
Kluwer Mediation Blog

Mediation as a Megaphone

Rosemary Howell (University of New South Wales) · Friday, January 22nd, 2021



The Harvard Program on Negotiation (PON) has provided a life-changing experience for many of us.

It certainly changed the trajectory of my life and triggered a life-long immersion in conflict resolution theory and practice. I am immensely grateful.

The program has been an evolutionary one - regularly enhanced and updated to fit the frame of modern research and practice. It's coverage of the role of emotion in negotiation is a great illustration.

In the first program I attended in the late 80s we were counselled 'not to let emotion overwhelm reason' and in one memorable Fishbowl demonstration Roger Fisher silenced me by telling me he would deal with me when I was not being so emotional.

Shaken but not stirred (as Sean Connery famously said in the movie Goldfinger) I retreated, crushed.

Others has similar experiences. Commentary from these experiences over time prompted acknowledgement from critics and academics that the Seven Elements were a wonderful strategic tool but the absence of a tool to help us deal effectively with emotion was a significant omission.

Emotion enters the room

Not long after PON took a long look at where emotion fits and following a very productive collaboration between Roger Fisher and Daniel Shapiro, [Beyond Reason](#) was born. This text gave us the ever-useful tool I have written about before - The Five Core Concerns. It answered a lot of questions about where emotional responses come from and added to the negotiator's repertoire.

While local mediation training programs were (and still are) presenting emotion as peripheral to conflict, the wider research community - particularly within the social sciences frame - was providing research which encouraged us to see emotion differently. Research such as the work of [Tricia Jones and Andrea Bodtker](#) dug deep into what the mediator's role should be in dealing with emotion, identifying it as 'central to all mediation contexts.'

Locally, we saw more programs directed to mediators wanting to build their skills in dealing with emotions in mediation. We were given permission to unleash our inner amateur psychologist as we paid more attention to emotion and its impact and consequences.

We made a lot of mistakes as we learned the hard way about emotional flooding - parties experiencing a system overload where they are swamped by the force of their emotions, removing their ability to think or function constructively. We learned how damaging this could be when we encouraged parties to talk through their issues in a joint session without anticipating the emotional force that would be released.

So where are we now?

Mediation is hard work and I am proud of the commitment I continually observe mediators make to support parties in reaching a good outcome.

However, the emotional space remains a dangerous one even for the well intentioned. Some of the dangers are:

2. **We fail to recognise the impact of emotion on us** as part of our own learning. [Picard and Siltanen's research](#) gives us some understanding of this challenge, using techniques from Insight Mediation. However, their questioning process is not universally applicable. More sophisticated and professionally powerful parties may easily find the suggested questions patronising and superficial.
3. **The myth of emotional venting** remains a very real challenge. It is a serious temptation to overestimate our ability to decode emotional expressions accurately. One damaging outcome is the view that encouraging parties to express their emotions openly is the best means available to allow them to have some kind of purging process and 'gets it out of their system' so the mediation can move forward.

Of course, this can and does happen regularly but it is dangerous to assume it naturally follows our 'tell me more about how you feel' encouragement.

Expressing negative emotions is only valuable if it is accompanied by a willingness to reflect and learn. Without this, it is likely venting only increases the negative emotional experience and does more harm than good.

Mediation as a megaphone - when mediation does more harm than good

It is important that the mediator's repertoire contains tools to support the parties in working with and through emotion. But meaning well is not enough.

On occasion our attempts to help a party work through and let go of a negative emotion legitimise a crescendo of personal attacks and blame that are unresponsive to the kind of cathartic questioning recommended by [Kennedy-Moore and Watson](#).

Sometimes a party exploits the mediator's support for venting by continually turning up the dial.

We have some serious learning to do to recognise the 'megaphone effect'. There is a definite 'note to self' here as the reflections and research I have shared here were prompted by my own recent experience as a megaphone wielder.

Some suggestions

Clearly emotions matter and are relevant. The challenge for us is to develop a more robust repertoire for dealing with them. Mediators need to be encouraged to engage with this challenge and I suggest we start by doing 2 important things

1. Accreditation

Some big steps are being taken in my jurisdiction to strengthen mediator standards in various organisations. A great example is the work of [Danielle Hutchinson](#), one of the most accomplished researchers and practitioners in the field of identifying and designing internal quality frameworks in the dispute resolution field.

One of the hierarchies she has created identified the highest skill level as including an ability to differentiate between constructive and unconstructive consideration of emotion in order to maximise potential for resolution. She notes the difference between identifying an emotion which signals a previously unidentified interest, which may offer a key to resolution, as distinct from an emotion which promotes the opening up of old or unrelated wounds that may impede resolution.

Watch this space as Danielle and her business partner Emma-May Litchfield conduct [the review](#) of the Australian National Mediation Accreditation Standards (NMAS). I am hopeful this will encourage the upgrade of our standards to embrace the appropriate focus on what are the skill levels in dealing with emotion that accredited mediators need to demonstrate.

2. Training

Incorporating emotion into accreditation will be the perfect catalyst to persuade bodies offering training for accreditation to upgrade their programs and fill the current gaping hole where emotion needs to be.

In the meantime, I have my own lessons to learn about keeping my megaphone under lock and key!

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The image shows a screenshot of the Kluwer Arbitration Practice Plus web application. The interface is titled "Explore Practice Plus" and features a profile for Gary S. Bore. The profile includes a photo, name, and various statistics. Below the profile, there are several circular charts and data visualizations, likely representing the Relationship Indicator mentioned in the text. The interface is clean and professional, with a blue and white color scheme.

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