ADR Bulletin
ADR Bulletin

Volume 6 | Number 9 Article 1

3-1-2004

The chameleon mediator

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Recommended Citation
Alexander, Nadja (2004) "The chameleon mediator," *ADR Bulletin*: Vol. 6: No. 9, Article 1.
Available at: http://epublications.bond.edu.au/adr/vol6/iss9/1

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ADR bulletin
The monthly newsletter on dispute resolution

Information contained in this newsletter is current as at March 2004

Volume 6 Number 9

New models of mediation

The chameleon mediator

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In the early phases of the Anglo-American mediation movement, certain models were promoted in theory and training and applied in practice. The models differed, depending on the background of the trainers/mediators, the cultural context and the jurisdiction in which the training and practice took place. In the mediation world of shared understandings and collaboration, there was often competition and sometimes even conflict among advocates of the various theories, models, approaches and styles.

Over time a number of jurisdictions have seen the emergence of the *chameleon* mediator. Chameleons are representative of one's versatility and well-roundedness – in other words, one's ability to adapt to any situation.[1]

> She slips seamlessly through selected styles and a spectrum of skills. Known to have no colours of her own, she borrows from her neighbour's hue, demonstrating understanding and empathy with him – and then doing the same with another. She is the chameleon mediator.

The chameleon mediator can take any number of forms within the framework of acceptable mediation practice in her culture, jurisdiction or organisation. The chameleon mediator may play different roles within one mediation model or may choose to move among models. As we encourage our clients to trust the mediation process and accept its initial uncertainty, so too the chameleon mediator learns to embrace the Hegelian dialectic of contradictory forces. This may entail the initial loss of structural control in the conduct of a mediation.

The following table illustrates the 'top 10' chameleon types in mediation processes and describes the functions of each type and the circumstances in which each type is likely to be used.[2]

Table 1: 'Top 10' chameleon types in mediation processes

1. The Catalyst	**Provides an initial impulse/ impetus that gets the process kick-started and the parties interacting.** *Functions:* — to move the parties forward — to provide an environment in which the parties can interact with a view to achieving a change in circumstance to provide a legitimate reason for the parties to stay in the same room without losing face. *Useful where:* — the parties, until the current impasse, had a history of effective decision-making and constructive dealing with conflict — the parties are highly motivated to settle.
2. The Cabbie	**Will take the participants to the destination of their choice irrespective of his or her view of the wisdom of this choice – because, hey, they are paying. The cabbie typically determines the quickest route, unless of course it is a cab charge customer in which case the scenic route is often taken. Pushy customers may interfere in the routing.** *Functions:* — to conduct the process without any responsibility for substance or outcome

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	— to offer process advice — to change course where he or she sees a traffic jam (eg the parties reaching deadlock) ahead. *Useful where:* — parties know where they want to go but do not know how to get there. They need some process or protocol assistance in this regard — parties have the ability to negotiate without the assistance of a mediator but seek reassurance that they are taking the right path and covering all bases — parties are seeking some expertise on the process, so that they can concentrate on other aspects of the negotiation — parties want a formal recognition of having gone through a mediation whether or not they reach an agreement in the end.
3. The Chef	**Knows how to 'expand the pie', to transform seemingly banal ingredients into a sumptuous feast; pounding, squeezing, tearing and extracting unusual tastes and pulling them together. The chef is also an expert at rescuing dinner party disasters.** *Functions:* — to identify and expand the resources available to the parties — to demonstrate to the parties what they can do with what they have — to demonstrate to the parties that the whole is greater then the sum of its parts. *Useful where:* — the parties are locked in destructive positional bargaining behaviour — the parties need a kick-start in generating options — the parties have run out of creativity — the parties believe there is no way to resolve the dispute in a mutually-effective manner.
4. The Coach	**Motivates, educates, trains and pushes the boundaries of the players of the mediation game so that they both feel they can win.** *Functions:* — to assess the skill level of the players — based on the assessment, to develop an hypothesis and a strategy to bring the parties to a skill level to negotiate their differences — to give the parties constructive feedback on the game — to listen — to advise on game strategy — to give the parties the feeling that the mediator is on their side and the dispute is on the other side. *Useful where:* — parties are not fully prepared — parties do not understand the negotiation process well — parties have unrealistic and unfounded expectations — there is a power imbalance between the parties based on lack of understanding and application of the negotiation process, lack of sound advice, and/or misinformation.
5. The Clown	**Uses humour and self-mockery at unexpected moments.** *Functions:* — to change the participants' perspectives on a particular issue — to play the scapegoat, taking responsibility for mistakes or things gone wrong in the process — to save face for the parties — to hold up a mirror to the parties' incongruous behaviour — to balance heaviness with lightness.

	Useful where: — the parties' behaviour has reached the absurdly incongruous — the parties cannot see the humour, absurdity or ridiculousness of the situation — there are potentially embarrassing matters to discuss — neither party wants to be shown up to be foolish – the mediator can take this on — parties have moved from reasonable lightness to heaviness and the mediator wants to circumnavigate them back to lightness. *Warning*: Humour is difficult to use well. It is risky. Proceed with caution and professional indemnity insurance. Yet, if done at the right time in the right way, humour works untold magic.
6. The Conductor	**Conducts the flow of musical expression between members of the mediation orchestra with a view to creating harmony.** *Functions:* — directs the interplay of the participants' communication and expression — takes the energy and expression from one party and reframes it, before passing it on to the other — creates harmony from friction. *Useful where:* — parties have difficulty communicating directly with each other; instead, they can speak directly to the mediator — parties have difficulty expressing their views in a constructive manner — the conflict is escalating.
7. The Confucian	**Bestows benevolent wisdom upon the parties.** *Functions:* — to motivate the parties to persevere with the mediation process — to play the wise and trusted elder coaxing the parties towards a more constructive approach to the conflict — to permit the parties to move forward – the Confucian mediator takes silent responsibility for the decision to change direction in the mediation thereby allowing the parties to save face. *Useful where:* — the parties are struggling on an emotional level. Confucius say 'It is easy to hate and it is difficult to love. This is how the whole scheme of things works. All good things are difficult to achieve; and bad things are very easy to get.' — the parties are frustrated at what they see as their lack of progress towards resolution. Confucius say 'It does not matter how slowly you go, so long as you do not stop.' — the enormity of the task is overwhelming for the parties. Confucius say 'A journey of a thousand miles begins with a single step.' — the parties are getting caught up in detail. Confucius say 'Life is really simple, but we insist on making it complicated.' — a party has unrealistic expectations. To reality test, Confucius say 'Better a diamond with a flaw than a pebble without.'
8. The Cowboy	**Tolerates no nonsense; is a cool, tough character. Tells everyone he has a big weapon and is not scared to use it.** *Functions:* — to reality test and earth the parties — to bring inappropriate participant behaviour to an end, — to get a result quickly — to bring 'legitimacy' to the otherwise 'soft' mediation process. *Useful where:* — lawyers or clients are stubbornly sticking to unrealistic expectations — lawyers and/or clients view mediation as a 'soft' process and seek reassurance in the seriousness and/or toughness of the process through a cowboy mediator — parties are unwilling to make concessions due to a need to save face.

Published by ePublications@bond, 2004

9. The Captain	**Collaboratively determines the destination with the crew, sets the course for the ship to sail, and, to protect his or her crew, makes the tough and urgent judgment calls as they arise in the unexpected twists and turns of the journey.** *Functions:* — to maintain tight control of the process without giving the parties the opportunity to negotiate this aspect of the mediation — to attempt to protect the participants from disaster and failure — to use the mediator's authority to add legitimacy to the process in the eyes of the participants — to move the parties quickly in a particular direction when they stray off course or reach impasse — to demonstrate effective (often positional) negotiation strategies and interventions for the participants. *Useful where:* — the mediation proceeds along positional lines, in which case the process and range of outcomes has greater predictability than in an interest-based process — parties are looking for strong guidance on process and input into outcome — parties are focused on achieving a substantive settlement to allow them to walk away from the dispute and get on with other aspects of their lives.
10. The Commandant	**Exercises control over those under his command, what they say and do, and, with any luck, what they ultimately think.** *Functions:* — to evaluate the dispute on its merits (legal, commercial, equitable) and communicate this to the parties and their representatives — to provide a risk assessment of the options available to each party — to use the mediator's authority (typically status-based) to influence the parties and their representatives with respect to the first two points. *Useful where:* — one or both parties are promoting their arguments and their best case scenario — one or both parties are refusing to make the first offer/the next concession, which is jeopardising the parties' chances for a good settlement — parties have been required to attend mediation under a mandatory scheme and are more interested in getting an advisory opinion than negotiating an outcome themselves from scratch — parties are focused on achieving a substantive settlement and not concerned about how they get there.

While, theoretically, there are no limits to the ability of a chameleon mediator to transform him or herself into these and other roles, not all mediators will feel comfortable with each of these transformations. Darwinian theory would suggest, however, that mediators who survive the fashions of policy, the instability of markets and the whims of professional politics are the fittest, most successful and arguably the finest, most evolved mediators on earth. With the ability to draw on a range of disciplines, styles and skills, chameleon mediators are able continually to change their colours to adapt to the needs of the process, the parties and other stakeholders. Importantly, chameleon mediators do not operate at the beck and call of their clients. Decisions about how and when to change colour and tone remain with the chameleon mediator. Accordingly, they retain the ability to influence perceptions of their integrity, transparency and impartiality – an ability integral to the continuing market appeal of these Darwinian survivors. ●

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Endnotes

1. <www.hyperdictionary.com/dream/chameleon>

2. Many thanks to George Fox and Laurence Boulle for their input into the chameleon types.