

Kluwer Mediation Blog

The 'F-word' for mediators – failure

Charlie Irvine (University of Strathclyde) · Monday, August 13th, 2012

Professions (and hence professionals) are both blessed and cursed with high expectations. The upside is clear: the public expects high standards, expertise and care, and in return is prepared to pay handsomely. The downside typically involves disciplinary sanctions against those not measuring up to those standards, although issues of probity rather than competence tend to make the headlines. Less often discussed is the impact of these high expectations on professionals' self-image. We also have to see ourselves as supremely competent, or the compact with the public loses its validity.

It is therefore unsurprising that professionals rarely talk about failure, especially their own. It becomes difficult to admit publicly that our approach to a given situation was anything less than perfect. This in turn creates a strange dissonance for learners: we cannot come into the world fully-formed, with all the knowledge and competence that come from years of practice. And yet we need to appear competent enough to convince members of the public to hire us early in our careers so that we get the opportunity to practice and learn. Most professions solve this by some sort of training system: the 'apprenticeship of identity' that forms lawyers, doctors, architects and psychotherapists. The mediation profession is still early in its development, and there is precious little evidence of such an approach as yet.

Alongside this sits what might be called the 'pioneering' dimension of mediation. I agree with Robert Benjamin that mediators tend to be outsiders, even subversive. We have not, to date, gone in for a great deal of bureaucracy and structure. A lot of us are self-made, even entrepreneurial. While admirable and interesting, this creates another disincentive to the acknowledgement of failure. Self-made people are not noted for their modesty and it hardly makes good business sense to go around admitting that we got it wrong.

So, a few days ago I wrote a post about mediation failure on an ADR forum: http://www.linkedin.com/groups/ADR-Conflict-Resolution-Mediation-Exchange-935617?home=&gid=935617&trk=anet_ug_hm . My particular beef was with mediation literature. I was simply pointing out that it is packed full of stories of success: magical moments when the right word or gesture (or even silence) unlocks seemingly intractable conflict. To read these books you would be forgiven for thinking that mediators are 'special' people with enerring instincts. The books try to be helpful by illustrating each learning point with a story. But the stories rarely say anything like: 'On this occasion I really blundered, and the mediation ended in failure'. Or even: 'I used to get this wrong by doing X or Y; but now I have learned from my mistakes and do Z'.

The responses to my post have been interesting. Some have very kindly offered support, some have identified with the issue, and quite a few have pointed out that the mediator is not really responsible for the outcome. I appreciate the logic, that our mistakes are probably less significant in the big scheme of things than the parties' own stuff, and that there are many people out there

who simply don't want to settle, agree or compromise. However, I don't think this lets us off the hook. Yes, our doctrine of empowerment and respect for parties' autonomy mean that we don't assume responsibility for the outcomes of mediation. But we are responsible for our own part. Our blunders, faux pas or simple misreadings can contribute to a poor outcome.

On occasion I have felt the momentum of the mediation flow away from goodwill and humanity back towards mistrust and demonisation, and haven't known how to prevent it. Perhaps afterwards, with the benefit of hindsight, reflection or discussion I have realised that I should have done X, or not done Y. But at the time I simply didn't have enough knowledge, skill or experience to do the right thing. It happens. Hopefully we learn each time, so that we grow in both skill and humility.

Michael Jacobs, in a brilliant article, goes further and suggests that 'pain and suffering should be hallmarks of mediator professionalism' – see <http://www.mediate.com//articles/jacobsM5.cfm> . He points out that the compassion that brings us into this work can't simply be left at the door when it goes wrong: 'Thus when mediation ends, I am no more 'free' of the conflict – either externally or internally – than I am of my ears, or heart.'

Where I particularly agree with Michael is in his contention that pain is the best teacher. If we are stung by our failures, we have the motivation to learn and improve. But if our belief system allows us to ignore them, or place all the responsibility on the parties, we can sail on without questioning our approach.

Returning to the literature, I am not accusing those who write about mediation of being particularly boastful. They seem highly decent people with a keen sense of their own frailties. Rather, I contend that mediation is not yet at the right point in its history to acknowledge failure. It is too young and too insecure in its position to talk about getting things wrong. Actually it is hard to find much evidence of older professions admitting failure either. It would be refreshing for any professional to speak about failure (although an honourable exception exists in the international development world – see <http://www.admittingfailure.com/>).

So, I am not suggesting that we downplay the fantastic impact that mediation can have, nor the incredible skills and instincts that many people bring to the table. But a little honesty would be a pleasant counterweight in a world where we are surrounded by tales of success. I'm sure there are lots of tales of failure out there: good , honest attempts to do the right thing that simply didn't work, through to outright blunders, breaches of ethics, or ineptitude. There must be fantastic richness and insight in these stories. It would make for a healthier learning community if more of them saw the light of day. I finish with a quote from www.admittingfailure.com: 'the only "bad" failure is one that's repeated.'

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