

Kluwer Mediation Blog

Time to break down the silos?

Rosemary Howell (University of New South Wales) · Saturday, October 22nd, 2022



One of the great professional satisfactions of being part of the mediation community is that it sits within a much wider cluster of non-adjudicative processes. This proximity to a broader cluster represents an opportunity for learning, experiment and the exercise of curiosity and investigation.

In Australia, the cluster of which mediation is a part includes negotiation, conflict coaching, conciliation, independent expert appraisal, facilitation and hybrid processes.

And while mediation itself has been undergoing ongoing development, much of the development is related to differentiated forms of mediation identified by subject matter (such as the Family Law Dispute Resolution regime) or by technique (such as facilitative, evaluative and narrative mediation).

The problem with silos

One of the disappointments this has produced is that the mediation community has remained siloed. For example, facilitative and evaluative mediators occupy different worlds – it is rare to observe them sharing experiences and skills or being curious about what they might learn from each other. As we struggle to figure out whether we can move from an emerging profession to one that is fully formed, we are still unable to reach agreement about what mediation is – and we can be quite territorial.

Dr. Anna Howard's valuable empirical research in her recent [text](#) gives us the voices of General Counsel. It sounds to me as if they are reflecting on their disappointment that the promise of mediation has not been realised – identifying that, in their view, the significant role which negotiation plays in dispute resolution seems not to be acknowledged in the mediation process. This seems a very relevant example of two processes, sitting side-by side in the cluster of non-adjudicative processes, operating separately rather than in a complementary fashion.

Is it time to learn from our Facilitation colleagues?

As a participant and observer of the mediation community, my analysis is that all the moving parts in our community seem to be focusing on getting better and better at what we already know how to do. The appetite for innovation and reinvention is not front and centre.

In contrast, the 800 plus members of the facilitation community to which I belong are keeping the airwaves (should I say Zoom-waves?) buzzing as they exchange ideas about the fields they are exploring. It is here and also with our international facilitation colleagues that we have had developments in fields such as Courageous Conversations and Decision Conferencing (see the remarkable work of [UNCTAD](#)). Leading up to the Australian Federal Election process earlier this year we saw the Holding Democracy facilitation process which engaged many communities and resulted in significant electoral changes.

During the worst of the Covid lockdowns these colleagues devised novel ways to meet and share ideas and generously helped me (and many others) to master 7 new platforms to enhance online engagement.

This week an invitation came to another session to continue my exploration of ongoing developments in the area of consent. In the commercial mediation field where I practise, consent usually is interpreted as consent to engage in the process and consent to resolve the process and is evidenced by executing documents.

However I have often experienced situations where particular challenges in working relationships between key parties create questions about whether it is appropriate for the mediation to continue. Mediation literature is not very helpful. The wonderful [Ellen Waldman's](#) text on Mediation Ethics is silent about the deeper ethical challenges of consent, as are other texts in my library. The only place in the mediation world where I can find more exploration of this topic is in the family law, domestic violence and restorative justice literature. The silos within the mediation world ensure that we commercial mediators are largely unaware this work exists.

However the facilitation field is busy developing and sharing widely projects scrutinising the challenges of consent and offering very helpful tools.

The UN has provided a number of reports such as [Guiding Principles on Business and Human Rights](#) and the [UN Declaration on the Rights of Indigenous People](#) and it is interesting to see how the facilitation community is using them as part of ongoing projects into consent models.

So what?

The silos have never been very helpful. What we need now, as we continue to manage the challenges of a world upended by a pandemic, is to push ourselves and our professional bodies to take a more three-dimensional approach to learning. Let's continue the innovation Covid drove us to and look further afield for ideas outside our experience and comfort zones.

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The graphic features a black background with white text and a circular icon. The icon depicts a group of five stylized human figures, with a magnifying glass positioned over the central figure. The background is accented with horizontal lines in blue and green.

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