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The ADR Bulletin

Competencies for ADR practitioners

Pathways to learning: conciliator core competencies

David Bryson and Mark McPherson

Conciliation is structured negotiation within a statutory or administrative framework. The conciliator balances the requirements of the framework while seeking an agreement between the parties through negotiation.

What kind of attributes do conciliation practitioners possess?

The list of competencies below summarises the writers' collective experience of almost 15 years in the equal opportunity and workers' compensation fields, and draws to some extent on similar work overseas by Honeyman [Honeyman C (1988) Five Elements of Mediation, *Negotiation Journal Vol 4, No 2* and Honeyman C (1990) On Evaluating Mediators, *Negotiation Journal Vol 6, No 1*] and others.

The proven result is a person, somewhere between a lawyer and a counsellor, who can work effectively within personal, legislative and administrative constraints, while delivering a product that is highly satisfactory to most clients.

Analysis	Effectiveness in identifying the issues in dispute and seeking out relevant information pertinent to the resolution of the case.
Objective empathy	Ability to refocus a party's self-absorption in their dispute to a problem-solving approach. Rapport, awareness and consideration of their needs and interests is demonstrated, but the objective is always towards the path to resolution.
Inventiveness and problem-solving	Pursuit of collaborative solutions and generation of ideas and proposals consistent with case facts.
Interpersonal skills	Effectiveness of verbal expression, gesture and body language in communication and managing the interaction between parties.
Strategic direction	Effectiveness in moving parties toward areas of agreement or towards a productive streamlining of the dispute.
Legislative framework	Appropriate use of administrative law principles in considering parties' rights, options and responsibilities under the law.
Expert knowledge	Knowledge of the relevant law, case law and other relevant developments, including an understanding of the legal options, processes and practices beyond conciliation.
Multiple roles	Parties need to be clear about what role the conciliator has at any time. Conciliators must manage their various roles effectively. For example, signal changes in roles and in more determinative or conclusive interventions, conform with rules of natural justice.
Personal flexibility	Effective in adapting preferred styles and roles to differing circumstances during conciliation.
Self-efficacy	Personal power and psychological strength to be effective in a meeting with changing emotional and power dynamics within the limitations of what a conciliator can actually achieve. This includes the capacity to manage the dumping, blaming and aggressiveness of parties.
Managing expectations	Effectiveness in managing the parties' expectations of conciliation. This is important where the entry to conciliation is a compulsory phase prior to legal proceedings.

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➢ How do you select for these competencies?

Experience at the Equal Opportunity Commission is not different to other recruitment practices when it suggests that a variety of approaches is required to assess competencies. They include (a) written work completed within a short timeframe, (b) panel interview that includes discussion of the written material, (c) video role-play of the applicant managing a dispute scenario, and (d) referee checks.

	Written work	Interview/Referees	Video role-play
Analysis	✔	✔	
Objective empathy		✔	
Inventiveness and problem-solving	✔	✔	✔
Interpersonal skills		✔	✔
Strategic direction		✔	
Legislative framework	✔	✔	
Expert knowledge	✔	✔	
Role transition		✔	
Personal flexibility		✔	✔
Self-efficacy		✔	✔
Managing limitations		✔	✔

The above table confirms our experience that in the selection of ADR practitioners there is nothing as powerful or perceptive as video role-plays. ❖

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