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Mediating in the shark-infested waters of organisations

David Bryson
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A chairperson of a small service business telephones the mediator and describes the following situation. He says that the chief executive officer is at war with a senior manager; both have built the success of the business. The manager has complained of ‘bullying’ by the CEO. The business has no dispute resolution policy or procedures. The chairperson believes the battle could destroy the business and wants both to stay. He has persuaded the CEO into mediation while the manager is apparently more amenable to the process.

The mediator meets first with the manager, who describes episodes of what seems an attempt to force the manager out of the business. The manager wants the behaviour to stop and for the working relationship to be restored, and welcomes the intervention of the mediator as an ally.

The mediator meets with the CEO, who recognises that his behaviour sometimes ‘crosses a line’ but otherwise considers it normal. The CEO now feels the victim to the bullying accusations and sees the mediation process as protecting him from direct contact with the manager. The CEO also sees mediation as being a useful opportunity for tabling a restructuring proposal that would see the manager’s role significantly changed in line with the CEO’s objectives to keep the business viable and reduce friction by minimising contact between them.

This story illustrates some of the unintended consequences of mediating in the complex world of organisations. The mediator is often used, willingly or unwittingly, as an instrument of managerial authority, which can reinforce the entrenched balance of power. Or in some cases, managerial impotence, which utilises the services of an outside mediator and thus diverts attention from developing managerial competence.

Mediators can also be introduced to symbolise neutrality to reduce resistance to managerial decisions or enhance perceptions of fairness and independence in the process of change. But more often than not there is no sub-plot but merely the effects of a third party outsider making manifest aspects of the parties’ inter-relationship, that are normally unwritten, unseen but experienced daily. Organisational realities and constructs around power, bias and inequities come to the surface once the mediator hits the water.

How is the mediator to survive in the surf with cross currents and rips such as these tugging from all sides?

A starting point is to recognise that there is no comfort in conducting a facilitative, interest-based process without due attendance to the context. In the workplace context where power exists (decisions to hire and fire and all that goes in between) and rights (human and legal), facilitation can be ambiguous at best. So while the mediator may want to focus on providing procedural and relational fairness, the distributive justice issues of equity and input, equality with others, legality and industrial rights, intersect continually at every stage. Mediator fairness in practice and perception is not assumed by the mediator’s training or code of practice, but earned and socially constructed by how rights, interests and power are handled.

The mediator also requires an anthropological or organisational consulting approach to map the system in which they are working. So while the presenting problem is framed by the client as a dispute or conflict, the mediator needs to redefine the environment more systemically than individually and make linkages between the personal and technical contributions to the presenting issues. The picture that the mediator feeds back to the client, more often than not prior to an actual mediation meeting between the protagonists, must enable the client to take action. For example, structural misalignments of roles, responsibilities and accountabilities may need clarity and reinforcement before the mediator tackles relational elements in contention. The mediator must be adept at reading the situation in this way; otherwise mediation of the particular can reinforce reoccurrence of disputes in the future.

This type of mediation from an organisational consulting perspective has been described as ‘strategic’ or pragmatic. It is characterised by an approach that attempts to understand and then address underlying or latent causes of conflict before entering into facilitating problem-solving. It has broadly three phases: diagnosis, strategy formulation (which may include mediation and other forms of intervention), and orchestration of the plan. It demands multiple roles for the mediator and a relatively unconstrained capacity to identify contextual issues and negotiation of the scope and role of the mediator.

There are lifesavers available to toss to a mediator prepared to enter the swell, or who has already thrown themselves in: here are my pick of them:

Training in system thinking — perhaps apart from family mediation, mainstream mediation training is not covering the latent-cause skills required to manage in institutional settings. A multi-disciplinary approach incorporating organisational change and development skills must be part of the mediator toolbox.
Establish contract clarity at the start and throughout — a standard mediation agreement is not enough. A consulting contract is required that clearly defines the objectives of the mediator consulting role, who is the client and what milestones are expected, what’s in and what’s specifically out of the intervention, what is expected of parties, and what are the assumptions underlying the consultancy. This ‘scope’ statement is critical at the commencement of organisational mediation and should be revisited throughout, amended by agreement if necessary.

Manage your boundaries; swim between the flags — once the scope is defined the reality is that the mediator is often placed under considerable pressure to transact other elements of the workplace (eg negotiating structural change as in the example above). For the mediator’s safety and the parties’ clarity the mediator must stick to the role agreed or transparently re-negotiate it.

Respect intuition — if there is a shadow on the sea floor it is best to believe sharks are about and respond accordingly. The body and subconscious usually know intuitively that danger lurks well before the mind has understood what is going on. If it feels something is not right then it probably means that is not. Give yourself time to work out what it is that troubles you and how it may or may not affect what you are doing.

Don’t swim alone — find a trusted buddy and either involve them in the project specifically or have them available on the phone for those moments when you need to gain perspective. When the breakers toss you it is hard to know what’s up and what’s down.

Become the reflective practitioner — while an essential part of the therapeutic field, professional supervision is not appreciated or utilised on the whole by mediators. In working with organisational issues I think it is critical. At the very least the mediator should keep a running journal of thoughts and ruminations, staying with questions that arise even if the answers are not immediately clear. In many instances journaling self counsels the practitioner through difficult situations.

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Participants in the conference workshop recorded their concluding reflections (written in a hurry as they left on ‘talking paper’) which I have transposed legibly and photographed.

David Bryson is mediator specialising in workplace disputes. He conducts tailored training in conflict management, mediation and negotiation skills and is a conciliator in the workers compensation system in Victoria, Australia. David can be contacted at <dbrysonaus@gmail.com>.

Endnote

LEADR is holding a Mediation Workshop in Adelaide on 31 August–4 September; in Alice Springs on 31 August–4 September; Canberra on 4–8 May; Darwin on 11–15 May; Hobart on 25–29 May; Melbourne 19–23 April, 1–5 June and 11–15 October; Perth on 18–22 May and 26–30 October; and Sydney on 19–23 April, 21–25 June, 16–20 August, and 18–22 October. For further information go to <www.leadr.com.au/training.htm>.

ACDC is offering Mediation Training in Sydney on 24–28 May, 9–13 August, 18–22 October. Accreditation dates include 3 June, 17 August and 27 October. For further information visit <www.acdcltd.com.au>.

The 5th Asia-Pacific Mediation Forum Conference will be held in India from 21–27 November 2010. For further information go to <www.apmec.unisa.edu.au/apmf>.

National Mediation Conference will be held in Adelaide on 7–9 September 2010. For further information go to <www.mediationconference.com.au>/.

The Bond University Dispute Resolution Centre has upcoming courses including Family Dispute Resolution (Legislation and Skills) in Sydney from 20–24 April; Conflict in Schools on 13 May; Mediator Assessment 11–12 June; Global Negotiation Course in Lyon, France on 30 August to 4 September. For more information email <drc@bond.edu.au> or visit <www.bond.edu.au/law/centres>.


Mediator Style Training is running Mediating Personality Workshops in Perth on 17 April; Sydney on 6 May; Melbourne on 10 April; Adelaide on 14 May; Brisbane on 9 April. For further information go to <http://mediatorstyletraining.com>.

The Trillium Group in association with AGSM Executive Programs is holding 5-day Mediation Skills Training in Sydney on 3–7 May and 13–17 September. For further information on this course go to <www.thetrilliumgroup.com.au>. They are also running an Advanced Negotiation and Influence program on 29–30 April; 15–16 July; 28–29 October. For further information on this course go to <www.agsm.edu.au/ani>.