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Emotional competence and the mediator

Patricia Marshall

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Research findings in ADR

Emotional competence and the mediator

Patricia Marshall

General Editor
Laurence Boulle
Professor of Law,
Bond University, Queensland

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Research focus

This article discusses findings from the first phase of a doctoral study which explores the resources on which mediators rely in order to accomplish their demanding role. The study is being conducted at the University of Melbourne, and has also been approved by the ethics committee of the Department of Justice, Victoria. Twenty-three experienced mediators were involved in this initial phase, which included participation in one of three focus groups and the completion of two inventories related to their reported coping behaviours.

Demands of the mediator role

1. 'I felt in fear of my life. It was that bad for me I had to have counselling.'
2. 'Don't you ever get triggered, and you think [about a party], "You bastard"?'
3. 'I'm not a good giver-up. So sometimes I think I should have cut this hours ago, and that's emotional exhaustion.'

These are comments offered by three of the mediators as they discussed their experiences. The emotions of *fear* (comment 1), *anger* (comment 2) and *frustration* (comment 3) are, of course, also frequently felt by parties either before or during a mediation. Much of the research on mediation has focused on the parties and their reactions to the process. More than a decade ago, however, Deborah Kolb[1] described the mediator's practice as 'inordinately stressful'. She referred to the significant attrition rate, and the 'burnout' which results from dealing with parties:

> … whose emotional pain, limited motivation for resolving their difficulties, combativeness, and general resistance often conspire to frustrate and demoralize even the most tenacious and resourceful mediator.[2]

Kolb identified the 'emotionally draining' aspect of the task:

> … the emotional wear and tear of trying to help people whose anger or emotional wounds are raw and almost overpowering, but with whom the mediators must hold themselves in check or disguise their own painful or angry reactions.[3]

Her mediators identified the 'ever present need to be patient, slow down, and recycle the same issues many times over' (p 486), a demand exacerbated by the 'inherent contradictions and ambiguities of the mediation role'. For example:

> … tensions between giving the parties autonomy and [the] obligation to control the process, and between the promise to address difficult problems and the often constricted settlement that results.[4]

Kolb found that, in response, some denied any contradiction existed, 'others develop cynical or alienated feelings about themselves and their practice', while yet others take 'a more pragmatic stance — what they do is simply better than the other choices available' (p 487–8). A rather gloomy picture emerged of mediation practice, but it is one that must be examined more closely.

There are tensions in the mediator role that are now beginning to be explored in the literature, although not all have been examined through research. These include the ambiguity of the mediator's being detached but influencing, 'inextricably involved

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in the conflicts';[5] 'central and [yet] matter[ing] not at all';[6] being empathic, yet distant;[7] having authority yet 'subsuming sense of self as a separate person and [melding] into each party's perspective';[8] 'encourag[ing] the parties to vent their emotions while we must suppress our own'.[9]

Emotions and conflict

We now understand more about the role played by the emotions in a conflict situation. Early writers on conflict management discussed emotion from a dualist, and even adversarial, perspective; 'dualist' in that they saw emotion as separate from thought, and 'adversarial' in that emotions were posed as being in opposition to, and preventative of, thought. In this paradigm we hear, 'letting off steam may make it easier to talk rationally later'[10] because 'in that emotional state a thinker is simply *incapable* [italics included] of having certain types of thought'.[11] The advice was to allow a party to express their emotions because, by doing so, the party 'frequently is encouraged to move on to substantive issues'.[12]

The paradigm is understandable given that most mediators come from professional domains other than psychology,[13] and further there has been much debate even among psychologists about *the nature of emotion*. Although this debate continues, we may be confident about the following:

1. Affective states do not exclude thought. Cognition, feelings and moods interact to produce, modify and regulate emotional states. Lazarus argues that to experience an emotion, people must comprehend that their wellbeing is implicated in a transaction, for better or for worse.[14] Plutchik [15] describes emotion as 'a complex chain of loosely connected events that begins with a stimulus and includes feelings, psychological changes, impulses to action and specific goal-directed behaviour' with cognition 'near the beginning of the chain'. He claims that the function of emotion is 'to restore the individual to a state of equilibrium when unexpected or unusual events create disequilibrium', a definition very similar to that of coping. Indeed, Lazarus sees emotions as responses to our environment that prepare and mobilise us with potential threat or challenge.
2. The above definitions support the claim that emotion is not only pervasive in conflict, but *necessary* in its initiation and continuance. As expressed by Bodkter and Jameson, 'conflict is an emotionally defined and driven process'.[16] There is not the space here to explore fully the reasons why this is so but, briefly, we appraise an event as causing at least discomfort and possibly distress because it threatens our goals (cognition) and we then react with feeling (for example, anger, sadness, fear)[17] and physiological changes, such as pounding heart or headaches. The intensity of the feeling may be affected by mood, a more enduring state, and by disposition, that is, personality traits such as optimism. To remove the discomfort and return to the state of equilibrium, we act (behaviour) and express the feeling outwardly or suppress it, because emotions are both *social* and *political*. They are social in that they regulate interpersonal relationships ('via the communication that one feels one's standards or expectations have been violated'[18]) and political in that they may be used to obtain or maintain power or control or 'acquire influence'.[19]

The challenge for the mediator of dealing with emotion

The seminal paper of Jones and Bodtker[20] links the study of the emotions to the task of mediation, and identifies the challenges in the practice, namely, emotional flooding,[21] emotional contagion,[22] and emotional reappraisal.[23] According to Jones and Bodtker, the mediator must understand the elements of emotion, employ strategies to avoid emotional flooding, guard against the tendency to be drawn into emotional contagion, understand how conflict is either escalated or assuaged through the appraisal of the conflict situation, and 'help guide the disputant through a process that may enhance the potential to reappraise the situation'.[24]

Emotional intelligence?

Such a demand presupposes 'emotional intelligence' on the part of the mediator or 'the capacity to process emotional information accurately and efficiently, including the capacity to perceive, assimilate, understand and manage emotion'.[25] The construct of emotional intelligence has been challenged.[26] Critics claim that because there is not an agreed definition of the concept, it fails to satisfy tests of construct validity. Second, it appears insufficiently distinct from personality measures, leaving open the question of divergent validity. Third, predictive validity would be supported by its ability to forecast effectiveness in work, and studies on this are not conclusive.

These claims were carefully considered in the design of the current research project. An inventory was sought which would encapsulate the tasks of the mediator even if the aggregate profile could not be described as emotional 'intelligence', but personality traits. The Bar-On Emotional Quotient (EQ-i), which defines emotional intelligence as 'a cross section of emotional and social competencies that impact intelligent behaviour',[27] has been used as a research tool in a number of environments. It identifies 15 scales of an individual's ability to deal with everyday demands and pressures in terms of: intrapersonal factors; interpersonal factors; adaptability; stress management; and general mood.

These factors were proposed as necessary to accomplish the task and role of the mediator effectively. For example, it was expected that *intrapersonal skills* would be necessary for the mediator to possess sufficient authority to control the process, establish a climate of good will and resist the seduction of 'emotional contagion'. The presence of the mediator affects proceedings,[28] and empathic listening must always be balanced with awareness of community expectations, so *interpersonal* skills are necessary. The process is highly structured but the content of the discussion depends on the parties. Within this constraint the mediator judges what to pursue, push or refrain from mentioning, so *adaptability* seems important. Kolb's findings referred to earlier paint a picture of a stressful activity, hence the importance of *stress management*. Finally, the mediator maintains throughout the course of the mediation optimism that a solution is possible, so a *general mood* of positive coping and reassurance would presumably be another buffer against stress.

Focus group findings

The 23 mediators who participated were all highly experienced, whether as sole practitioners or sessional mediators within a Victorian State tribunal or dispute resolution agency. Twenty-one had more than a decade in the field, and two had more than three years experience. Most were over 50 years of age, with one being 30 and another 45. They came from differing primary professions: law, counselling, education, business, environmental science, building and engineering.

Comments from the three focus groups supported the use of the Bar-On as a means of distinguishing the task elements. What follows is a description of the scales[29] and an illustrative comment from a focus group participant that could be applied to the individual scale.

Intrapersonal subscales

- *Self-Regard* — 'the ability to respect and accept oneself as basically good'; self-assuredness, self-confidence, self-adequacy.

  [Mediation] means providing an environment that is neutral and respectful. Not everyone can do that. (1f) [30]

- *Emotional Self-Awareness* — 'the ability to recognise one's feelings'; to differentiate between them, to know what one is feeling and why.

  You have to ask, 'Am I just protecting my interests here, or am I working for the parties?' (1m)

  The key thing is self-awareness — everything you do will impact on the dynamics. You are making conscious choices. (1m)

- *Assertiveness* — 'the ability to express feelings, beliefs and thoughts and defend one's rights in a non-destructive manner'; to outwardly express feelings without being aggressive or abusive.

  I insist on active listening. (2m)

  'Respectful' might mean being clear about what is not negotiable; I'm very clear about that. (1f)

- *Independence* — 'the ability to be self-directed and self-controlled in one's thinking and actions and to be free of emotional dependency'; self-reliant in planning and making important decisions, but not excluding consulting others, ability to function autonomously versus needing protection and support.

  I don't have a model — I create it on the day. (1m)

- *Self-Actualisation* — 'the ability to realise one's potential capacities';

… it was expected that *intrapersonal skills* would be necessary for the mediator to possess sufficient authority to control the process, establish a climate of good will and resist the seduction of 'emotional contagion'. The presence of the mediator affects proceedings, and empathic listening must always be balanced with awareness of community expectations, so *interpersonal* skills are necessary.

persistently trying to do one's best; excitement about one's interests; self-satisfaction.

Mediation 'is still deliciously new and exciting to me after 10 years'. (1f)

'It is the most wonderful experience — where it seemed hopeless, they wanted to give it one last shot. Then somehow have it all transform.' (2m)

Interpersonal subscales

- *Empathy* — 'the ability to be aware of, to understand, and to appreciate the feelings of others'; tuning in; able to read others emotionally.

  I find it useful to be able to have sympathy [sic] with everyone regardless of what they are supposed to have done. No matter how aggressive and how nasty they are being to me, I never assume it is a personal attack but rather it's coming out of their fear and pain at going through the process. (3f)

- *Social Responsibility* — 'the ability to demonstrate oneself as a cooperative, contributing and constructive member of one's social group'; acting responsibly; using talents for the good of the collective, not just the self (p 16).

  We are often trying to save lives. Really saving lives. (3f)

  There is something I feel about restraining the power I have to be really intrusive … One of the dilemmas for me as a mediator is to find a way of holding back on an ethical issue of power. I have the capacity to be a heavy operator. I can really go in there and pinpoint a vulnerability and I could misuse it. (1f)

- *Interpersonal Relationship* — 'the ability to establish and maintain mutually satisfying relationships'; the ability to feel at ease and comfortable; sensitivity towards others.

  I get to know the people — what they do, their kids. (3m)

  If you don't know their names you lose their confidence. (3m)

Adaptability subscales

- *Reality Testing* — 'the ability to assess the correspondence between what is experienced and what objectively exists'; keeping things in the correct perspective, ability to accurately size up the immediate situation.

  Threatening suicide is a classic. The threat of suicide may be a political statement or it may be a tactic. If you are trained in mediation you are told that is a no-go area. But people maybe threaten suicide to make a political statement or they may do so as a tactic. People will make threats. You need sufficient knowledge of the history and the setting to decide how high the risk is. (1m)

- *Flexibility* — 'the ability to adjust one's emotions, thoughts and behaviour to changing situations and conditions'; capable of reacting to change without rigidity; able to change one's mind when evidence suggests one is mistaken; open to and tolerant of different ideas, orientations and practices.

  You can take some risks; you have to take risks often. (1m)

  I think mediators need to have a high tolerance for ambiguity. I expect that I won't know. I ask the dumb questions. (2m)

  You have to have the capacity to see what's going on, to see if the joke has fallen flat, and make it right. (3f)

- *Problem-Solving* — 'the ability to identify and define problems as well as to generate and implement potentially effective solutions'; a process of sensing a problem, defining, generating solutions, deciding which to implement; associated with being conscientious, disciplined, methodical, systematic.

  It is the ability to cut through the crap and focus on what is at the base of it … to sift out the extraneous stuff. (3f)

  It's important that we as mediators are able to see the end of the tunnel if they want to go along it. (3m)

  You're constantly thinking of what might be the next move. (3m)

> … the mediator maintains throughout the course of the mediation optimism that a solution is possible, so a *general mood* of positive coping and reassurance would presumably be another buffer against stress.

Stress management subscales

Stress Tolerance — 'the ability to withstand adverse events and stressful situations without "falling apart"'; capacity to choose courses of action for coping; belief in one's capacity to handle the situation; keeping calm and maintaining control; similar to 'positive coping'; not surrendering to feelings of helplessness and hopelessness.

I saw the dynamic, the conflict escalating between my co-mediator and the party. I could see what was happening and instinctively used a technique to try to switch the focus, to leave my co-mediator out of the picture. I kept saying to the person, 'Look at me talk to me, tell me how angry you are'. (1f)

- *Impulse Control* — 'the ability to resist or delay an impulse, drive or temptation to act'; controlling aggression, hostility or irresponsible behaviour.

  Patience is a virtue. Sometimes you can see what they need to do, but you have to wait … You can't do anything to push then towards it. (2f)

  Sometimes you can get heated inside with what people are telling you. You have to be careful and patient then … You can feel yourself tensing up … You have to control that and that's where the patience comes in. (3m)

General mood subscales

- *Optimism* — 'the ability to look at the brighter side of life and to maintain

Table — Comparison of EQ-i scores of female and male mediators, and female and male University students								
Scale	**Female Mediators M (n=7)**	**(SD)**	**Male Mediators M (n=14)**	**(SD)**	**Fem Uni students M (n=125)**	**(SD)**	**Male Uni Students M (n=118)**	**(SD)**
Emotional self-awareness	111.43	10.31	97.64	19.52	100.20	15.09	99.00	16.18
Assertiveness	102.57	11.63	101.71	7.91	96.34	15.36	95.33	16.19
Independence	107.86	15.12	100.14	14.11	91.90	16.81	97.03	14.58
Self-actualisation	101.86	10.45	92.64	11.02	95.36	14.78	94.81	16.45
Self-regard	100.14	12.39	92.0	10.47	92.50	17.56	96.51	17.58
Empathy	103.29	13.20	97.71	14.05	100.57	13.45	97.72	16.57
Interpersonal relations	103.71	13.89	94.57	12.37	97.32	14.09	95.21	16.58
Social responsibility	96.43	11.06	96.93	11.74	98.52	14.10	94.66	16.28
Problem solving	94.86	11.14	93.36	13.36	96.43	13.00	98.46	14.68
Reality testing	101.43	13.85	90.57	8.16	92.19	16.00	92.82	15.44
Flexibility	104.29	8.30	94.64	11.03	93.60	15.88	97.38	14.36
Stress tolerance	102.14	11.52	98.14	12.16	93.10	16.08	96.31	15.35
Impulse control	96.43	8.98	92.93	14.09	98.45	12.83	95.59	16.73
Happiness	100.29	11.44	92.64	13.74	95.23	16.61	95.14	17.17
Optimism	97.00	14.61	90.86	12.70	92.58	17.07	96.93	16.06
Total EQ	101.71	11.13	93.29	8.77	92.80	14.99	94.25	14.83

Note. Dawda and Hart report no significant gender differences except on Independence, $t (241) = 2.53$, $p<0.05$, with men receiving higher scores than women; on Social Responsibility, $t (241) = -1.98$, $p <0.05$, with women receiving higher scores than men; and on Optimism, $t (241) = 2.04$, $p <0.05$, with men receiving higher scores than women.

a positive attitude, even in the face of adversity'; a measure of hope in one's attitude to daily living.

> You must be a great optimist, and believe in people being good people. (1m)

- *Happiness* — 'the ability to feel satisfied with one's life, to enjoy oneself and others, and to have fun'; self-satisfaction, general contentment; cheerfulness, enthusiasm.

> I just love it when you get there — when they say it can't settle and you do! (3m)
> I go home on a high. (3m)

Self-report on the EQ-i

Twenty-one mediators returned the inventory, seven females and 14 males. The scores of the mediators were computed and compared with some earlier studies whose scores were available. The Bar-On scores are all based on a mean of 100 with a standard deviation of 15. First, the scores were compared by gender. Although the female scores were higher than those of the males, the two statistically significant differences between the male and female mediators were on the 'Adaptability' scale. On *Reality* testing the mean female score of 101.43 (sd 13.85) was greater than the male mean score of 90.57 (sd 8.16) [$t (19) = 2.28$, $p = 0.03$]. On *Flexibility* the mean female score of 104.29 (sd 8.3) compared with the male score of 94.64 (sd 11.03) [$t (19) = 2.03$, $p = 0.056$]. All mean scores were found to reflect 'Effective Functioning'. No differences were found between mediator respondents in terms of either their original profession or their organisational situation, that is, whether they were sole practitioners or employed at a state tribunal.

The scores of the male and female mediators were then compared with those of 243 male and female university students in North America.[31] The male mediators' scores showed no significant differences when compared with the male university students. However, the female scores show differences in three of the scales when compared with their university counterparts:

- emotional self-awareness — the female mediators' mean score was 111.43 (sd. 10.31) and the students' 100.2 (sd15.09), [$t (130) = 1.94$, $p = 0.05$];
- independence — the female mediators' mean score was 107.86 (sd 15.12) and the students' 91.9 (sd 16.81), [$t (130) = 2.46$, $p = 0.02$];
- flexibility (to a lesser extent) — the female mediators' mean score was 104.29 (sd. 8.3) and the students' 93.6 (sd 15.88), [$t (8) = 3.1$, $p = 0.02$].

The Total EQ scores of females and males combined were compared with those reported for a 2003 study of the general Australian population.[32] The mediators' mean score was 96.1 (sd 10.19) and the general population 93.7 (sd 15.93).

These findings are set out in the Table above.

Discussion of the findings

The conversations in the focus groups demonstrated the usefulness of the Bar-On scales in distinguishing the skills and attributes required in the mediator role. There are, of course, caveats on using the EQ-i as a determinant of who should, or should not, be a mediator. In the mediators' description of their task

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and role it emerged that what is required is balance. Too much empathy with one party would result in unfairness to the other, too much impulse control might restrain a sense of injustice, thus interfering with social responsibility. Too much optimism might prevent the awareness of 'the dynamics in the room'.

The mediator role involves walking tightropes. The mediators spoke of the need to rely on the authority of their role, but simultaneously of the need to cede that authority to the parties, because 'in mediation you don't know what's best' (1m). They needed knowledge of the subject area of the dispute, but too much knowledge created problems because then 'you are grasping for agreement' (2m). They identified the need to show empathy, but — simultaneously — distance and objectivity. One mediator expressed the dilemma as, 'You empathise but you are not employed to be part of their conflict' (1m).

Further, problem-solving as envisaged by the Bar-On would not be appropriate for the mediator because a step-by-step approach to identifying and solving a problem would preclude the necessity to 'follow a jumbled train of thought' (2m) and to 'pick up on the logic in someone's statements' (2m).

The need for balance and fine-tuning of the scales may explain why the mean scores on the EQ-i are not higher than the average, and fall within 'Effective Functioning' rather than 'Enhanced Skills'. In reference to social competence, Schneider and colleagues point out that 'more is not necessarily better where certain social competence dimensions are involved'.[33] The same may be said for EQ in certain professional settings.

The findings should not, however, be dismissed. In female scores the difference between mediators and students in the areas of emotional self-awareness, independence and, to a lesser extent, flexibility *may* be an indicator of the significance of these attributes. Independence emerged as attracting the highest ranking when the gendered scores were combined. A fuller definition of this term reads:

> The ability to be self-directed and self-controlled in one's thinking and actions and to be free of emotional dependency. Independent people are self-reliant in planning and making important decisions. They may, however, seek and consider other people's opinions before making the right decision for themselves in the end … Independence is essentially the ability to function autonomously versus needing protection and support … The ability to be independent rests on one's degree of self confidence, inner strength and desire to meet expectations and obligations, without becoming a slave to them.[34]

It may emerge that the elements in this definition prove to be contributory factors to the 'key resource' which enables mediators to perform effectively, and which reduces the likelihood of the burnout identified in the Kolb research.

Emotional self-awareness attracted the second highest ranking, the definition of which is:

> The ability to recognise one's feelings. It is not only the ability to be aware of one's feelings and emotions, but also to differentiate between them, to know what one is feeling and why, and to know what caused the feelings.[35]

This ability seems particularly important in understanding emotional contagion. To a large extent the mediator relies on emotional contagion, by setting a positive mood at the start of proceedings, because when 'people are in positive moods … their

Too much empathy with one party would result in unfairness to the other, too much impulse control might restrain a sense of injustice, thus interfering with social responsibility. Too much optimism might prevent the awareness of 'the dynamics in the room'.

perceptions and evaluations are likely to be more favourable'.[36] But emotional contagion is a two-edged sword because Neumann and Strack[37] have found that 'listening to another person's emotional expression is sufficient to automatically evoke a congruent mood state in the listener'.[38] The mediation process involves such listening, but if the activity results in one party evoking their prevailing mood in the mediator, what is the effect on mediator impartiality, whereby the mediator balances time and attention given to the parties?

The small sample size of the current study has been a limitation, as has the imbalance between female and male participants. The sample is being expanded in the second stage which has now begun. In this stage, individual in-depth interviews will explore further the resources on which mediators rely. ●

Pat Marshall is a facilitator and mediator in private practice and accredited with the Department of Justice, Victoria. An educator for many years, she is a lecturer in the Masters subject 'Managing Conflict in Educational Settings', Faculty of Education, University of Melbourne. She is completing her PhD thesis on 'The Resources on which Mediators Rely' and can be contacted at <*pjmarshall@bigpond.com*>.

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