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The ADR Bulletin

ADR in Australian schools

Schools conflict resolution and mediation competition 2001

Helen Taylor

In this article I give my impressions, as a new mediator, of the Queensland Law Society's (QLS) initiative — the Schools Conflict Resolution and Mediation (SCRAM) competition. For my impression to be based on an identifiable foundation I propose to reiterate the objectives of SCRAM, provide a brief history of the competition and how it operates, and include commentary from authors on mediation — both generally and more particularly programs involving students.

History

SCRAM was a pilot program initiated by the QLS in 1994. After a favourable 12 month trial, SCRAM as we know it commenced in earnest in 1995. The competition was expanded from a State competition into a quasi-national one when NSW and Victoria adopted it in 1998. In 2001 there were 102 schools involving 800 students in the three eastern States.

The objectives of SCRAM for students were to:

- create an awareness of their responsibilities when dealing with others;
- further personal development and self-improvement;
- increase self esteem; and
- learn to manage conflict in a productive way.

The objectives of SCRAM for schools were to:

- reduce conflict in the school environment;
- modify aggressive behaviour;
- reduce tension in the classroom situation; and
- maximise the opportunity for learning for all students.

The objectives of SCRAM for the community were to:

- reduce aggressive behaviour resulting from poor conflict management skills;
- promote open communication to resolve contentious issues;
- maximise the benefits of co-operative problem solving; and
- encourage mediation as an alternative to litigation.[1]

The Schools Education Department of the QLS is currently endeavouring to expand the competition to include other States. Currently WA and SA have initiated pilot programs, and the Law Societies of Tasmania and the Northern Territory are being canvassed as to their interest in joining.

When SCRAM commenced there was a need for adjudicators. The response from the voluntary adjudicators was impressive. Initially, because SCRAM emanated from the Law Society, solicitor members of that Society formed a major part of the adjudicator pool. As SCRAM has become better known, there has been enthusiastic and willing assistance from government based mediators, barristers and academics. In Queensland this year approximately 90 legal practitioners adjudicated the various stages of the competition, with some being required to drive long distances in rural Queensland where teachers, despite the isolation of their schools, entered their students in the competition.

There is a benefit to the Law Societies of the various States in that SCRAM provides a valuable community service. By their involvement in SCRAM legal practitioners maintain positive links through their interaction with the students and the school community. Conversely, it gives students who participate in SCRAM the opportunity to liaise with lawyers, academics and government mediators and to see for themselves that senior and well respected members of the community are prepared to assist in pro bono activities in their local schools. In Queensland SCRAM is now run as part of the QLS's Schools Education Department which aims to educate young people and the broader community about the legal system.

While one of the results of the introduction of SCRAM was that it provided solicitors with a positive public profile, one of the objectives was to educate clients in what their expectation of lawyers should be. In addition, it was a view of some proponents of ADR that it was important that the community's expectation of the legal system — that a person takes a problem to a lawyer and the matter then goes to court for a decision imposed by a magistrate or judge — should not be reinforced. By meeting with solicitors and other mediators, students, as part of the community, would learn that lawyers provide services other than simply representing clients in court.[2] Students would also learn that mediation is a structured way to solve problems and that it is a positive alternative to litigation as it leaves responsibility for the outcome with the disputants.

In recent times, significant legislation has been put in place in most, if not all Australian jurisdictions, that makes it a requirement for people to attend a mediation or dispute resolution process before they are given access to a court or tribunals.[3] A requirement for mediation is also entrenched in the new *Uniform Civil Procedure Rules 1999* (Qld), which apply to all Queensland Magistrate, District and Supreme Courts. This reinforces another of the original aims of SCRAM — that by participation in dispute resolution at school, students will have knowledge and skills which may well be required by many of them as they mature. By teaching students to resolve conflict in a hypothetical situation, they acquire the necessary tools to deal appropriately with conflict in later life.[4]

The aspect of the lifelong skills attained through mediation at schools is emphasised by Jan Cameron and Ann Dupuis in their article dealing with lessons from New Zealand's first school mediation service at Hagley High School. To them,

> one of the most persuasive findings of the Hagley evaluation was the benefit to mediators and disputants of the skills [they] gained, whether

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through training or through mediation.[5]

Cameron and Dupuis continue on to say:

> Schools should take serious heed of the conclusion that, notwithstanding the value of resolving disputes between individuals, of even greater value is the acquisition of conflict management skills which will be life-long.[6]

Apart from the possibility that the skills may be used in future, some schools already deal with an environment of continuous conflict, attributed by educationalists to the increase in unemployment and the resulting low socio-economic status of some students and their families.[7] In these circumstances the skills students develop by participating in SCRAM are those needed to deal with anger, aggression control, frustration, hopelessness and other destructive and antisocial behaviour within their immediate environment. From discussions held with guidance counsellors at some schools it appears that participation in SCRAM supports the work schools are doing in the fields of aggression, conflict management and dispute resolution. It is recognised that these skills are not innate and need to be developed.[8]

'From discussions held with guidance counsellors at some schools it appears that participation in SCRAM supports the work schools are doing in the fields of aggression, conflict management and dispute resolution.'

That the objectives and outcomes of SCRAM respond to the needs of the community at large is a view shared by Christina McMahon, Director, Conflict Resolution Network Schools Development, who sees the introduction of dispute resolution in schools as a result of increasing pressure on teachers to find ways to manage behaviour such as insolence, harassment and violence.[9] McMahon lists some of the schools throughout Australia that are involved in dispute management. However, while acknowledging there are many differences and some similarities, she considers that the introduction of dispute management is generally reactive and in response to a need: behavioural problems in the classroom; bullying; racial or gender harassment in the playground; or violence. [10]

The QLS's mediation expertise has recently been recognised, with the Queensland Department of Justice asking the Schools Education Department to take over their program which had offered mediation services to schools involved in disputes. This will be a point of expansion in 2002.

My own impressions of SCRAM

I will now address my impressions of my own involvement in the competition — an impression that may be sharper because of my enthusiasm for my new role.

When I was given the SCRAM portfolio I represented a *tabula rasa* as far as mediation was concerned. I spent a week participating in a mediation training program run by the Queensland Department of Justice, which whetted my appetite for this approach to problem solving. As time progressed and I observed the progress of the students in the competition, I realised how well SCRAM assists young people in acquiring life skills. Unlike mooting and debating, mediation requires the students to communicate and interact with each other in order to reach an outcome by working together.

As a novice co-odinator and mediator, I am enthusiastic about the expansion of mediation practices among those who will be tomorrow's citizens.

Interestingly, the National Alternative Dispute Resolution Advisory Council's (NADRAC) report to government, *A Framework for ADR Standards* of April 2001, identifies common themes in mediation guidelines, rules, or codes of conduct or ethics. Those common themes include fairness, confidentiality, communication issues, conduct during proceedings, neutrality, impartiality and settlement.[11]

While these themes are for adult mediations, nearly all the SCRAM mediations I observed this year exhibited some of these concepts. Even though the problems were hypothetical, the student mediators all addressed the need for each party to respect the view of others during the proceedings. At the student mediation level I consider respect and analytical skills could be added to the competencies learned through participation in mediation.

One interesting aspect of the 2001

national SCRAM final was that even though the three national finalists exhibited different styles of mediation, there was a skillful ability of the participants to tease out the issues and investigate the options while addressing the important emotional issues. This might well be evidence that Edward de Bono's concept of lateral thinking had been absorbed. De Bono is a proponent of the view that the human mind can become patterned in its thought processes and that to avoid the mind falling into accustomed patterns it is necessary to slow the decision-making process and allow for careful consideration of each aspect of a problem.[12] Having the mediators and role-players teasing out the issues and options, and exploring them fully and comprehensively, allowed for each aspect of the problem to be considered. This meant that the agreement, when reached, represented a compromise which had been reached by consensus.

The de Bono lateral thinking concept, even if exhibited without being recognised, was another positive concept for an appropriately performed mediation. For students of this age to learn to 'think outside the square' has a value which cannot be overestimated, particularly in today's rapidly changing environments. It was obvious this year that each participating school extracted different options from the same scenario — evidence that adherence to a reasonably rigid process need not inhibit a freedom of expression or a diminution in analytical skills. For the participating students from Years 9 and 10, the ability to analyse situations and understand the nuances of relationships reflects another valuable life skill acquired through their participation in mediation. It also illustrated the value of the SCRAM design, which aims to foster a flexible approach to problem solving, knowing there is no one correct answer to most problems.

As the stages of the 2001 competition progressed it was noticeable that the mediations became more sophisticated. The participants' analytical skills became more comprehensive as the competition continued. Videos of earlier finals which could very well be described as mediating a 'schoolyard scrap' seemed light years away from this year's sophisticated national finals. Towards the end of the competition, one group from an all girls' school presented a mediation imbued with such authority that one could visualise them at some future time holding a strong peace-making role similar to that held by Madeleine Albright.

By the time of the 2001 finals, there was also evidence of a maturity of outlook being incorporated into the process — particularly in relation to private meetings. It was noticeable that the more accomplished mediators allowed for feelings to be articulated fully before 'closing the door' and moving on. This is a fine line situation and some groups handled it better than others. However, in the main, success became more prevalent with experience. Often the mediation developed a life of its own and it would not be possible for teachers or coaches to deal with a 'textbook' reaction from the parties. It appears that it was the adherence to the process by the team which gave them a solid foundation on which to build a solution. This echoes the view of Meyer:

> The task of the mediator is not an easy one. The sea that he sails is only roughly charted and its changing contours are not clearly discernible. Worse still, he has no science of navigation, no fund inherited from the experience of others. [13]

Throughout the competition, student mediators were dealing with topics which might be real life situations for students in this age group, such as plagiarism, damage to school property, problems in the workplace during work experience, being banned from competing in sporting events as a punishment for wrongdoing and incorrect identification of culprits. The role-players developed their response by being provided with facts unseen by the mediators and it was during the interaction with the role players that the waters became uncharted and the mediators required quite advanced lateral thinking skills to reach a resolution.

Many of the problems addressed were dealt with to accord with the definition of mediation proposed by Folberg and Taylor: 'Mediation is a process which emphasises the participants' own responsibilities for making decisions that affect their lives.'[14] This classic approach is reflected in the adjudication criteria for the SCRAM competition. Participants are marked on a range of attributes, based on the participants' adherence to the principles of mediation. Some examples are contained in Table 1 on p 102.

The role playing parties are marked on the qualities outlined in Table 2 on p 102. During the adjudications it was interesting to observe how the management of the particular mediations was easily marked within the various categories and the strengths or weaknesses of the mediators and parties were accommodated well within these criteria. There is scope for some issues which have been overlooked by anxious participants to be picked up and incorporated as the mediations progress. I am very grateful for the hard work of my predecessors and all those who put so much effort into providing these guidelines for assessment.

Ongoing management of SCRAM

One issue which was problematic with co-ordinating the SCRAM competition in 2001 was the wide range of results from adjudicators. If anything, this wide range of assessments validates the need for implementation of NADRAC's framework for the implementation of standards, the stated purpose for which is to 'assist relevant bodies and persons to develop and promote standards for ADR in Australia'.[15] Setting standards would assist with the aspect of SCRAM that was of most concern — that is, my inability to assess the adjudicators' results and moderate the markings.

Currently my plan is to get as many schools/teachers involved, by way of participating in workshops and conferences or for QLS to assist in preliminary pre-competition rounds. By these methods it is hoped to have more uniform standards for the competition. Judging by the comments of the adjudicators at the national final regarding the difficulty in choosing between this year's finalists and the improvement in standards

The mediator's opening statement	This includes the use of clear concise language, good teamwork and division of tasks and a clear, concise explanation of the process.
The parties' statements and identification	The criteria here include clear identification of the issues by the parties; the use of issue neutral language; teamwork; inclusion of significant matters; and confirmation of identified issues.
Ability to clarify and fully discuss issues	This segment includes marks for the initial assistance by mediators for parties to select and explore each issue, but moves to a requirement on the parties to suggest their own options rather than relying on the mediators, good teamwork by mediators and accurate recording of emerging options.
Display of skills and strategies	This segment includes marking mediators for: appropriate verbal and body language; neutrality; appropriate listening and questioning skills; ability to summarise and appropriately record the issues; and reality testing and teamwork.

Table 1

Characterisation	Students must show an ability to adopt the appropriate characteristics of their role.
Authenticity	Students' responses to mediator interventions should be suitably tempered and appropriate.
Statements	Statements should be clear and within character, and their personal needs are identified, incorporating confidential facts.
Positive approach	Here the role players have to exhibit an ability to show that conflict can develop into change for the better and also demonstrate their willingness to engage in discussion, listen to others, demonstrate empathy, show that they contributed to the formulation of ideas and show that they made an attempt to understand the other parties' position.
Commitment to process and teamwork	Here the role players are marked on their commitment without hasty compromise and their openness to a possible settlement. The parties are also expected to show teamwork by formulating options and contributing to negotiations, ownership or part-ownership of the agreement.

Table 2

each year, this may well mean an added burden for those adjudicators. However, that can only be positive for the students, teachers and mediations generally.

Conclusion

In conclusion, the Schools Education Department of the QLS is enthusiastic about the importance of mediation in schools. In 2002 we will produce a mediation module as part of the QLS Education Department's work with the new Years 1-10 Studies of Society and the Environment (SOSE) syllabus now being implemented in Queensland schools. We will also hold workshops with teachers to demystify mediation.

There will be increased visits to schools to enable the students and teachers to become more familiar with the level of assistance available and, where requested, there will also be preliminary rounds conducted at those schools which require additional practice prior to participating in the competition. These initiatives should result in more and more students improving their mediation skills and taking them into the broader community.

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Endnotes

1. SCRAM 2001 Booklet p 1.
2. Interview with Ms Bernadette Rogers, then Director of Alternative Dispute Resolution at the QLS, 30 July 1998
3. Rogers interview above note 2.
4. Rogers interview above note 2.
5. Cameron J and Dupuis A 'Lessons from New Zealand's first school mediation service: Hagley High School 1987–1989' (1991) 2(2) May ADRJ at 91.
6. Cameron and Dupuis above note 5 at 91.
7. McMahon C 'Dispute resolution in schools' (1997) 8(3) August ADRJ at 197.
8. Rogers interview above note 2.
9. McMahon C above note 7 at 197.
10. McMahon C above note 7 at 199.
11. The National Alternative Dispute Resolution Advisory Council (NADRAC) *A Framework for ADR Standards* April 2001 p 41.
12. Grant S 'The importance of lateral thinking in mediation' (2001) 12(2) May ADRJ at 78.
13. Meyer A 'Functions of the mediator in collective bargaining' (1960) *Industrial and Labour Relations Review* 159, in Lim LY 'Developing role-plays for experiential mediation learning' (2001) 12(2) ADRJ at 71.
14. Grant above note 7 at 78.
15. NADRAC above note 6 Introduction.