preference, family environment, and spiritual background. Deconstruction allows participants to gain more awareness about other beliefs opening up the way from ‘unstoried ways’ of thinking.³⁵ ‘The goals of narrative mediation then, represent a kind of a hybrid between the solutions created out of a problem-solving approach and those of the transformative approach, in which empowerment, recognition, and social justice are sought.’³⁶ ‘It must be emphasised, that the narrative approach privileges relational issues over substantive issues, this ‘shortens the negotiation phase of mediation, because it engages people in negotiation from a place of greater willingness’ according to Winslade and Monk.³⁷ Winslade and Monk, and Winslade, Monk and Cotter state that ‘Written agreements are a natural extension of the new narrative and, in a very real sense, become a part of it as a new plot development.’³⁸

Hallmarks of Narrative Practice

Are to:

- view a problem story as a constraint
- identify openings to an alternative story
- build an externalising conversation
- engage in double listening (hear the conflict as well as the preferred story)
- listen for positioning
- re-author the relationship story and
- document progress.³⁹

³³ See John Winslade, Gerald Monk and Alison Cotter, ‘A Narrative Approach to the Practice of Mediation’ (1998) 14 *Negotiation Journal* 21; see also Hansen (n 26).

³⁴ Hansen (n 26).

³⁵ Winslade, Monk (n 25).

³⁶ Robert A Baruch Bush and Joseph P Folger, *The Promise of Mediation* (Jossey-Bass, San Francisco, 1994), cited in Winslade, Monk and Cotter (n 33).

³⁷ John Winslade and Gerald Monk, *Narrative Mediation* (Jossey-Bass, 2001) 90; cited in Winslade, Monk and Cotter (n 33).

³⁸ See Winslade and Monk (n 37) 90-91; see also Winslade, Monk, and Cotter (n 33) 37.

³⁹ Winslade and Monk (n 25) 33.

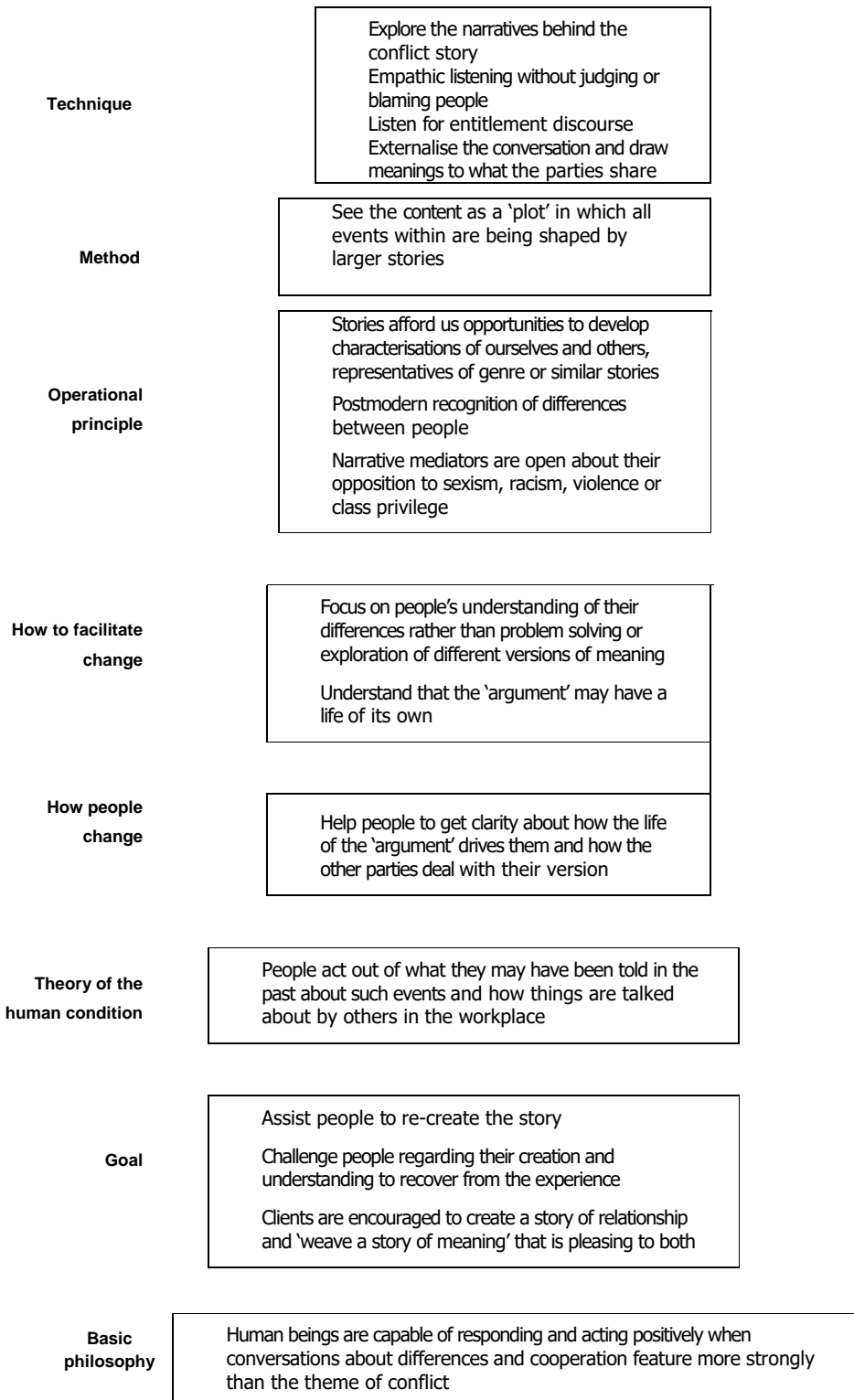


Figure 3: Narrative Framework⁴⁰

⁴⁰ We acknowledge that Figure 3 is updated from Brandon and Fisher (n 8) 41-42 and adapted from Brill 1995. Reproduced with permission of Thomson Reuters (Professional) Australia Ltd (3 September 2021).

Solution-Focused Approach

Haynes, Haynes and Fong state that mediators need to assist their clients to determine what they really want for their future, their hopes and goals and how they might be able to get there. In workplace mediation this could be: encouraging participants to think about their potential for future workplace relationship in their workplace environment, as well as their dependence on their colleagues to successfully carry out their role in the workplace in a positive attitude and to have a future that rewards them in what they set out to achieve and were hoping for.⁴¹ John Haynes who introduced the notion, that mediators are most valuable to their clients when they ‘mediate in the future tense’.⁴²

The challenge for workplace mediators is ‘to assist clients in making changes and to help them leave the ditches they have dug themselves into.’⁴³ The mediator encourages the participants in mediation to express themselves about their experiences and what this means to them. Mediators can use solution-focused interviewing skills so the participants provide information about themselves and their situation. In a solution-focused approach the belief is that the ‘clients are considered to be the experts of their own lives ... and through “solution-focused” questions they can come up with their own solutions to the conflict.’⁴⁴ Bannink states that this ‘attitude promotes client trust, confidence, and hopefulness about the future.’⁴⁵

Bannink also advocates questions that create hope, such as:

- ‘what are you hoping for that is best?’
- ‘what would be better?’
- ‘what would be good enough?’
- ‘what difference would that make to your goal?’
- ‘what is already working in that direction and what would be the next step towards progress or signal change?’⁴⁶

Bannink sees ‘hope as a journey: a destination (goal), a road map (pathways), and a means of transport (agency).’⁴⁷

⁴¹ See John M Haynes, Gretchen L Haynes and Larry S Fong, *Mediation: Positive Conflicts Management* (State University of New York Press, 2004), cited in Fredrike P Bannink, ‘Solution-Focused Mediation: The Future with a Difference’ (2007) 25 *Conflict Resolution Quarterly* 183.

⁴² Haynes, Haynes and Fong (n 41) 70.

⁴³ Fredrike P Bannink, *Solution-Focused Conflict Management* (Hogrefe Publishing, 2010)

⁴⁴ Ibid 72.

⁴⁵ Ibid 72.

⁴⁶ Ibid 37-38.

⁴⁷ Ibid 11-12.

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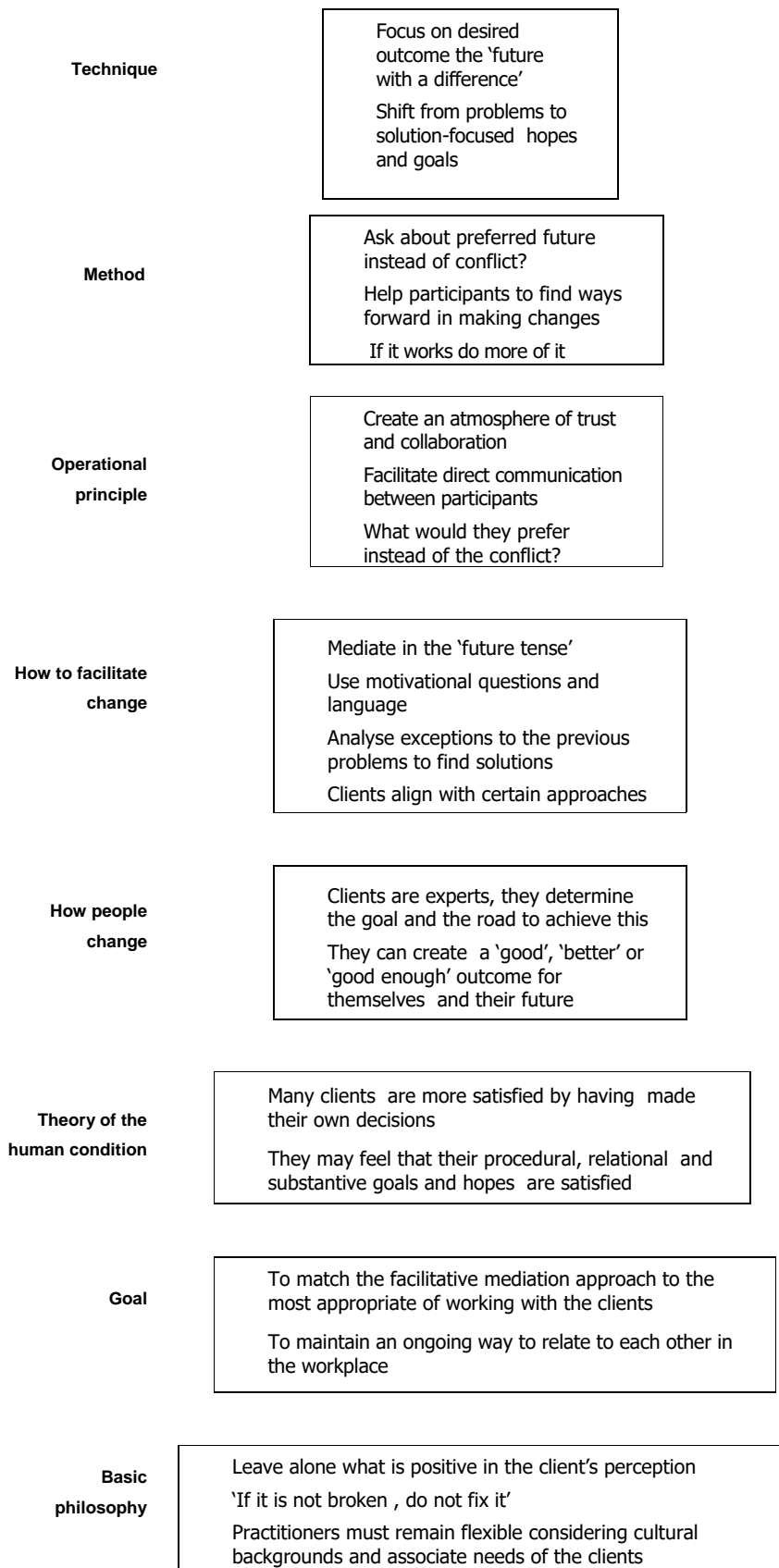


Figure 4: Solution-Focused Framework⁴⁸

⁴⁸ We acknowledge that Figure 4 is based on S De Shazer and F P Bannink in Brandon and Fisher (n 8) 28-39 and adapted from Brill 1995.

Hallmarks of Solution-Focused Practice

Solution-focused mediation is about ‘hope’.⁴⁹ In solution-focused mediation, mediators assist employees in dispute to focus ‘on the desired outcome: the future with a difference’.⁵⁰ Underlying assumptions of the solution-focused model are:

- the development of a solution is not necessarily related to the problem. Analysis of exceptions to the problem is useful in finding solutions.
- clients are the experts. They determine the goal and the road to achieving this.
- if it is not broken, do not fix it. Leave alone what is positive in the clients’ perception.
- if something works, do more of it even though it may be different from what was expected.
- if something does not work, do something else. More of the same leads nowhere.⁵¹

Ideally participants need to be able to demonstrate some confidence, motivation and hope that change is possible and be open to finding some resolution when participating in solution-focused mediation.⁵² Participants in workplace mediation can come to their own outcomes that are considered by them ‘best’, ‘better’ or ‘good enough’.⁵³

The frameworks discussed above, however, are not suitable for every participant in workplace mediation. Participants need to be able to re-store their relationship to a level that they are able to speak with each other in mediation and as well as future employees if they have to continue to work together.

Mediation works because it respects the person, because its process is open, because its ends are mutually agreed on, and because it encourages responsibility by all, both for the problem and for the solution. Mediation works because it accepts people as they are and allows them to change and become better; because it does not judge their actions but helps them do what they believe is right; ... Mediation works because it accepts the human condition, while affirming its desire for self-improvement.⁵⁴

Conclusion

Facilitative mediators have a variety of frameworks to draw upon and may use approaches from one or more of these frameworks. The mediator’s choice in using the different frameworks described in this article (or use a hybrid form) means that workplace mediators need to have insight and flexibility to be able to draw on the most suitable framework to use. To determine the most suitable framework

⁴⁹ Ibid 38.

⁵⁰ Bannink (n 41) 176.

⁵¹ Bannink, (n 43) 29; see also Steve De Shazer, list of underlying assumptions, from *Keys to Solution in Brief Therapy* (WW Norton, 1985).

⁵² Bannink (n 43) 72-74.

⁵³ Ibid 38-44.

⁵⁴ Kenneth Cloke, *Mediation Training Manual* (2017) available at <https://www.beyondintractability.org/cic_documents/eclipse/Cloke-Training-Manual-4.pdf> 10.

experienced mediators will consider the nature of the conflict, and where they are in the process to follow the purpose of certain stages. The mediator's role is to facilitate a process that assists participants to communicate their underlying emotions about their concerns, and goals for their future. Ideally participants not only feel heard by the mediator but also feel heard or even achieve acknowledgement from each other for their similar and different needs, fears and interests. The mediator strives to create the best opportunity, through the use of a facilitative process, for participants to hear each other and for participants to decide if or how they might build a more functional and professional workplace relationship.

By using a certain framework, or a mixture of techniques from one or all frameworks, a mediator might inspire participants to reflect how the resolution of conflict can lead to innovative ideas and practices. Participants can thereby develop the skills needed to use conflict to improve collegial relationships and group dynamics to promote more respectful and cooperative teamwork.

The mediator can be agile in using what approach is best to attempt to meet the relational and emotional needs of the participants to assist them through the process to achieve an outcome; both or all participants can live with.