
Kluwer Mediation Blog

Learning from beginners: what new mediators can teach us

Charlie Irvine (University of Strathclyde) · Wednesday, July 13th, 2016



Despite some scepticism about the value of “roleplay” most mediation training involves asking people to run a pretend mediation session. I’ve tried various euphemisms to ease trainees’ anxiety – “skills practice”, “simulation”, “sitting with conflict” – but none seems to make it any less daunting. You can read about this activity, watch others do it, even be a party in it, but sooner or later you have to get into the mediator’s chair and give it a go. We call it learning by doing, and it has a lot to recommend it.

For one thing, mediation is a set of real-world practices rather than an abstract object of study. To become accomplished in any practice requires repetition – our first faltering steps need to be re-taken, critiqued, improved, reviewed and embedded, long before we achieve anything like mastery. Mediation is particularly tricky because it usually requires some unlearning. Many trainees already have years of experience as problem-solvers or advice givers. These are fantastically useful skills but, as I describe below, they can get in the way.

As well as providing practice, simulations let beginner mediators make their mistakes in private. Real mediations are high-stakes affairs. I wouldn’t want to inflict my early train-wrecks on clients who deserve competence and professionalism. With simulations we have the luxury of pausing the action and asking the “pretend” parties how things are going. Sometimes it’s going well. But sometimes it isn’t, and you certainly learn quickly when a colleague says your question made them feel you were judging them, or favouring the other side, or that you seemed to be ignoring them altogether.

Over the years I’ve noticed a particular “move” trainees make which goes down badly with their mock clients. Yet it’s so persistent that I’ve come to think it is telling us something important. It

goes like this:

Party A has been making a point that seems pretty reasonable, but party B keeps rejecting it. Having absorbed the ideology of empowerment and self-determination, most beginner mediators don't interfere straight away. However, they are human! In the mediator chair their brains are working rapidly, running an instant trial and error check on everything that's said; they can see that party A's angle could hold the key to resolution; they start to feel frustrated by party B's apparent intransigence. Eventually they make their move. The mediator turns to party B and says either of the following:

- a) *"I think what A is trying to say is ... (re-stating A's position more artfully). What do you think of that?"* OR
- b) *"Can you not see that A has made a major concession?"*

Apart from being leading questions (one more subtle than the other) both these moves share a common feature: the mediator has slipped into the role of party A's advocate.

Before trying to understand why this might happen, the good news is that it's easily corrected. Experienced mediators also feel frustration and know there's no mileage in going round the same conversational loop of suggestion – rejection – repetition, etc, etc. But mediation is closer to judo than karate – and so we rarely need to do the parties' work for them. Faced with this sort of impasse, an experienced mediator is more likely to swivel towards party A, saying something like: *"I think what I hear you saying is ... Have I got that right?"* This starts to clarify and crystallise the proposal but, crucially, avoids it becoming the mediator's idea. S/he then turns to party B and asks *"What do you make of that?"* When B (usually) rejects it, the mediator can say: *"Ok, that's not for you. What would you prefer?"* or *"Would you mind telling us a bit more about what you were hoping might happen?"*

Of course there are no magic bullets when it comes to other people's conflict. Some situations just won't settle; some need more time than we have. But experienced mediators tend to avoid traps like this, maintaining their role as a well-intentioned and unbiased companion in the quest for resolution. Of real interest, however, is why so many of us instinctively respond as I described above.

One possible explanation lies in the psychological theory of cognitive dissonance. Leon Festinger's term refers to situations where our beliefs and behaviours don't match up, or where our beliefs come into conflict with each other. The trainee mediator probably came into this to help people resolve their problems through communication (a belief). However, after a while s/he can't help noticing that B's behaviour seems obstructive (another belief). Being thrown in at the deep end the mediator hasn't time to disentangle the two contradictory beliefs – indeed, research suggests that "reasoning areas of the brain virtually shut down when people were confronted with dissonant information" (Aronson et al, 2005, *Social Psychology*, 5th Canadian Edn. Toronto: Pearson. p. 179, citing Westen et al 2006). So the mediator takes steps to reduce the dissonance. Not wanting to drop the commitment to resolution, s/he targets party B's obstructive attitude, hoping to reduce it and restore the belief that they are on the path to resolution.

Heider's related "Balance Theory" (http://www.cios.org/encyclopedia/persuasion/Ccongruity_theory_2heiders.htm) may offer another way of understanding the instinct (though I recognise I am stretching it a little). At the start of the session the mediator is equally well-disposed to both A and B (balance). After a time s/he comes to believe that A is reasonable and B isn't. One way of restoring balance is to coax B into

reasonableness. Of course this is unlikely to be effective, unless the mediator has so much authority that B is driven to re-examine her approach. More often, though, B will simply dig in her heels, believing that it's now "two against one".

A third and simpler explanation is that many of us lose patience with other people's bickering. We just want to get it sorted and take steps to "knock heads together". This may be a particular temptation to those accustomed to providing solutions to others' problems under time pressure: lawyers, social workers, managers, HR professionals.

However, real-life mediation has a nice tendency to reduce that temptation. If you ask experienced mediators who they think is in the right, or who they think is likely to win, they say "I've absolutely no idea". The more you've seen, the less you think you know. This speaks of mediation as a slowly acquired knack – it's as much about one's underlying philosophy as about any particular technique. I developed my mediation motto, "*everybody's story makes sense to them*", over many years of hearing both sides. Equally I've seen my attempts to "coax" or "influence" the parties fail. I've learned that it's their situation, not mine, and if they want to resolve it they probably will. I've also learned that most people hugely appreciate our efforts to get alongside them, to listen, to offer interpretations, sometimes act as devil's advocate, but only once they trust us.

A final helpful way of looking at this is to see these role-plays as a way of developing tolerance towards discomfort through repeated exposure. In this instance it's discomfort for conflict. Once we start to build that tolerance our anxiety diminishes, meaning we can think more clearly, and our need to impose a solution declines. Then we can join, even lead, the problem-solving conversation through its phases of uncertainty, complexity, possibility and resolution. And we can start to relish this unique role, accompanying our clients as they find their own solutions and get back a little bit of their belief in humanity.

Charlie Irvine, July 2016

To make sure you do not miss out on regular updates from the Kluwer Mediation Blog, please [subscribe here](#).

Profile Navigator and Relationship Indicator

Includes 7,300+ profiles of arbitrators, expert witnesses, counsels & 13,500+ relationships to uncover potential conflicts of interest.

Learn how **Kluwer Arbitration** can support you.

Learn more about the newly-updated *Profile Navigator and Relationship Indicator*



This entry was posted on Wednesday, July 13th, 2016 at 2:49 am and is filed under [Conflict](#), [Developing the Field](#), [Impasse](#), [lawyers in mediation](#), [mediation models](#), [Mediation Practice](#), [mediation process](#), [Mistakes](#), [Tactics](#), [Tips](#), [Understanding mediation](#). You can follow any responses to this entry through the [Comments \(RSS\)](#) feed. You can leave a response, or [trackback](#) from your own site.