

Kluwer Mediation Blog

Early intervention – an encouraging case study.

Rosemary Howell (University of New South Wales) · Sunday, September 22nd, 2019

Mediation is certainly featuring in the international news right now.

This week Giuseppe De Palo [posted](#) an enthusiastic message about workplace conflict resolution. He congratulated the Office of the Ombudsman for UN Funds and Programmes as it prepares to establish a world-wide panel of mediators to make mediation “the first, natural step to take in pursuing informal resolution to workplace conflict”.

This is an achievement to be celebrated. However, it is disappointing that early intervention processes which precede mediation, particularly in the workplace environment, are not getting the same enthusiastic press.

The concept of early intervention is not new. Indeed I have written about it in an [earlier blog](#). Readers may recall reference to the [Civil Litigation Research Project](#) (CLRP) in the early 1980s which investigated the apparent explosion of disputes in the civil justice system in the USA.

The project discovered that disputes are not ‘found objects that arrive fully formed’. It validated earlier [research](#) analysing the stages of a dispute. It demonstrated that, even before a dispute begins to form, there are opportunities for early intervention which offer significant savings in time, cost and, perhaps most significantly, human relationships.



The Dispute Pyramid – Adapted from Miller & Sarat 1980

Despite the research and the conversations, until now I have been unable to find useful examples of early intervention at work, especially in an institutionalised environment where we can track uptake, outcomes and party responses.

A case study

Recently I was fortunate to discover a useful case study which adds some interesting and valuable enhancements to the early intervention process.

Introduced two years ago by the Department of Health & Human Services (DHHS) in Victoria, Australia (whose vision is to achieve the best health, wellbeing and safety of all Victorians so they can lead a life they value) the program, as with all effective programs, has been evolving as the Department evolves. It uses the language of facilitation. Services are provided by a workplace facilitator. The program has not been widely publicised. I was fortunate to discover it via my daughter, an accredited mediator, facilitator and coach who has recently been appointed to the role of workplace facilitator. Through her recommendation to investigate this well-thought out and continually evolving program, I have found a case study to explore.

Located within the Employee Wellbeing and Support space, the program (which supports 11,000 people!) was created in response to requests for a pathway to resolve matters involving inappropriate behaviour and conflict as an alternative to the usual formal Departmental processes. This approach has led the Department to offer a range of options called “employee wellbeing supports”.

The Organizational Ombudsman

Initial development was based on the concept of the Organizational Ombudsman drawn from the [Institutional Ombudsman Association](#) (IOA) framework.

At a high level the Organizational Ombudsman role involves both supporting parties and promoting institutional learning about enhancing conflict resolution processes.

This contemplates that in interactions with parties the emphasis will be on:

- Listening and understanding.
- Identifying interests and developing options to support them.
- Coaching parties towards direct engagement.
- Facilitating informal resolution and referring parties to other more formal avenues for resolution where this becomes necessary.

Beyond the parties, the role also offers independent insight to the organisation about opportunities for systematic change. It is a ‘source of detection and early warning’ of new issues that require the organisation’s attention.

The role of the workplace facilitator

It has been wise of DHHS to use the IOA framework. It is steeped in relevant research, has international recognition and support and brings a useful legitimacy to the role. An exploration of how the role is operating two years on also demonstrates that the Department has had the wisdom to allow the role to transform and be enhanced in response to stakeholder feedback.

This has produced a number of changes. Already located in the ‘Wellbeing’ space the role has now been moved into the Health, Safety and Wellbeing Support Unit. This has overcome some of the challenges of the more isolated role – giving the facilitator a familiarity with and access to other services that are available to support parties. These are terrific tools which enhance the opportunities for the workplace facilitator to offer truly situation-specific support and referral which includes:

• A peer support network

Trained volunteers available to support individuals needing help – not trained counsellors but a confidential service based on active listening, clarification and referral to appropriate support services as a ‘first port of call’ resource.

• An employee wellbeing support program

This is often called an EAP (Employee Assistance Program) in other organisations. This is a ‘more than just counselling’ resource provided by an external provider which includes a manager assist offering that provides unlimited bespoke coaching services and a conflict assist coaching service for employees

• Teamwork programs

Early intervention is party driven. Sometimes the coaching element of the role encourages parties to realise that there could be value in bringing the workplace facilitator into the team environment to support the team in dealing well with differences.

The significance of confidentiality

Two years on, other significant feedback is influencing the operation of the role. Parties are reporting that their confidence in the confidentiality of the process influences their willingness to seek support. They want an interaction that is not reportable on content. As a consequence, should it emerge during the facilitation that there is a need to report, the workplace facilitator does not step into the reporting space but offers coaching to the party in how the party might take this action.

Data collection

Every program needs to confirm its value via appropriate data collection. However data collection needs to be managed extremely sensitively. This is particularly important in an environment where the program’s credibility relies on parties’ confidence that there will be no consequences flowing from their decision to engage and that no reporting back to the organisation can ever result in them being identified. Parties will not access a process if there is the slightest concern that confidentiality will be breached, whatever the intention.

The response has been to refine the reporting outcome so that data is captured according to common themes rather than individual cases. This still allows the collection of data which can inform the DHHS about key concerns whilst ensuring that confidentiality has priority.

What are the important lessons from this project?

Two messages strike me as significant:

- The location of this program in the Employee Wellbeing space (which itself sits within Occupational Health and Safety), rather than with other formal Human Resources programs, makes it plain that there is a relationship between human wellbeing and an ability to deal well with differences
- This is not a conventional workplace mediation program. We know that by the time parties get to mediation there is often a fully blown conflict which, in the workplace, has serious employment consequences if it does not end well. This program does offer the opportunity for facilitated conversations. However, the initial emphasis is on a skills transfer via coaching to give participants the confidence to engage in difficult conversations before fully blown conflict breaks out.

Watch this space!


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