Theory, practice, prospects: a student’s perspective

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Introduction
Mediation, offering a multidimensional and structured approach to dispute resolution, was introduced to me during a theoretical unit in dispute resolution at the University of Notre Dame, Australia. Supported by Boulle's text Mediation: Principles, Process, Practice, the unit covered several dimensions of the mediation process: both applied and practical, through simulations and topical case studies; and theoretical, through conflict psychology and philosophy. The manner in which the principles and their application were presented reflected their integration.

The course is not designed to produce mediators, but rather to develop a theoretical understanding of conflict and mediation primarily in order that, in their profession, students will be able to:

• advise clients who are parties to a mediation;
• advise clients on how to recognise disputes that are suitable for ADR; and
• explain conflict management as an opportunity for empowerment, recognition and reconciliation.

These objectives were accomplished in large part by educating students to identify parties' substantive, procedural and psychological needs,1 in order to introduce them to the patient work required to preserve the relationships at stake. Students were introduced to ways of endorsing productive and well-organised negotiations. After the course, I decided to find a practicum as I saw the need to further what I had learnt to enable me to practice in my chosen field of international mediation.

On the rise in Australia and other countries, particularly in the interconnecting legal and commercial fields,2 mediation seemed to me to offer a transferable and thus appealing tool for a variety of work settings.3 Its adaptability to a variety of situations, as well as its strong use of negotiation skills, reinforced my interest in the topic. This interest, I soon began to realise, was based mainly on theory. The simulated mediations of the unit served only to draw attention to the size of the gap between theory and practice. I recognised that I needed experience in the field to reinforce and clarify much of my understanding of theory and to synthesise theory with practice. My curiosity led to an inaugural student placement in a professional mediation service.

Theory
The mediation process was presented throughout the course from several angles: from its underlying ideology to the diversity of settings that it can be applied to; from the parameters that are used to analyse the suitability of disputes and disputants for mediation, to practical ways of supporting communication in bringing about constructive negotiations. Measuring rods or standards of practice were covered, and the notions of flexibility, assertiveness, respect and tact were presented as essential to the mediation process.

Theory covered in the course was backed by application: simulations of mediations in the form of case studies and role-plays were integral to unit assessment. During these, students were required to develop hypothetical conflict scenarios varying from international to local settings. Some were in the context of social issues, family disputes and neighbourhood disputes; others were based on work settings or international tensions.

To these situations, we were to apply the theoretical stages of the mediation process. Part of the assessment, together with the conflict scenarios,
included written Agreements to Mediate and Opening Statements for both mediators and parties. In groups of three or four, students mediated the conflict scenarios through problem-defining and problem-solving steps of the mediation process. Throughout these steps, the assistance of an experienced mediator was available. This had the advantage, for students such as myself, of initiating the synthesis between theory and practice.

My placement furthered this synthesis and definitely added a variety of elements to my understanding of mediation, expanding on knowledge gained in the course. This article provides an overview and reflections on clinical and administrative aspects of the placement.

Agency
The agency where I had my placement has branches throughout Australia, including in Victoria, Tasmania, South Australia, Queensland, the Northern Territory, Western Australia, New South Wales and the Australian Capital Territory. The agency provides mediation services in three major areas: workplace mediation, family mediation, and professional development training programs in mediation.

- Workplace mediation. This part of the service offers mediation for disputes surrounding issues between staff or between staff and employer; communication difficulties; strategic planning and goal setting; ownership structure; or issues surrounding future business direction.

- Family mediation. This part of the service focuses on family mediated agreements in coming to agreements relating to childcare, parenting, financial and property issues, often, but not necessarily, following separation. Where they are made under the Family Law Act, the mediated agreements can be registered in the Family Court of Western Australia.

- Professional development training programs. The agency offers courses in mediation skills at both introductory and advanced levels. It provides participants with an understanding of the principles of mediation as applied to a variety of settings, including family, workplace, commerce, government and justice. As well as the principles of mediation, participants in the basic course learn a generic model of mediation, where and when to use mediation, skills applicable to mediation, and regulations leading mediation practice. Advanced courses are tailor-made for participants.

Place of Work
During my placement I worked with a team in which both the clinical and administrative aspects (see Table 1 and Table 2) were addressed by five mediators as well as two intake officers, one of whom was the team coordinator. The mediators were accredited mediators under the Family Law Act 1975 and Supreme Court Rules. They had backgrounds relating either to law and business, psychology and management.

As required by all members of the mediation team, I signed an oath of confidentiality prior to starting the placement. Clients' approval prior to my attendance at any session was required and my attendance was dependent on clients' needs.

**Table 1: Clinical tasks during placement**

<table>
<thead>
<tr>
<th>Task</th>
<th>Description</th>
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<tr>
<td>Preparation of mediation sessions</td>
<td>Preparation of files prior to and after separate sessions. This involved preparation with one of the mediators, by observing and being informed of the components of a file (eg being introduced to contents of a file and discussing aspects of it prior to mediator attending a joint session; being exposed to ways in which files are organised and issues to look for prior to attending joint sessions; being exposed to elements of file to complete prior to attending separate sessions; being exposed to ways of preserving one's impartiality).</td>
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<tr>
<td>Observation of pre-mediations</td>
<td>Consisted of attending separate sessions. I observed mediators’ communication strategies, in terms of interview techniques and reframing to convey a variety of perceptions on issues raised (eg mediators’ ways of asking the same question in different formats when there is a lack of clarity surrounding parties’ comments; use of non-directive ways of conveying different perceptions on issues raised by clients through reframing; observation of non-verbal signs surrounding ways clients and mediators communicate).</td>
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<tr>
<td>Participation in incidental supervision of observed sessions</td>
<td>Consisted of discussing with a mediator various aspects of a session after a client's departure. This had the effect of allowing mediators to present some of their techniques to me, and gave me the opportunity, straight after observations, to ask questions, share ideas about the situation, the type of dispute, the way in which the client had presented it, the ways in which it could be interpreted, and various ways of interviewing and listening.</td>
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The agency’s generic model of mediation consists of the following in this order: phone intake, separate session with one of the parties (1SS), separate session with other party (2SS), first joint session (1JS), second joint session (2JS) and other joint sessions until an agreement is reached. The number of joint sessions varies according to the requirements of the case.

Reflection
Throughout my placement, several dimensions of mediation theory I had come across in the course took on a different angle. These were in particular related to observable mediator adaptability and sensitivity to surroundings, to cooperative communication strategies, and to the multi-disciplinary nature and scope of mediation.

Adaptability and sensitivity to surroundings
I realised mediators adapt their style and approach to their clients’ communication styles and socio-economic backgrounds. Mediators seemed to take these aspects into account when exchanging information with clients. For example, a mediator changed speech style depending on the client. Mediators also adapted their clothing styles: for mediation sessions where clients were known to be from a particular socio-economic background, the mediator adjusted their style of clothing.

Some mediators were more inclined to be directive in their communication styles, while others focused more on listening depending on situations they came across or, of course, depending on their personalities. For example, if a client seemed unsure about aspects of mediation, mediators would make sure that clients were informed. In such cases, mediators took on a more directive role during the premediation. As a general trend, I observed some mediators’ styles to be more empathetic, whereas others were more outwardly detached in communicating with clients, having an effect on the type of exchange of information.
between client and mediator. Therefore, the mediators were adaptable to different types of clients and to situations they found themselves in. Although there was a high degree of flexibility, it was done within a particular structure: the generic format for separate sessions and NADRAC guidelines for mediation practice in general.

Cooperative communication strategies

This was reflected to me throughout the placement, through aspects of the separate sessions. I was also able to observe the use of techniques such as reframing, used to try to communicate in a non-directive manner different perceptions on issues raised. In one instance, both the mediator and I understood the reasons for a situation of which the party seemed not to be aware. To try and communicate this understanding in a non-directive manner, the mediator presented the party with a question repeatedly from different angles, to allow the party to do the reframing himself. The party seemed unaware this was taking place. This is how subtly the reframing was done, in a non-imposing manner.

Cooperative communication was also reflected in the way mediation intake officers spoke to clients over the phone, stressing the cooperative nature of mediation through the terminology they used. For example, one of the first descriptions of mediation that intake officers made was that mediation was non-imposing rather than competition.

Non-verbal communication was also a strong tool for mediators: their body language was quite managed in the presence of clients, conveying the professional setting of the session, whilst at the same time establishing a comfortable and open atmosphere. This was particularly reflected in the different ways in which mediators conveyed empathy and detachment through eye contact, facial expressions, ways of presenting themselves, ways of conveying a calm appearance and openness in the face of individuals’ distress and crisis time. Their own personal concerns such as tiredness, uncertainties or other did not seem to come across non-verbally in sessions.

Multi-disciplinary nature and scope of mediation

From various observations throughout my placement, I think that it is an advantage to be aware of the central to a variety of conflicts. It would be correct to speculate that the scope of mediation is as broad as the conflict types to which it can be applied. The central philosophy and communication strategies of mediation, as practised in one Australian agency, could, to a certain degree, be applied to other settings. It could possibly be applied to prospective mediation and negotiation settings with adjustments to the specificities of each setting.

Prospects

The placement introduced me to a setting in which mediation and negotiation skills can be applied and to some intricacies of the profession and of that specific setting. My supervisor exposed me to the broader context of mediation and dispute resolution practice, through meetings and research beyond the immediate venue of the placement. Indirectly, and through research for the placement, I had glimpses of the links throughout Australia and Asia connecting the...
regions through dispute resolution practice, following commercial and legal fields across borders. This included coming across types of umbrella organisations that cover arbitration and mediation practice throughout the region (e.g. Advoc Asia, LEADR, IAM A) and introduced me to the international scope of mediation starting from Australia.

Coming from an international background and upbringing, I see the importance of mediation and negotiation skills. I speak several languages due to having lived and studied in France, the Middle East, and Australia, and my current studies in Paris at the INALCO are focused on deepening these language skills and developing an appreciation of international exchanges.

I am pursuing placement possibilities in settings linking Asia and other strategically important parts of the world. I am interested in working as a mediator, moulding the process to suit particular zones, so as to fit the mentality of varying situations, depending on the cultural, political, religious, social and economic settings.

Acknowledgments

Thanks to RAWA and its mediation team. My experience throughout the placement has widened my perspectives in terms of career prospects and mediation opportunities in different parts of the world. I am grateful to Margaret Halsmith for her support and guidance in looking for the placement and throughout its duration. I am also thankful for her help and support in writing this article.

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Endnotes

3. ‘Mediation is practised at the highest levels of international diplomacy and in primary schools in South Australia, by traditional elders in the rural outback and by full-time officials of the Administrative Appeals Tribunal, by volunteer community mediators in drafty community halls and by unqualified luminaries through the pages of the press’ quote from Boulle L ‘Minding the gaps – reflecting on the stories of Australian mediation’, Bond Dispute Resolution News, Vol 5, 2000.
6. Ibid p 44.
7. ‘Institut National des Langues et Civilisations Orientales’.