

POLITICAL COMPETENCE AND THE MEDIATOR: A NEW STRATEGY FOR MANAGING COMPLEXITY AND STRESS

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I INTRODUCTION

The newly developed 'Practice Standards for Australian Mediators' emphasise the need for competence in knowledge, skills and ethical understanding. These competencies now need to be defined more specifically. For a mediator, competence is vital, not only to achieve client satisfaction, but to ensure the mediator's own sense of wellbeing; lack of mastery may produce stress and inability to cope with the demands of the role. The focus of this article is a form of competence which has thus far not been named in the mediation literature: political competence. It is relevant because mediators must: manage power relationships; harness the power of parties in order for them to achieve some form of resolution that meets their needs; and restrain their own power so that they do not impose a settlement which contravenes the ideal of self-determination. The paper describes how awareness of this competence emerged from a study of mediator stress and coping. It then suggests a link between political and social/emotional competencies, and proposes the need for political competence to be developed in mediation practice.

II MEDIATION AS A POLITICAL ACTIVITY

Because the ability to negotiate presupposes a certain amount of power, and because a mediation meeting is a structured negotiation, mediation involves the exercise of power and is thus a political activity. The mediator deals with situations in which parties are either confident in their power, or anxious about their impotence. In these situations, the mediator 'controls' the meetings with a view to increasing parties' understanding of their options, and 'manages' the interactions by developing strategies not only 'for creative expression and understanding of feelings' but also 'for emotional suppression

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or control'.² Establishing control so that the meeting does not become a 'free-for-all' and managing emotional expression are political tactics given that they involve the exercise of power, however subtle or overt the exercise may be.

Indeed, the management of power relationships is a constant challenge, and possible stressor, for mediators who are imbued with the ideals of both self-determination for parties, and impartiality on the part of the mediator, ideals which the new Australian National Standards for Mediators continue to uphold.³ Self-determination is tested if a mediator attempts to intervene when sensing that parties may not be acting in their own interests. For example, in a study conducted by Kolb and her associates, one mediator found it frustrating when:

somebody can't express their own views well to the rest of the group and the rest of the group is pouncing on them. I know that if I intervene, the person would take it as an insult and yet I know I could express that person's view in a succinct way that would help them.⁴

Therefore, deciding how much to intervene, or restrain one's power, is a factor which makes the work of the mediator 'inordinately stressful'.⁵

Then, impartiality may be threatened when mediators find themselves 'so angered or frustrated by an encounter' that to act impartially is impossible, while still being aware that this is the expectation.⁶ On the one hand, mediators believe that they are expected to behave impartially, that is: approach a dispute without preconceived biases and opinions; operate non-aligned; and treat all parties fairly and equally in terms of time and attention.⁷ On the other hand, they are 'castigated if they fail to support the less powerful party'.⁸ However, when they do attempt to support the less powerful, they may find themselves enduring the accusation from the other party that bias is being shown.

For these reasons, 'the mediator's job is a delicate one and fraught with difficulties' with the 'trick' being 'to provide what assistance is needed for making it clear that each is being given what is needed and no more'.⁹ This 'delicate' task is compounded by the fact that 'what direct and indirect influence mediators have, emanates from their person, their reputation and skill, and the parties' ongoing assessment of them during the case'.¹⁰ It may be argued that carrying out the delicate task successfully depends, to a considerable degree, on the mediator's ability to understand the phenomenon of power, and to apply that understanding judiciously.

² C W Moore, *The Mediation Process: Practical Strategies for Resolving Conflict* (Jossey-Bass, 3rd ed, 2003) 174.

³ *Australian National Mediator Standards* (2007) 5 and 8.

⁴ D M Kolb and Associates, *When Talk Works: Profiles of Mediators* (Jossey-Bass, 1994) 338-9.

⁵ *Ibid* 464.

⁶ L Mulcahy, 'The Possibilities and Desirability of Mediator Neutrality – Towards an Ethic of Partiality?' (2001) 10 *Social and Legal Studies* 505, 516.

⁷ This is the substance of definitions of impartiality. Fuller treatment of the concept is available in L Boulle, *Mediation: Principles, Process, Practice* (Lexis Nexis Butterworths, 2nd ed, 2005) 30ff.

⁸ M D Lang and A Taylor, *The Making of a Mediator: Developing Artistry in Practice* (Jossey-Bass, 2000) 180.

⁹ A C Garcia, K Vise and S P Whitaker, 'Disputing Neutrality: A Case Study of a Bias Complaint During Mediation' (2002) 20(2) *Conflict Resolution Quarterly* 205, 223.

¹⁰ D M Kolb, 'To be a Mediator: Expressive Tactics in Mediation' (1985) 41(2) *Journal of Social Issues* 11.

III UNDERSTANDING POWER IN MEDIATION

A *The Mediation Ideal*

It is fair to say that the ideal model of power in the mediation literature owes its heritage to the seminal work of Mary Parker Follett. Some decades ago, in defining power as ‘the ability to make things happen, to be a causal agent, to initiate change’,¹¹ she argued that conflict was exacerbated by strategies which employed ‘power over’ the other (a coercive concept), and ameliorated when the strategy was informed by a mindset of ‘power with’ (co-active and jointly developed).¹² Although her context was management rather than mediation, she foresaw the benefit of integrating interests to arrive at a solution from which all could benefit.¹³ Interestingly, she argued against the possibility of ‘balancing power’, a topic which occupies much space in mediation literature, describing it as a ‘sterile’ process. Instead, she advocated for the activity of coordinating power to build up ‘a functional total’ and ‘create new values’.¹⁴ This is the mediation ideal – for the mediator to harness power so that interests are integrated and new value is created.

B *The Resources Parties Bring to the Table*

The work of French and Raven in distinguishing sources of power has contributed to appreciation of the resources parties may bring to the table.¹⁵ Their original six categories of power (coercive, reward, legitimate (or positional), expert, referent and informational) has been extended by Mayer to include such resources as: power of association; the ability to create a nuisance; procedural power; and the perceptions of one’s own power.¹⁶ The significance of these contributions lies not only in alerting mediators to a ‘resource pool’ which parties may possess, but also in disabusing them of the possibility of ‘balancing power’ definitively. As Astor points out, power cannot be regarded as a measurable commodity which can be balanced. Rather, ‘the dynamics of power change, ebb and flow during the course of the mediation’.¹⁷ Therefore, the challenge facing mediators is not to find a way of ‘balancing power’, but to harness and coordinate parties’ power, and to judge when to restrain or assert their own procedural power and authority. Again, these strategies constitute political activity.

C *The Mediator’s Response*

References to the political nature of the mediator’s role are evident in the literature even though these have not been pursued by other researchers. For example, Cobb and Rifkin allude to the ‘proactive (and political) involvement of the mediator’;¹⁸ van Ginkel

¹¹ M Parker Follett, ‘Power’ in H C Metcalf and L Orwick (eds), *Dynamic Administration: The Collected Papers of Mary Parker Follett* (1941) 95, 99.

¹² Ibid.

¹³ Ibid 104.

¹⁴ Ibid 113-14.

¹⁵ J R French and B Raven, ‘The Bases of Social Power’ in D Cartwright (ed), *Studies in Social Power* (1959) 150.

¹⁶ B Mayer, *The Dynamics of Conflict Resolution* (Jossey-Bass, 2000) 53.

¹⁷ H Astor, ‘Some Contemporary Theories of Power in Mediation: A Primer for the Puzzled Practitioner’ (2005) 16 *Australasian Dispute Resolution Journal* 30, 32.

¹⁸ S Cobb and J Rifkin, ‘Practice and Paradox: Deconstructing Neutrality in Mediation’ (1991) 16(1) *Law and Social Inquiry* 35, 48.

explores the ‘face giving’ moves the mediator makes;¹⁹ and the recurrence of the words ‘trick’²⁰ or ‘tricky’²¹ suggest the obliqueness of the methods. These references reflect subtlety and diplomacy, features of an approach which is political because it is about managing power relationships.

Indeed, when mediators talk about reframing the language used by disputants, they are referring to political activity, which is implicit in the way the term is defined. For example, Benjamin argues that the mediator ‘takes the communication of a party, and without abrogating his or her meaning entirely, alters and redirects that meaning to allow more constructive use in the settlement process’.²² The mediator is not making a judgment about emotions or about cognition, although his or her strategy is informed by awareness of the emotional and cognitive states of the parties. Instead, the strategy is political in that it: alters the language used by the parties; changes the target to which it is directed, away from the other party; and directs it to what may be described as a mutual and neutral ‘pasteboard’.²³ The purpose of the strategy is to make the language ‘palatable’ to the other party.²⁴

The sort of competence required to handle this delicate role and the finesse with which the strategies are applied emerged from my doctoral study which explored the stressors facing mediators and their methods of coping. This ‘mixed methods’ study involved 43 Australian mediators.

IV METHOD

The study was conducted in two phases. The first phase involved a total of 23 mediators in three focus groups, each with seven to nine participants, with the purpose of identifying the stressors in the role. The mediators were asked a key question, ‘If you were to design the mediation from hell, what would it look like?’ From their responses, a list of 10 potentially stressful scenarios was drawn up and then presented to a further group of mediators. These mediators comprised the second phase of the study in which 20 individual interviews were conducted. As well, all 43 mediators completed two inventories, one on coping strategies in general (the Coping Scale for Adults),²⁵ and one on social and emotional competencies (the BarOn EQ-i).²⁶

¹⁹ E van Ginkel, ‘The Mediator as Face-Giver’ (2004) October *Negotiation Journal* 475.

²⁰ Garcia, Vise and Whitaker, above n 9, 205.

²¹ R D Benjamin, ‘Managing the Natural Energy of Conflict: Mediators, Tricksters, and the Constructive Uses of Deception’ in D F Bowling and D A Hoffman (eds), *Bringing Peace Into the Room: How the Personal Qualities of the Mediator Impact the Process of Conflict Resolution* (2003), 79, 99.

²² Ibid 116.

²³ P Marshall, *Stress and Coping Among Professional Mediators* (PhD Thesis, The University of Melbourne, 2008) 295.

²⁴ D T Saposnek, ‘Style and the Family Mediator’ in D F Bowling and D A Hoffman (eds), *Bringing Peace Into the Room: How the Personal Qualities of the Mediator Impact the Process of Conflict Resolution* (2003), 245, 252.

²⁵ E Frydenberg and R Lewis, *Coping Scale for Adults: Administrator’s Manual* (Australian Council for Educational Research, 1997).

²⁶ R Bar-On, *BarOn Emotional Quotient Inventory Technical Manual* (Multi-Health Systems, 1997).

A *The Sample*

An important criterion of participation was that the mediators be experienced, that is, with more than five years in the field, or mediating on a weekly basis for three years. Another criterion was that they practised facilitative mediation, in which the mediator conducts a process which encourages communication between the parties in order to achieve consensual decision-making in order to satisfy their interests. It is a style which involves relatively low intervention in contrast with evaluative mediation which might involve the mediator commenting on the strengths and weaknesses of parties' cases or determining an outcome.²⁷ All had been trained by either universities such as The University of Melbourne, La Trobe or Bond University, or agencies such as Relationships Australia, the Family Mediation Centre or the Dispute Settlement Centre of Victoria. Most were from Melbourne, with one practising in Canberra and one in Albury, a regional centre. Twenty two of the 43 were male, and 21 female; 19 were sole practitioners, and 24 worked in agencies or tribunals. There were: 10 lawyers, 14 from therapeutic domains, including psychology; six from education; seven from business; and six from a combined group of scientists, engineers, and builders. Participants were recruited through: personal contact; 'snowballing' where one participant suggests another; and presentations made by the researcher to agencies and tribunals, and to the 8th National Mediation Conference in Hobart in 2006.

V THE STRESSORS INVOLVED IN MANAGING POWER

The study confirmed earlier findings about the stressful activity of mediation in managing power relationships. Mediators generally were concerned about power imbalances, with one claiming that power imbalance is 'singularly the most difficult thing to mediate – not just emotional, but financial and physical power imbalance',²⁸ and most referred to their concerns about how to manage power so that no party felt disadvantaged.

In brief, the stressors included the fact that mediation is generally a 'one-off' event, for which little preparation can be undertaken in real terms, so that 'a hand grenade' might be hurled during the process, shocking the mediator as well as the parties.²⁹ The mediation event involves high emotional content because people in conflict have experienced some form of 'loss' and are fearful of greater loss.³⁰ The mediator is accountable to at least two adversarial parties whose expectations are antagonistic, and may also be accountable to an employing body. The meetings themselves may vary in intensity, from cool civility to heated volatility, dependent on the manner in which parties exert their power.

²⁷ For a full explanation of the differing styles of mediation, see Boule, above n 7, 45.

²⁸ The participants are identified by a code which protects their anonymity. The person and the words quoted here are identified as 20Mint6. The numbers and letters are determined by: the identity of the speaker in the data set (eg 15); the gender of the speaker (M or F); the type of their participation, focus group (fg) or interview (int); the number of the focus group where applicable (a, or b, or c); and the page in the transcript (eg 3). In this case, the participant is no 20 in the data set, a male interviewee, and the words appear on page 6 of his transcript.

²⁹ 15Fint3.

³⁰ 13Fint1.

The mediators cited specifically: a wife verbally ‘savaging’ her husband, ‘screaming at him’;³¹ the threat of physical violence between two business owners and their wives;³² a situation where neighbours ‘ganged up’ on a young female neighbour, then ‘brought the council down on her ears’, and, finally, ‘attacked each other and the mediators’.³³ One mediator even recounted a situation where ‘I was in fear of my life.’³⁴ Another had been assaulted.³⁵

The stress attached to these situations, however, largely resided in the fact that the mediators perceived that they were required to balance power relationships, and still behave impartially, that is, in a way which does not favour one party over another, even when the behaviour of one party might offend the mediator’s own values.

The study found that shifts in power can arise inadvertently, for example, in parent/adolescent situations because the young person ‘has a limited capacity to deal with strong emotions’.³⁶ It can also arise deliberately, when people are not present in good faith, but ‘on a fishing exercise’.³⁷ In these circumstances, power can be used against the mediator. One mediator reported feeling ‘hoodwinked’ because she had ‘actually believed’ what a support person told her about his intentions.³⁸ Abuse of power may result in blatant injustice if ‘someone is using the process to gain an unfair advantage’, or if ‘somebody is capitalising on another’s vulnerability’ and the disempowered ‘agrees to something just to end it’.³⁹

A *Restraining One’s Own Power*

In all these circumstances, however, mediators reported that they find it difficult to address the injustice directly, because they must hold back not only from imposing their own values but also their own power.⁴⁰ In fact, in one focus group, one mediator spoke with anguish when she said:

There is something I feel about restraining the power I have to be really intrusive. I am highly attuned psychologically to what is going on with the parties. I am very strong on picking up vulnerabilities. I have the capacity to misuse this. I have seen it in myself in some situations. One of the dilemmas for me as a mediator is to find a way of holding back on an ethical issue of power...I can really go in there and pinpoint a vulnerability and I could misuse it.⁴¹

The situation is exacerbated for the mediator when there is ‘almost a conspiracy’ between the parties, so that in those circumstances: ‘There is something very puzzling about the dynamics in the room. And I don’t know what’s happening. There is

³¹ 12Mfgc10.

³² 5Ffgb5.

³³ 7Mfgb5-6.

³⁴ 5Mfga5.

³⁵ 9Fint.

³⁶ 17Mint3.

³⁷ 2Ffga5.

³⁸ 21Fint3.

³⁹ 21Mint2.

⁴⁰ 22Mint4-5.

⁴¹ 1Ffga7.

something about power playing itself out. I have a feeling of inadequacy, of having let something down'.⁴²

A lawyer mediator expressed frustration when he found himself in conflict with parties who believed they knew best about a point of law, so that: 'I had to resist the temptation to tell them; I had to let them work it out for themselves. It took a long time. They were obviously, clearly wrong, so hopelessly wrong, but I would have been exceeding my role if I told them'.⁴³

In all these situations, the mediators referred to the strain of holding in check not only their own fears and frustrations, but even their own professional competence, which might in other circumstances be a source of their own power.

B *Struggle for Power - The Behaviour of Other Professionals*

Mediators expect that other professionals acting as support people to parties will contribute positively to mediation. But many in this study referred to what they perceived to be inappropriate behaviour on the part of other professionals, including a co-mediator. This emerged as a major stressor, because the behaviour results in a struggle for power, rather than a harnessing of it. These professionals might be lawyers supposedly assisting the parties, but, instead, 'grandstanding'.⁴⁴ Or they might be legal advisers not acting in their client's best interest – indeed, 'taking them out for a daily milking',⁴⁵ or at the last minute 'pulling the pin' on an agreement.⁴⁶ The strain might also stem from an employer who has considered the mediator to be a 'hired gun', hopefully ready to do the employer's dirty work by recommending that someone be fired.⁴⁷ Also frustrating were: union representatives who 'highjack the process'⁴⁸ or are there 'just to have fun',⁴⁹ and the support people who 'subjugate the client' when the client 'should be the decision maker'.⁵⁰

Interestingly, the power struggle might also be with a co-mediator. Even though most of the mediators' work was undertaken alone, many had experienced co-mediation. In a focus group, one mediator groaned when she said, 'My mediation from hell was so traumatic because my co-mediator and I were on different planets. It was excruciatingly, exquisitely awful.'⁵¹ Another grimaced when he admitted that he had once been 'smacked' by his co-mediator.⁵²

In fact, 12 of the 20 interviewees identified the scenario, 'Your co-mediator is cutting across your line of questions which you thought were getting somewhere' as the most challenging for them, making this scenario the one most strongly identified with. The reasons for this choice were various, but included:

⁴² 2Mfga7.

⁴³ 12Mfgc10.

⁴⁴ 2Mfga5.

⁴⁵ 6Ffgc5.

⁴⁶ 16Mfgc10.

⁴⁷ 4Ffgb6.

⁴⁸ 21Fint2.

⁴⁹ 11Fint 14.

⁵⁰ 8Fint2.

⁵¹ 3Ffgb8.

⁵² 7Mfgb8.

- The parties are short-changed, because the flow of the mediation should be ‘seamless’,⁵³ yet the mediators appear to be operating from ‘different paradigms’.⁵⁴
- The mediator is short-changed because ‘You have to do double the amount of work because they’re not up to it, and that’s not professional’,⁵⁵ and if ‘they’re in a totally different space, or being bullish...it’s almost like dealing with another party’.⁵⁶
- The process is disrupted because the mediator has to decide, ‘Do you wait patiently for your co to finish, and then you go back to what was raised 15 minutes ago?’⁵⁷

Most responses, however, focused on the fact that such behaviour is disrespectful, and ‘mediation is about respect’,⁵⁸ and also challenging because the mediator must decide how to raise the issue in a way which will avoid another conflict, this time with a colleague. One mediator acknowledged that ‘it’s the old thing; it’s one thing to sort out issues with clients, but it’s another to talk frankly with a colleague – that’s not straightforward.’⁵⁹ Another spoke of the extra labour required in the collegial situation: ‘I find it difficult to tell someone that they were doing something unhelpful. You have to deal with it in such a diplomatic way that sometimes you skirt the point you were trying to make.’⁶⁰

Mediators need the support of advisers to the parties, or of managers in workplaces, or, indeed, of a co-mediator. They feel: let down when this support is absent; frustrated when the professionals do not display ‘professional’ skills; and disappointed, even angry, when the professionals seem to be acting in accordance with agenda which are contrary to their own, or to the ideals of the practice.⁶¹ When the support is present, it appears to be an important resource against stress. Its absence, however, may be caused by a struggle for power which the mediator feels ill-equipped to deal with.

VI COMPETENCIES TO HANDLE THE STRESSORS ASSOCIATED WITH POWER

A *Social/Emotional Competencies*

The original proposition of the research, namely that the mediator requires the resource of social and emotional competence, was confirmed. Statistically significant when compared with general and specific professional populations⁶² were the mediators’ intra-personal competencies of: emotional self-awareness (the ability to know what one is feeling and why); independence (the ability to function autonomously versus needing to rely on others for thought and action); assertiveness (the ability to express thoughts

⁵³ 19Fint2.

⁵⁴ 21Mint2.

⁵⁵ 17Fint2.

⁵⁶ 14Fint2.

⁵⁷ 18Mint3.

⁵⁸ 10Fint2.

⁵⁹ 18Mint3.

⁶⁰ 19Fint1-2.

⁶¹ Marshall, above n 23, 194.

⁶² Academics in J G Maree and R J Eiselen, ‘The Emotional Intelligence Profile of Academics in a Merger Setting’ (2004) 36(4) *Education and Urban Society* 482; building executives in C J Butler and P S Chinowski, ‘Emotional Intelligence and Leadership Behavior in Construction Executives’ (2006) 22(3) *Journal of Management in Engineering* 119; general Australian population in B Palmer et al, ‘Examining the Factor Structure of the Bar-On Emotional Quotient Inventory With an Australian General Population Sample’ (2003) 35 *Personality and Individual Differences* 1191.

and beliefs without being aggressive); and the interpersonal competencies of interpersonal relations (the ability to feel at ease with people, and be sensitive to them) and empathy (the ability to be aware of, understand, and appreciate the feelings of others).⁶³ One interpretation of the fact that scores on other competencies such as stress tolerance, impulse control and optimism were not higher than the population norm is that the role requires balance, whereby too much optimism might prevent awareness of power plays, and excessive stress tolerance might obviate sensitivity to another's distress.⁶⁴

Further, particular coping strategies appeared to protect the mediators from the adverse effects of stress. These were the proactive strategies of being able to relax and use humour yet also focus on the problem, and the strategies adopted after the event, such as a willingness to share the problem with trusted confidantes, rather than engaging in rumination or self-blame.⁶⁵

B *The Emergence of Political Competence*

The resource of political competence first became obvious to me when one mediator described using oblique methods to convey to her co-mediator where she thought his biases might be showing. She explained how: 'I came at it in an indirect way. I said, "I think it's going to be difficult in the joint session because they (the parties) might feel they have aligned themselves with us." So I guess I mutualised it a bit.'⁶⁶

Multiple re-readings of the transcripts then uncovered evidence related to the fine judgments which the mediator makes. For example, one said, 'There are ways of checking out...if they're exhausted or just capitulating. I might ask open questions in a private session.'⁶⁷ Another described her method of getting lawyers on side. She said, 'I do that very delicately',⁶⁸ and in a situation where both parties are steering away from the topic, 'I'll tread carefully'.⁶⁹ As well, her approach when a party is changing the story is to check it out 'subtly'.⁷⁰ Her use of the adverbs, 'delicately', 'carefully', and 'subtly' suggested finesse in tactfulness.⁷¹

A similarly oblique approach was identified by another mediator who used the technique of creating a hypothesis and testing this with parties, always allowing for correction of the hypothesis, and always 'tentative'.⁷² For example, she would preface her hypothesis with 'I am just wondering if?' Tact, or diplomacy, was evident, too, in the approach to humour reported by yet another mediator who claimed that 'You have to have the capacity to see what's going on, to see if the joke has fallen flat and make it right.'⁷³

⁶³ Marshall, above n 23.

⁶⁴ P Marshall, 'Emotional Competence and the Mediator' (2006) 9(2) *ADR Bulletin* 21.

⁶⁵ Marshall, above n 23.

⁶⁶ 19Fint5.

⁶⁷ 22Mint4.

⁶⁸ 9Fint3.

⁶⁹ Ibid 4.

⁷⁰ Ibid.

⁷¹ Marshall, above n 23, 254.

⁷² 13Fint4.

⁷³ 6Ffgc8.

The words ‘subtlety’, ‘tact’, ‘delicacy’, ‘obliqueness’, and ‘diplomacy’ suggested to me a resource other than social and emotional competence, because they were used in the context of managing power relationships, that is, either a relationship between the parties or between the mediator and parties or support people. This resource I have named ‘political competence’, using a term which is becoming familiar in organisational thinking, and applying it to the context of mediation.

C *Defining Political Competence*

‘Political competence’ as it is used in organisations is still in the process of being defined. It was first referred to in the 1980s when Pfeffer⁷⁴ argued that political processes play an important role in the decision-making of organisations, and Mintzberg⁷⁵ described the organisation as a political arena in which persuasion, negotiation and even manipulation were the ways to achieve success. Briefly, political skill, or ‘savvy’, relates to ‘the ability to read, understand, and exert influence and control in social situations in a way that is not seen as overt and controlling’.⁷⁶

Implicit in the definition are the notions of: awareness of one’s behaviour in relation to the circumstances; the ability to engage others in order to build trust; the ability to convey sincerity; and the adoption of behaviours that are goal-directed and targeted for success.⁷⁷ The concept may be applied to mediators in the following way.

D *Political Competence – Building Rapport*

Even before mediation begins, the mediator must develop sufficient rapport to encourage all parties to participate. To achieve this, the mediator relies on influence, or the art of getting people to agree to things.⁷⁸ This is particularly important given that the parties have the power to reject any attempts to influence them, even if they have been directed by a court to attend. During the individual interviews, 15 of the 20 participants identified their ability to develop rapport as being their most important skill related to mastery.⁷⁹

The attribute of influence allows the mediator to ‘get information on the table that is necessary for the parties to discuss if they are to resolve their dispute’ and to ‘recognize that different situations and individuals require us to use different approaches’.⁸⁰ These are skills which are aimed, not at social relationships, but at the management of the content of the dispute and the balancing of power for strategic ends; they are therefore subtle, political skills.⁸¹ The mediators detected strains in achieving these outcomes. For example, one said that ‘finding a common thread or bond’ with parties is ‘draining’.⁸²

⁷⁴ J Pfeffer, *Power in Organizations* (Pitman Publishers, 1981).

⁷⁵ H Mintzberg, *Power In and Around Organizations* (Prentice-Hall, 1983).

⁷⁶ K K Ahearn et al, ‘Leader Political Skill and Team Performance’ (2004) 30(3) *Journal of Management* 309, 311.

⁷⁷ Marshall, above n 23, 294.

⁷⁸ R B Cialdini, *Influence: How and Why People Agree to Things* (William Morrow & Co, 1984).

⁷⁹ Marshall, above n 23, 258.

⁸⁰ M E Johnson, S Levine and L R Richard, ‘Emotionally Intelligent Mediation: Four Key Competencies’ in D F Bowling and D A Hoffman (eds), *Bringing Peace Into the Room: How the Personal Qualities of the Mediator Impact the Process of Conflict Resolution* (2003) 151, 162.

⁸¹ Marshall, above n 23, 292.

⁸² 14Mfgc8.

Then, during the process, sufficient empathy needs to be shown in order to get people to ‘spill their stuff’⁸³ but not to the point where the other party is discomforted by what seems to be bias in favour of the antagonist. Building rapport, therefore, has to take place in the shadow of the need to act impartially. One mediator expressed her greatest dilemma to be: ‘I work really hard to engage people. They come on board; they are engaged. But there’s a fine line between staying engaged and at the same time accepting that that the other party might feel exactly the same way.’⁸⁴

The quotation implies a delicacy in the judgment which the mediator makes about the appropriate amount of empathy shown.

E *Political Competence – Harnessing Power*

These fine judgments include deciding when to confront assertively, and when to protect. For example, mediators talked about helping parties to ‘save face’ using strategies ‘that make no one look bad’,⁸⁵ and the use of apology: ‘If you’re wrong and you know you’re wrong, and you keep going, you’ll get into quicksand, whereas if you back off and have a strategic retreat, and accept, “Look, I’m sorry I misread that. My apologies. What’s your view of it?”’⁸⁶

Such obliqueness, however, may need to be coupled with the willingness to ‘push the envelope’, or act assertively. For example, one female mediator described dealing with a ‘misogynist’ union representative who ‘sat directly opposite me...winking at me to the point that I said to him, “Do you have a problem with your eye?”’⁸⁷ For another who deals with workplace situations, a strategy was ‘to speak to their job security almost, but not in a manipulative way’.⁸⁸ Indeed, she was intent on preparing people well before the mediation so that they could ‘put their best foot forward’. Her comments showed a decision about when to offer support and when to confront.

The judgments referred to in these examples pointed to a resource which might be described as ‘political’ because it refers to the use of power in the way the mediator uses his or her influence, yet with an obliqueness which takes it into the realm of diplomacy rather than control.⁸⁹ The mediators made constant reference to the methods they use such as asking questions and careful listening. But the use of such indirect methods creates a challenge for professional mediators in that:

The parties don't realise the skill of the mediator because they are inclined to think, ‘We've managed to get that result because we did a good job as parties.’ But would they have done that if the mediator hadn't got a way about them, a way of defusing the tension before it even gets to the stage of becoming palpable?⁹⁰

⁸³ Ibid 11.

⁸⁴ 8Fint2.

⁸⁵ 22Mint6, 6Ffgc9.

⁸⁶ 20Mint8.

⁸⁷ 11Fint10.

⁸⁸ 15Fint7.

⁸⁹ Marshall, above n 23, 255.

⁹⁰ 15Fint2.

This mediator added, ‘How do you let the parties converse openly, and yet control things?’⁹¹ According to the mediators’ accounts, there are many activities which happen simultaneously in order to defuse the tension. To summarise their statements, the mediator must:

- be alert to both verbal and non-verbal cues which reveal emotional states;
- concentrate in order to pick up convergence of thought between the parties, or points of serious antagonism;
- convey preparedness to listen so that parties will remain engaged, but at the same time be sensitive to possible perceptions of bias from ‘the other side’;
- think about the next strategic move.⁹²

F *Political Competence – Managing Professional Relationships*

The skill of subtlety emerges even in the relationship between the co-mediators, which might involve harnessing and using power to good effect, or a struggle for power. For example, when relating the story of a co-mediation that had gone wrong, one mediator admitted:

I handled it very badly because I realised afterwards that I should have said, ‘Let’s take a break’, and I should have had a conversation with her there and then. I didn’t do that. I said [referring to the subject of the parties’ discussion to which her co-mediator objected] ‘I think this is OK, because you are talking about things that are important to you.’⁹³

The extract reveals political savvy in retrospect. There is a power play happening during the mediation between the two mediators, which requires a negotiated settlement, but this does not occur.

By contrast is the situation recalled by a mediator where she subtly indicated to her co-mediator that he might be conveying bias. Rather than pointing this out, she used the political strategy of diplomacy (‘I mutualised it a bit’) so that her relationship with her colleague was not jeopardised. In the interview she had complained laughingly that ‘you have to do it in such a diplomatic way that sometimes you skirt the very point you are trying to make’, but, unlike the former situation, the relationship was maintained and there was also a positive result for the parties, because ‘he took notice of what I said and was conscious of it during the mediation’.⁹⁴ Therefore, rather than becoming distressed, she was able to draw on another resource which diminished the threat, not only to herself, but also to the outcome of the meeting.

The tentative approach appears to be even more necessary, given that ‘accurate decoding of the meaning of emotional expression is not easy, and intermediaries need to use caution when interpreting non-verbal (or even verbal) cues’.⁹⁵ A ‘heightened sensitivity to the subtle interactional cues that signal critical moments’ has been described as part of the ‘artistry’ of good mediation practice.⁹⁶

⁹¹ Ibid.

⁹² Marshall, above n 23, 178.

⁹³ 20Fint3.

⁹⁴ 19Fint5.

⁹⁵ Moore, above n 2, 169.

⁹⁶ Lang and Taylor, above n 8.

VII A LINK BETWEEN POLITICAL AND SOCIAL/EMOTIONAL COMPETENCE

If it is true that ‘emotion is the foundation of all conflict...and issues of how emotion influences the management of conflict become central’ in mediation,⁹⁷ then the emotional indeed becomes political. It occurs in this way: emotion drives the conflict, which determines the course of the mediation, which, in turn, determines the mediator’s strategy at every stage. Obviously, awareness of emotion is necessary as a starting point and as a guide to the escalation or diminution of the conflict. But a mediator decides what to do in response to this awareness; it is not awareness that is the strategy.⁹⁸

Indeed, emotions themselves are both social and political: social because they regulate interpersonal relationships in that ‘they signal to us where we stand in the world’⁹⁹ and political because they may be used to obtain power or control, or ‘acquire influence’.¹⁰⁰ Indeed, ‘emotions are the stuff of the politics of everyday life’.¹⁰¹

So, while ‘strategic expression of emotion [or] the ability to regulate one’s emotional expression in adaptive and beneficial ways’ is ‘one of the hallmarks of emotional competence’,¹⁰² this comment is more about political competence than emotional, because ‘strategy’ and ‘regulation’ belong to the realm of politic. In fact, Jones and Bodkter go on to emphasise this fact with their explanation that emotional regulation happens because: ‘We control, moderate, or mask how we show what we are feeling in order to accomplish some social goal. That goal may be to persuade the other, to protect ourselves from more hurtful behaviour, to impress the other, etc.’¹⁰³

A tentative link between political and social/emotional competence was established empirically in my own study. It should be stated that mediators were not asked directly about their political skill; the competence emerged unexpectedly through the interviews. Responses to the quantitative measures were then examined to determine any links. There were common elements among the 10 participants (eight women and two men) who referred in the interviews to the subtle way in which they approached their craft. Close examination of their responses to the fifteen subscales of the EQ-i revealed similarities in a number of these: emotional self-awareness; independence; interpersonal relations; and happiness. Interestingly, there was also a strong similarity among the female participants’ scores on assertiveness and flexibility, although these differed from the male scores (Table 1).

While there is a good deal of similarity across all domains, it should be noted that all scores on ‘interpersonal relations’ and on ‘Total EQ’ are above both the general population norm (100) and the means for the total group of 43 mediators.¹⁰⁴ The group

⁹⁷ T S Jones and A Bodkter, ‘Mediating With Heart in Mind: Addressing Emotion in Mediation Practice’ (2001) *Negotiation Journal* 219.

⁹⁸ Marshall, above n 23, 290.

⁹⁹ T D Kemper, ‘Social Models in the Explanation of Emotions’ in M Lewis and J M Haviland-Jones (eds), *Handbook of Emotions* (2000) 45, 51.

¹⁰⁰ R R Cornelius, *The Science of Emotion* (Prentice-Hall, 1996) 163.

¹⁰¹ Ibid.

¹⁰² Jones and Bodkter, above n 97, 224.

¹⁰³ Ibid 225.

¹⁰⁴ The EQ-i converts raw scores to standard scores with 100 as the mean, and 15 points as one standard deviation. Bar-On offers the following guide to interpreting the scores:

mean for ‘interpersonal relations’ was 101.4 (sd: 13.5) and for ‘Total EQ’ 98 (sd: 11.9). The BarOn EQ-i equates positive interpersonal relations skill with ‘the ability to feel at ease and comfortable with such relations’ which require ‘sensitivity towards others’.¹⁰⁵

There may be a link between managing political interactions with subtlety and the competency shown in interpersonal relations, although the link can be proposed only tentatively, given the sample size.

Participant No & Sex	Em s aw	Indep	Inter relats	Ass	Flex	Happ	Total EQ
Part. 1 (F)	96	106	110	98	120	113	109
Part. 2 (F)	120	114	110	110	104	93	103
Part. 3 (F)	107	92	124	108	106	112	102
Part. 4 (F)	117	104	118	105	106	113	109
Part. 5 (M)	122	109	124	98	92	116	106
Part. 6 (M)	109	111	108	89	89	115	108
Part. 7 (F)	121	112	120	117	104	120	111
Part. 8 (F)	113	110	102	123	106	104	105
Part. 9 (F)	103	116	108	105	104	98	104
Part. 10(F)	125	110	110	121	116	105	116

Table 1: EQ-i scores of participants who referred to subtlety

Note: The competencies from left to right are: Emotional self-awareness; independence; interpersonal relations; assertiveness; flexibility; happiness and Total EQ.

These social/emotional competencies make sense in the managing of power relations. The mediator who is aware of her own emotional reactions (emotional self-awareness) and can act who can judge the appropriateness of a strategy without reference to others (independence) is better equipped to handle the steps needed to assist parties to determine their own decisions. And, as Wade maintains, ‘virtually every step taken by a mediator involves the exercise of power’.¹⁰⁶

The female mediators who referred to the subtlety of their art also reported in their responses to the EQ-i a reliance on assertiveness as an attribute. This also makes sense in the handling of a political arena in which power may be exercised inappropriately, to the detriment of either the other party or the process. As well, given the fluidity of power relationships and the shifting nature of the sources of power, flexibility would seem to be an important resource. Happiness, or the ability to convey it, might be deemed helpful in establishing rapport. However, the attribute of the ability to relate to people (interpersonal relations) as being a source of political competence is most deserving of further investigation.

- 130+ Markedly high
- 120 - 129 Very high – extremely well developed emotional capacity – enhanced skills
- 110 - 119 High – well developed capacity – very effective functioning
- 90 – 109 Average – adequate capacity – effective functioning
- 80 -89 Low – underdeveloped capacity – area of enrichment
- 70 -79 Very low – area of enrichment
- below 70 Markedly low – atypically impaired.

¹⁰⁵ R Bar-On, *BarOn Emotional Quotient Inventory Technical Manual* (Multi-Health Systems), (3rd ed, 2002) 16.

¹⁰⁶ J Wade, *Forms of Power in Family Mediation and Negotiation* (1994) Faculty of Law, Bond University 18 <http://epublications.bond.edu.au/law_pubs/106> at 20 July 2008.

It should also be noted that there are similarities between the interpersonal relations subscale of the EQ-i and a recently developed political skill inventory (PSI),¹⁰⁷ indicating the overlap between the constructs of so-called emotional and political intelligence (Table 2).

EQ-i	PSI
I have good relationships with others	I am able to communicate easily and effectively with others
People think that I'm sociable	I am able to make most people feel at ease around me
I'm a fairly cheerful person	It is easy for me to develop good rapport with most people

Table 2: Comparison between the EQ 'interpersonal relations' subscale and the PSI.

Still, even the examples which are most similar are different: the difference lies in the fact that the PSI is clearly about strategy, whereas the EQ-i is about disposition. Thus, it is important to train mediators in the use of strategy, so that even those who are not as socially adept by disposition might be able to develop the competence. The use of strategy is made clear in the following example from another study. Here the mediator pondered the appropriateness of her response to clients in a situation where she was asked if she thought they would be able to resolve their matter. To answer, 'yes', would have seemed over-confident; to answer, 'no' unduly pessimistic and demeaning of their efforts. After a brief pause, she offered, 'I believe it's possible to find a way through this, but we shall have to work hard. I hope we can continue to keep looking at options together until we find one that you can both live with.'¹⁰⁸

So, although she was aware of the emotional state of the parties, she seemed not to rely only on this in the meeting. Rather, her emotional awareness prompted the political strategy of: attempting to distance herself from the situation (from 'I' to 'we'); of mutualising the discourse (the references to working together and finding a mutually satisfying agreement); as well as motivating the parties to persist ('we can continue to keep looking until').

Another example may be drawn from my study when a female mediator commented in a focus group:

I find it useful to be able to have sympathy with everyone, regardless of what they are supposed to have done. No matter how nasty and aggressive they are being to me, I never assume it is a personal attack, but rather it is coming out of their fear and pain of going through the process. I assume it's a reaction to the process, not a reaction to me. Because I can do that, I don't have much problem with authority and I can get even quite scary people to behave themselves.¹⁰⁹

The mediator seems to emphasise an attitude which shows sensitivity to the parties (she sees the people as scared, 'in fear and pain'). This translates into observable behaviour (not reacting to the provocation because the behaviour of the parties is 'not about me') and the behaviour shows self-confidence in her skill ('I can do that') which, in turn,

¹⁰⁷ G R Ferris et al, 'Development and Validation of the Political Skill Inventory' (2005) 31 *Journal of Management* 126.

¹⁰⁸ B Wilson, 'Hope Revisited – a Theory for Mediators' (2007) 9(5) *ADR Bulletin* 77, 78.

¹⁰⁹ 6Ffgc7.

affects the power balance in the room (parties will cooperate, and ‘behave themselves’). So empathy, the ability to feel with people and to understand their reactions, could be described as an attribute which is ‘operationalised’ into a political skill.¹¹⁰

Such strategy is evident, too, in references mediators made to the use of humour, both when to introduce humour, because ‘you’ve got to discreet’,¹¹¹ and when to ‘make it right’, if there is realisation that humour has been inappropriate.¹¹² Interestingly, the two mediators who made these comments also identified the tactical use of what they termed aptly the ‘mediator’s wobbly’, a strategy in which ‘you’re not losing your temper at all but you’re giving the impression you have. You use it carefully and not too often.’¹¹³ This strategy is most certainly political!

The reality of using persuasion and making political judgments may appear to run counter to the noble ideals of mediation, a fact alluded to by Benjamin when he explains that to transform parties’ construction of reality requires the use of ‘manipulative techniques’.¹¹⁴ Wakeen¹¹⁵ is another of the few mediators who have confronted, and acknowledged, this reality. In a video-taped interview, she claims that mediators ‘manipulate the whole way through’ because they choose the information to pursue, and are alert to the ‘pressure points’. She poses a contrast between the ‘ideal’ of being non-manipulative, intuitive and neutral, reliant on the ‘mystical magic’ of the process, and the reality of building trust with a view to ‘planting the seeds of willingness’ so that people will be able to express themselves. She claims that the mediator uses a strategic process, which is ‘highly manipulative’, not with a view to taking advantage of the parties, but to ‘fulfil their interests’. Indeed, her thoughts echo the implications of statements made by many of the mediators in the current study.

However, the competence needs to be applied judiciously. Excessive political skill may render the mediator too manipulative and too intent on achieving ‘influence’, thus jeopardising their impartiality.¹¹⁶ Perhaps the secret lies in adapting the tentative approach referred to by the mediators in this study, an approach which indicates ‘openness to others’ perspectives’.¹¹⁷ The ‘traditional’ skills of listening and asking open questions, even reframing, are thereby directed towards checking these other perspectives with a view to managing the power relationships which are at the heart of the mediator role.

In sum, the mediator needs to provide for parties, first, a sense of balance which is achieved through their experience of being treated fairly, even though ‘balancing power’ may not be possible. Then, the mediator needs to provide control. The mediator is influential, but he or she accomplishes the task mostly through oblique rather than direct means which require not only a sensitivity to emotion but also to appropriateness. Assessing appropriateness requires a tactical decision, and therefore political

¹¹⁰ Marshall, above n 23, 300.

¹¹¹ 12Mfgc16.

¹¹² 6Ffgc16.

¹¹³ 12Mfgc10.

¹¹⁴ Benjamin, above n 21, 83.

¹¹⁵ Robert Benjamin, Interview with Teresa Wakeen (Videorecording, 2005).

¹¹⁶ Ibid.

¹¹⁷ H Astor, ‘Mediator Neutrality: Making Sense of Theory and Practice’ (2007) 16 *Social Legal Studies* 231.

judgment.¹¹⁸ Astor refers to this assessment of appropriateness when she discusses the mediator's judgment about whether or not to insert an option into parties' decision-making.¹¹⁹

A *Political Competence and the Mediator's Wellbeing*

It is vital to equip the mediator with as extensive a resource base as possible. In this way, more protection can be offered to enable coping with stress. Political skill, when coupled with the social/emotional competencies of emotional self-awareness, independence, interpersonal relations, assertiveness and empathy, may provide another such resource.

The competence is also required in the building of rapport not only with parties but also with one's professional counterparts, be they support people or a co-mediator. Further, the sensitivity implicit in the competence allows for a judgment about the appropriate application of empathy and assertiveness, so that the 'weaker' is protected without the other party perceiving they have been disadvantaged.

Training in these competencies and strategies may also assist in guarding the mediator against self-doubt. While self-blame did not emerge to be a coping strategy employed by the mediators, many indicated that they were prone to self-doubt, of which the most significant cause was the perception by parties that they have shown bias. When one mediator in the study was confronted with the accusation of being biased, she said her reaction was to feel 'really, really shocked'. But what is interesting is that her reaction was not to refute the charge, but to experience doubt about herself, which she expressed as, 'I kind of felt, "How could I have got it so absolutely wrong? Did I really stuff that up?"'¹²⁰

The mediation principles of 'no blame', and of unquestioning acceptance that the client's reactions are valid, contribute to the stress experienced. In an environment where perceptions are shared and held to be valid, the belief of the parties that the mediator has been biased must be considered true. But the mediator is not a party who can put her view on the table; instead, by holding back her reaction, she restrains her own power. The danger in these circumstances is to accept the parties' perceptions and turn her gaze inward. Self-doubt can be the reaction, and may present a problem for the practitioner.¹²¹

VIII CONCLUSION

Findings from this study have confirmed the potentially stressful nature of the mediator's role, and highlighted social/emotional competencies which may safeguard against stress. Unexpectedly, another resource has emerged which may be as powerful in achieving results for parties because it contributes to enhanced mastery. Political competence involves the judicious use of interpersonal skill: building rapport; engaging parties and their supporters; even managing the relationship with a co-mediator. It helps the mediator to achieve his or her objectives through the subtle use of methods of

¹¹⁸ Marshall, above n 23, 301.

¹¹⁹ Astor, above n 17, 234.

¹²⁰ 15Fint5.

¹²¹ Marshall, above n 23, 185.

influence, coupled with the judgment about when more direct methods are required, and the flexibility to make those changes in strategy.