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Surveying ADR practitioners

What skills and attributes do experienced mediators possess?

John Wade

Ian Hanger QC, on behalf of LEADR, invited 50 experienced Australian 'commercial' mediators to a two day workshop on 21-22 August 1999 at the Gold Coast, Queensland, Australia. This elite gathering was facilitated by six Queensland teachers in the field of dispute resolution (Professors Gay Clarke, Lyla Davies, Nadja Alexander, Laurence Boule, Pat Cavanagh and John Wade). Participants were requested to complete a questionnaire during the first day of activities.

This exercise is one of many attempts to ascertain, from their self-perceptions and recollections, what expert mediators do in their work. The results emphasise both the commonalities and diversities of successful mediation and conflict management practice.

However, eight of the self-perceived practices emphasised by the majority of these respected and expert mediators are summarised briefly below. (The vast majority of these experts were also senior practising lawyers.)

Preparation and preparation meetings

The economy and simplicity of arriving at a joint mediation meeting 'to see what happens' has apparently been discarded by most of this group. More detail is needed on what kinds of premediation education, meetings, written summaries and coaching of clients is occurring.

Whiteboards and visuals

Surprisingly, the majority use whiteboards and flip charts to record questions and goals, and brainstorm solutions. Such communication devices are often (falsely, it appears) presumed to be preferred by environmental, family and community mediators — not 'big money' mediators.

This reflects a remarkable expansion of the communication repertoire of lawyer-mediators.

Reframing and summarising

The strong emphasis in most Australian mediation training courses on the micro-skills of reframing and summarising is apparently justified.

Relaxing and letting the process work

This is a fascinating theme emanating from this group of renowned mediators: 'I have learned not to work so hard, but rather to hand over to the parties and the process.'

Let the clients speak more than the lawyers

Once again, this group of experts shatter some stereotypes which prevail among less experienced (and less employed) mediators, at least in Australia. The attempts to give more control to clients, rather than to skilled helpers, needs further research. It is also relevant to the debate which is currently raging in the United States about the apparent domination of 'airspace' by legal representatives during mediations.

Where possible, sustain the joint meeting

Although diversity of process is a key theme, the majority of these mediators also emphasise that the more experienced they become, the more they try to keep clients in joint meetings. This development raises a challenge to a widespread practice of mediators who routinely separate all disputants soon after opening statements are made.

Listening skills

An overwhelming emphasis of good practice and of what has been learned in the school of hard knocks by this group is: listen, listen, listen.

This virtual unanimity raises challenges for training in the micro-skills of listening both at law school and in mediation courses.

Persistence and patience

Predictably, these two qualities, along with

the skill of listening, are seen as the core requirements of mediator competence (far beyond any others mentioned in the survey).

These qualities raise predictable questions for administrators who attempt to set up mediation programs which have rigid and short meeting times.

Conclusion

The results of this quick survey were surprising and were not predicted by the writer. The stereotypes of skills and process sometimes attached to big dollar commercial mediators were undermined. The (self-perceived) skills and processes of the majority of this expert Australian mediation group have clearly incorporated many features of 'classical', facilitative or problem solving (and even transformative) mediation.

This preliminary conclusion obviously requires continued research to verify what mediation models and micro-skills are being used by the most 'marketable' mediators, and which conflicts are being matched to each of these models. ●

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Contributions

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