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Good theory for good practice for good theory

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Good theory for good practice for good theory

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Abstract

Extract:

It has been said that mediation is 'practice in search of theory', and the same can be said of other forms of ADR. What the phrase suggests is that, on the one hand, many forms of ADR do not have developed and widely accepted theoretical frameworks and, on the other, that there are many variations and adaptations in most forms of ADR practice.

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Good theory for good practice for good theory ...

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'If we had eggs,' goes the saying, 'we could have eggs and bacon, if we had bacon.' The question is, where do we start?

It has been said that mediation is 'practice in search of theory', and the same can be said of other forms of ADR. What the phrase suggests is that, on the one hand, many forms of ADR do not have developed and widely accepted theoretical frameworks and, on the other, that there are many variations and adaptations in most forms of ADR practice.

Moreover, those who are both practitioners and academics of ADR are conscious of the frequent divergence between theory and practice. Personally I have often been surprised as a mediation practitioner at what I have said as a theorist, and as a theorist I have often been critical of what I have done as a practitioner.

The challenge is to develop ADR theory not only in the light of its values, principles and objectives, but also so that it adequately takes account of the actual practice of ADR.

For many ADR practitioners the search for theory is seen as unnecessary or irrelevant. They perceive their role as that of the technician who uses whatever 'tool' may be appropriate for the job in hand, and if one 'tool' proves inappropriate then they resort to another. This they regard as an intuitive aspect of practice, born out of experience, familiarity and self-confidence in their role.

However, theory is partly a systematisation of practice. It provides reasons and justifications for why particular ADR tools are appropriate in some circumstances and inappropriate in others. It is based on the principle of reflective practice, which allows the practitioner to develop and add to their knowledge

capital for use on future occasions. The 'intuition' of a practitioner need not be a mystical element, and it can often be explained and made explicit. In this form it can also be discussed, shared and analysed.

In this and the next few issues of the Bulletin there will be several articles dealing with the actual practice of mediation and other forms of ADR. In this issue we have a case study contributed by a mediator on a single mediation in which he was involved. Then there is a survey of commercial mediators indicating what kinds of interventions they use in their practices. This was conducted at the LEADR colloquium for commercial mediators held on the Gold Coast in the second half of 1999, a rare opportunity for practitioners to share and reflect on their commercial mediation practices.

Of course, when practitioners write case studies and respond to survey questions we are obtaining only a limited insight into ADR reality. Bias, vested interests, lack of objectivity, selective memory and sheer immodesty entail that they do not provide a full picture. They tell us what practitioners say they do, as opposed to what they actually do.

For the latter we require observation studies conducted through proper survey methods and other scientific ways of describing the practice of ADR.

Nevertheless, these self-reflections provide some basis for developing more sophisticated theories of mediation practice. We welcome further case studies and other accounts of practice from ADR practitioners for publication in future issues of the Bulletin. ●

Laurence Boulle, General editor.