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Mediators' whiteboard

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Issues in ADR practice

Mediators' whiteboard

This is a new feature of the Bulletin designed to afford mediators and other ADR practitioners the opportunity to circulate their views, both serious and less serious, on issues arising out of mediation practice. Readers are invited to submit their responses to the editor, and, space permitting, these will be edited and included in the following issue of the Bulletin.

What follows are two sample questions, with possible responses to each:

Q: Why does it feel so good as a mediator to do the occasional investigation, and make a judgment or finding?

- I often feel somewhat impotent as a mediator for two principal reasons. The first is that I am reliant on what the parties produce and say for my understanding of the situation and I know that I seldom leave with a complete picture. Secondly, I often feel that the situation is crying out for an authoritative decision which both parties would accept but I am precluded from providing this judgment because of my institution's protocols and liability concerns. Recently I have undertaken two workplace investigations in which I found it professionally and personally satisfying to make strong findings of fact and provide my assessments of what should occur thereafter.
- As a mediator or conciliator we often receive problems relatively late in their evolutionary development and it can be frustrating dealing with a predicament caused by lack of timely intervention by management, lawyers or the parties. While delay and inaction can affect investigations, there is usually more latitude in this situation to manage issues of timing.
- Because there is a degree of control that we have as an 'investigator' which we do not have as a

mediator. Lack of this control is what makes the mediation process such a tricky one at times and also requires a depth of skills not required of the investigator. The other ingredient of being the investigator is the recognition it provides of one's expertise in a certain area. The mediator has to settle for more vicarious satisfactions.

Q: Why is it so hard to be a competent mediator at home?

- Like some other mediators I am something of a conflict-avoider and at home I'm either the authoritative parent or I tend to walk away from conflict situations. Also, I can play the mediator very confidently when on 'stage' in my 'costume' but find it more difficult to do so in an informal impromptu setting. I've tried using reframing with the teenagers but they just tell me to stop that mediation stuff.
- Because mediation is a structured and formalised process not conducive to being produced over the Sunday roast (or vegetarian lasagna) or in the time given for TV ads or the attention span of the average teenager – generally shorter than the time for TV ads. And because the family won't pay double-time for weekend work.

Here are the questions for the following issue of the ADR Bulletin:

Q 1: Is mediating a health hazard because our bodies bear the cost of denying our real feelings?

Q 2: How do I prevent the person who speaks first from grabbing the agenda?

Please submit responses of between 50 and 250 words to the General Editor, laurence_boulle@bond.edu.au.