

## **MEETING CONFLICT RESOLUTION NEEDS OF ORGANISATIONS THROUGH MEDIATION TRAINING**

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### **ABSTRACT**

Consumer-rage. Technology-rage. Road-rage. Pool-rage. Parking-rage. These are just some examples of the rage phenomena facing Australian society in the 21<sup>st</sup> century. In the service industry, research by the New Zealand Association for Customer Excellence indicates that cost cutting resulting in high staff turnover and untrained staff is contributing to a worsening of the customer experience. Also, customers have higher expectations and know their rights, coupled with increased stresses in their own lives. All this means that customers have less tolerance and shorter tempers when dealing with staff in service-oriented businesses. The ensuing conflicts when customer expectations are not met are stress inducing for both staff and consumer, resulting in economic and human resource detriment.

This paper will look at the increasing use of training of personnel in mediation and negotiation skills in organisations in Australia. The need for methods of conflict resolution has escalated over the past decade with increasing demands on courts and the need to find alternatives to litigation. Models of mediation applicable to organisations will be examined and their efficacy evaluated. Through case studies the benefits of mediation as a tool in conflict resolution will be examined, including economic, time management, increased productivity and stress reduction.

Keywords: mediation, consumer-rage, customer-rage, conflict resolution

### **Introduction**

Conflicts generally involve struggles between two or more people over values, or competition for status, power, or scarce resources (Coser, 1967). This is because, as Boulding (1963) argued, social systems are ordered by threat, exchange, and integration or love. Conflict or disputes seem to be present in all human relationships and in all societies. Due to the pervasive presence of conflict and the physical, emotional, and resource costs involved, people have always sought ways for peacefully resolving differences through procedures that

are efficient, satisfy their interests, build or maintain relationships, and, where appropriate, minimize suffering, and control unnecessary expenditures of resources (Moore, 2003).

Disputes or conflicts that occur in organisations can cost millions of dollars in legal fees, lost productivity, recruitment expenses, and even stress leave (Earnshaw & Cooper, 1996). When this occurs, there is a need to resolve the disputes as amicably as possible and to try and avoid having the matter litigated. Unresolved conflicts have a negative impact on organisational resources due to staff turnover and reduced effectiveness which result in interest in addressing conflict through different means (Lipsky *et al*, 2003, p 76).

The popular press has recognised that in the service industry, customer or consumer rage is on the rise and this has led to conflicts and disputes<sup>1</sup>. Professor Janet McColl-Kennedy agreed that what had once been verbal abuse had in some cases been replaced with punches, spitting and even death threats. She claims that this is a serious problem which businesses need to address:

*Business recognises the damage caused by dissatisfied customers to both reputation and sales through loss of repeat business or decreased custom and negative word-of-mouth... it has been estimated that a dissatisfied customer will tell his or her story to around 11 other people kicking off a potentially disastrous domino effect.<sup>2</sup>*

One reason for this could be that the consumer world is becoming smaller, as consumers are increasingly exposed to global media, international travel, new products, consumption patterns, and technologies (Dahringer, *et al*, 1994). As such they begin to know and expect a certain level of service and will not settle for anything less.

Parties involved in a conflict have a number of choices. They can pursue more formal and structured means of voluntarily reaching an agreement, resort to a third-party, or try to leverage or coerce each other to reach a settlement. The most common way to reach a mutually acceptable agreement is through negotiation or mediation (Fisher and Ury, 1981; Shell, 1999; Thompson, 2001).

Mediation has grown very rapidly since the mid-1980s in the corporate and commercial arenas. Historically, disputes were dealt with by negotiation or litigation. Mediation was seen as a welcome alternative that could, through the presence of an impartial third party, provide a process where a rights-based discourse could take a back seat to an exploration of both parties' needs and a creative approach to problem solving (Douglas, 2004). Mediation and other alternative dispute resolution strategies have become many organisations preferred method of resolving complaints and conflict. For example, in 1997, a survey was conducted of Fortune 1000 companies in which 87 percent had used mediation and 80 percent arbitration in the three years prior to the survey. Mediation was overwhelmingly voted the favourite alternative dispute resolution process at 63 percent (Lipsky *et al*, 2003, p 81).

A number of factors have contributed to the increased use of these alternative methods of dispute resolution. These include a wider acknowledgment of individual human rights and dignity, the expansion of aspirations for democratic participation at all social and political levels, the belief that an individual has a right to participate in and take control of decisions affecting his or her life, an ethic supporting private ordering, and trends in some locales for

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<sup>1</sup> Anoska Tucker-Evans, "Shop Rage is Heating Up", in *The Sunday Mail*, 24 February, 2008.

<sup>2</sup> "Net Loss from Service Loss", [web document] Available: <http://www.uq.edu.au/research/index.html?page=22305&pid=0> (accessed 26 May 2008)

broader tolerance of diversity in all its aspects (Moore, 2003). Mediation is extensively used within public and private organisations to handle interpersonal and institutional disputes which include altercations between companies, and other commercial disputes (for example, Bazerman & Lewicki, 1983; and Brett and Goldberg 1983).

### **Models of Mediation Applicable to Organisations**

A significant amount of theoretical research has been devoted to developing an appropriate model of mediation for internal and external organisational disputes.

Rowe (1997) suggested that an effective dispute-resolution system should incorporate:

- commitment to the values of fairness and freedom from reprisal;
- interest- and rights-based options;
- multiple access points;
- an organizational ombudsperson;
- wide scope; and
- continuous improvement via an oversight committee.

Lynch (1998) argued that an effective system should incorporate:

- responding to stakeholder interest;
- reflecting important values;
- promoting the mission of the new agency;
- providing visible support by the organization's leadership;
- loop-backs between interest- and rights-based options;
- a system that is fair, flexible, friendly, and fast;
- the goal of resolution at a low level; and
- mechanisms by which the organization can shift from conflict resolution to management.

According to Slaikeu and Hasson (1998), there are four main principles for an effective system:

- it should acknowledge four means of resolution (essentially, power, rights, interest, and avoidance);
- it should include prevention and early-intervention options;
- it should seek to build collaborative strength through seven checkpoints; and,
- it should utilize the mediation model in order to build consensus among those involved.

Many models of mediation have been identified, some more applicable to industry-based mediation than others, including:

Evaluative Mediation: it is commonly believed that where the relationship is less important, and a quick prediction as to rights and positions is paramount, the parties are more likely to choose Evaluative Mediation (Mills, 2005). The evaluation of the parties' positions will be an assessment by the mediator according to legal rights, probable court outcomes, industry norms, and/or other industry objective social standards (Boulle, 2001; Levin, 2001).

Facilitative Mediation: where the parties desire a problem-solving mechanism to resolve the dispute in a non-antagonistic manner, taking into account the independent interests of the

parties, they are more likely to choose Facilitative Mediation (Mills, 2005). Facilitative techniques may assist the parties in establishing and/or strengthening relationships of trust and/or respect between the parties, and in the event that the relationship must terminate, the process might be designed in such a way as to minimize emotional costs and psychological harm (Moore, 1986).

Therapeutic Mediation: where there is strong incentive for the parties to repair the relationship, and address past grievances, they are more likely to choose Therapeutic Mediation (Mills, 2005). The goal of the parties in choosing therapeutic mediation is usually focused on dealing with the underlying causes of the parties' problems, in order to improve their relationship as a basis for resolving a dispute, and possibly to change their communication with each other, and their behaviours for the future (Boulle and Kelly, 1998). The Therapeutic Mediation model may blur the distinction between therapy and mediation and requires the mediator to have highly developed therapeutic skills.

Transformative Mediation, where the conflict is defined in terms of the relationship, therefore it will not likely be necessary for the mediator to have any more than a simple understanding of the conflict between the parties before the mediation commences. Before mediation begins, the mediator might only know very little about the actual conflict. Here, the mediator is less interested in the substantive issues because Transformative Mediation assists the parties in educating each other about the relationship. The mediator will therefore not receive position papers, briefs or other materials in advance of the mediation (Mills, 2005).

According to Mills (2005), mediators using the Evaluative, Therapeutic, and/or the Facilitative mediation models may use different techniques and skills to conduct the mediation. However, the core concepts of all three are the same in that the mediator is neutral, the process is intended to be confidential, and it is the parties, and not the mediator, determining the outcome. Furthermore, that depending on the method employed, the role of the mediator in the mediation, and the outcome (both intended and unintended), may be significantly different.

Other models that have been used include Dispute Systems Design (DSD). Ury, Brett, and Goldberg (1988) pioneered DSD in the 1980s, as a method for resolving intractable or frequent conflicts in troubled organisations, businesses, or entire industries. This method was intended to deal with conflicts quickly and efficiently by negotiating interests, by adjudicating rights, or by pursuing power options. Instead of focusing on what a person *can* do based on their rights and power, Ury, Brett, and Goldberg maintained that actors should focus on what they would *like* to do based on their own interests. Their argument was that interest-based claims are more negotiable, and hence less likely to become intractable. Only if interest-based negotiation did not work, should the parties try a rights-based approach, such as litigation.

Subsequently a number of theories were posited aimed at making this system more effective (Conbere, 2001). According to Constantino & Merchant (1996), the DSD is problematic because it focuses on individual disputes rather than underlying systemic problems. In organisations, disputes may often be casually connected to systemic issues.

Douglas (2004) advocates the adoption of new models of mediation practice, namely, the storytelling, the narrative and transformative models. Douglas maintains that the problem solving model allows the mediator bias to operate, but does not assist women with their

negotiation style or with power imbalances and does not address issues that arise when violence is a part of the workplace relationship. According to Douglas, these new models reject the problem solving approach and acknowledge that a mediator cannot be truly neutral in the mediation process. Van Gramberg (2003) is also of the view that mediators in the workplace may not practice mediation in a way that avoids conflict of interest or is reflective of notions of neutrality. Other writers are of the view that alternative models of mediation such as storytelling, narrative mediation and transformative mediation play a critical role to the concept of neutrality (Cobb and Rifkin 1991, Winslade and Monk 2001, Bush and Folger 1994).

### **Essential Mediation Tools and Skills**

According to Mills (2005), skills in the various mediation processes range from narrow conflict-based approaches to broad interest-based approaches, and from highly directed models like the Evaluative Mediation to undirected models like Therapeutic Mediation. The mediators in Facilitative Mediation and Evaluative Mediation are task-oriented because their objective is to achieve a settlement or resolution to the conflict presented. Therapeutic Mediation focuses less on the conflict and positions, and more on the people and their relationship. In this case, the mediator will not only deal with matters presently at issue, but also possibly look into the past interactions between the parties, and future needs of the relationship. A mediator in Evaluative Mediation basically educates himself about the conflict and interests of the parties to come up with a resolution. On the other hand, the mediator in Facilitative Mediation educates the parties to explore their interests including their positions in conflict and teaches them how to arrive at a solution for their dispute. Therapeutic Mediation explores the relationship, and teaches the parties about their relationship and how to interact not only for the resolution of their current problem, but also in the future in order to prevent problems.

In Evaluative Mediation, the conflict is defined in terms of the positions of the parties. It is the most adversarial of the processes and it focuses on the professional background and knowledge of the mediator. The parties provide briefs, evidence, expert material and any other material necessary to enable the mediator to study the documents in order to be able to effectively evaluate the case, and the parties' positions (Mills, 2005; Riskin, 1996).

In Facilitative Mediation, in order to maintain a directed process, the mediator may begin the process by pre-screening the participants to determine their needs during the mediation (Mills, 2005; Fells, 2000). The mediator might interview the parties separately prior to commencement, in order to best strategize how to conduct the mediation. The mediator ensures that all appropriate persons are present at the mediation and that all necessary documentation will be available. The mediator will also attempt to determine why the case has not settled to date, and what the best and worst alternatives of each participant will be if they do not reach a negotiated settlement during the mediation (Mills, 2005).

The Facilitative model requires the mediator to have highly developed mediation 'micro' skills in order to move the participants from positional bargaining to interest-based bargaining.

## **Case-based Analysis of Mediation as a Tool in Conflict Resolution within a Regulatory Environment**

Bayliss (1999) states:

*While there are similarities between the different models of mediation/conciliation which are established in the statutes, there are striking differences in the ways that the models approach different process issues. These differences relate to almost every area of mediation/conciliation practice including the identity of the mediator/conciliator, whether the mediation/conciliation is compulsory or voluntary, whether and how the statute deals with confidentiality and privilege, how any agreement is to be enforced, and what happens if the process fails to achieve a settlement. When the variety of areas covered by the statutes is considered it is not totally surprising to find some divergence.*

This particularly is so when considering a regulatory environment.

The administration of regulatory frameworks involves components of service delivery and legal obligation. The licensing and administration functions within the regulatory process typically involve providing a service to clients who apply for either information or permission to undertake an activity that is otherwise prohibited by law. In these cases traditional notions of client service are readily applicable and the focus is on providing an efficient service in a manner that meets customer expectations.

On the other hand, enforcement of regulatory frameworks is more appropriately described in terms of carrying out a legal duty. Whilst components of service delivery exist (for example, responsiveness to complaints about non-compliance and the application of appropriate interpersonal skills), the client relationship is more complex for a variety of reasons. Firstly, a range of potential clients exist including the public at large, the regulated community, the informant or complainant and the subject of any investigation. None of these clients fit the traditional concept of a client who voluntarily engages with an organisation in order to obtain a service of some kind. Secondly, in the case of the subject of the investigation, their involvement with the regulator is usually involuntary and they are generally unlikely to be happy about the interaction. In this situation the emphasis should be on delivering professional and impartial regulatory services that are consistent with public interest.

The critical task for any regulator is balancing the competing public interest factors to ensure that the will of the people as expressed through laws passed by the respective parliamentary body are respected and upheld.

### **Case 1 - Brisbane City Council (BCC)**

BCC has significant regulatory responsibilities across a wide range of legislation, encompassing both devolved responsibilities under state legislation and enforcement of local laws. Like all public sector agencies, BCC has limited resources and it is therefore important to ensure that licensing and regulation efforts produce both optimal effectiveness and maximum value for money.

Dispute issues are triggered due to urbanisation and people living close together. Issues can include odours, noise, boundary lines, behaviour of individuals. These triggers will not go away, and therefore situations need to be managed.

The Compliance and Regulatory Services (CARS) Branch of BCC annually receives over 120,000 requests for service, which includes approximately 40,000 complaints. Analysis of workload revealed that staff spent a disproportionately large amount of time dealing with complaints. Mediation training was employed by the BCC as part of its customer focus strategy. The proposed outcome of the strategy was to maximise customer satisfaction and address customer dissatisfaction, with a greater emphasis on the latter. To address customer dissatisfaction, it was perceived that regulators needed skills in negotiation and mediation when there was no clear legal solution or the legislative response resulted in a person being dissatisfied and issues in dispute continue. Regulators needed to help the client identify the root of the problem, its effect on them, the basis of their concern, and alternatives in problem solving.

### **Case 2 - Building Services Authority (BSA)**

The BSA engages in the investigation and determination of disputes between home owners and registered builders in Queensland. In the course of their employment and in compliance with the establishing legislation, building inspectors and administrative staff are required to engage in conflict resolution processes with disputing parties. To improve staff skills in the conflict resolution process the BSA instigated a number of mediation training sessions.

### **Case 3 - Department of Employment, Training and the Arts (DETA)**

DETA is a government body providing Queenslanders with services in employment, training, technical and further education and youth affairs. It facilitates and provides a range of programs, services and initiatives targeted at achieving key employment and training outcomes. In the course of their employment and in compliance with the establishing legislation, trainers, inspectors and administrative staff are required to engage in conflict resolution processes with complainant parties including students, teaching staff, apprentices, trainers and employers. Situations requiring intervention by the field officers included actual and perceived abuse or bullying by employers towards apprentices; absenteeism by apprentices; unacceptable levels of work by apprentices. The implications for unsuccessful intervention by field officers were apprentices breaking work contracts resulting in difficulty in obtaining a professional qualification, dissatisfaction with the process by employers resulting in the chance that they would withdraw from the apprenticeship scheme. In an attempt to improve the outcome of interventions, DETA implemented professional development training in mediation and negotiation.

### **The QUT model of mediation training**

In the QUT mediation training process to be discussed in this paper, the Facilitated Mediation process was adopted as the most appropriate to the regulatory environment as it promotes customer service by allowing for the independent interests of the parties to be taken into account while strengthening relationships between the organisation and the public.

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will be available. The mediator will also attempt to determine why the dispute has not settled to date, and what the best and worst alternatives of each participant will be if they do not reach a negotiated settlement during the mediation (Mills, 2005).

## **Methodology**

To assess the organisational needs of the individual clients, meetings and interviews were held with key personnel to determine the scope of training required. Existing dispute resolution processes were examined and an appropriate model was recommended. Training requirements were structured through a number of sessions with key personnel, including preliminary meetings, interviews, small focus groups, large focus groups, examination of case students, role-play exercises, and self-reflection exercises. The projects involved both empirical and theoretical research. Empirical data was acquired from officers engaged in conflict resolution, such as inspectors, field workers; claims officers; dispute coordinators; training services personnel; managers and administrative staff.

Sessions were held over either two or three days depending on the requirements of the client. Although not all sessions were used for each organisation, areas covered during training sessions generally included:

Defining the conflict resolution process, which highlighted the theoretical and practical distinctions between different systems of conflict resolution, the strengths and weaknesses of each and the skills required to effectively implement each process. The purpose of this session was to focus participants on the key features and expected outcomes from the dispute resolution processes with which they were involved and the advantages and disadvantages of creating hybrid models within the organisational context.

Exploration of integrative and distributive bargaining techniques, which focuses participants on the most effective way to structure negotiations both within the organisation and between the organisation and external stakeholders. Through theoretical analysis and large group discussions existing practices were analysed, problem areas identified and effective strategies proposed within the context of the aims and human resourcing needs of the organisation.

Sources of impasse, focussing on structural, contextual, organisational and psychological sources of impasse in dispute resolution. The organisational context was explored and specific in-house case studies examined to draw out theoretical and practical challenges being faced in workplaces. Through theoretical analysis and group discussions existing practices are analysed, problem areas identified and effective strategies proposed within the context of the aim and human resourcing needs of the organisation.

Creating quality agreements, covering the difficulties associated with creating self-enforcing agreements within the context of dispute resolution. This theoretical discussion is a precursor to a practical session encouraging participants to implement suggested strategies in a simulated role-play scenario.

Mediation analysis and planning, focussing on ensuring participants could identify the essential features of the different types of conflict and the skills required for the effective resolution of each type. Discussions were followed by practical sessions designed to enhance participants' confidence in the use of those skills and the adaptation of such skills to various organisational contacts through simulated role-play exercises.

The impact of power in conflict resolution processes, involved small group discussions on the types of power used by people in conflict, how power had been used in the organisation and strategies to redress power imbalances within dispute resolution processes. This theoretical discussion was a pre-cursor to a practical session that encouraged participants to implement suggested strategies in a simulated role-play scenario.

Defining key stages and skills, focussing on ensuring participants could identify the essential features of an effective conflict resolution system and the skills required for the implementation of those processes, followed by practical sessions designed to enhance participants' confidence in the use of those skills and the adaptation of such skills to various organisational contexts through simulated role-play exercises.

Profiling of conflict resolution facilitators. In order to improve settlement outcomes, it is essential for conflict resolution facilitators to understand their own personality profile and the effect that this profile has upon the process. Participant profiles were developed for each of the participants and techniques for improvement in the conflict resolution context were promulgated.

Cross-cultural conflict resolution, involved a workshop discussion of cross-cultural communication techniques.

Consolidation. On the premise that effective conflict resolution within the organisation requires skilled staff as well as effective systems, participants were enabled to explore their skills development in an authentic and supportive environment. Participants were required to take part in conflict role-play scenarios, both as conflict resolver and disputant. Professional development was encouraged through small group de-briefings and large group de-briefings which focussed on the processes and skills utilised rather than the substantive outcomes reached by each group. More reflective practice by dispute resolvers was encouraged.

## **Outcomes**

For all cases, the anticipated outcomes of the training included:

- Increased understanding of the theoretical basis of conflict resolution theory within the client organisation;
- Building upon the implementation of effective processes in the resolution of conflict in the organisation
- Improved staff capabilities in the implementation of effective conflict resolution processes
- Reduction in organisation conflict
- Improved internal and external communication processes
- Increased customer satisfaction with the dispute resolution processes of the organisation
- Economic benefits.

Extensive research on conflict in organisations demonstrates that the conflict management skills and strategies of organisational executives, and staff, are important elements in the conflict regulation equation (Henkin and Singleton, 1984; Morse and Ivey, 1996; Robbins, 1974; Walton and Dutton, 1969).

That these outcomes were met by the training has been supported by feedback from participants and the organisations. Exit surveys of participants across all sessions for the three organisations indicated that overall the training sessions contributed significantly to work goals, ranking on average 8.9/10. Comments included:

- *I found the training to be very engaging and enjoyable and intend on undertaking the advanced negotiation training as a result.*
- *The communication skills I have begun to develop from this will prove useful in my current role.*
- *Whilst we are not “purely” mediators a lot of the content was very useful and relevant to our job.*
- *Tools will be very useful when dealing with conflicts between clients/colleagues.*
- *I will be mindful of the process and will definitely try to put it into practice.*
- *Helped to develop a structured format with negotiation processes.*
- *My major learning points are: future focus; focus on ‘what you want’ not ‘what you don’t want’; the mediator is not the decision maker; solutions made by the participants are more likely to be durable.*
- *One of the most helpful and practical courses I have attended. Thank you for helping develop my skills.*

The Brisbane City Council cited “overwhelmingly positive” feedback from staff who attended the courses and the course now forms a core part of the management development program within the Compliance and Regulatory Services Branch of the Council. Further to providing the mediation training courses, QUT was asked to provide a “train the trainer” program for BCC management for the purpose of providing ongoing in-house training in mediation. The course has now been promoted by BCC throughout the Australian Environmental Law Enforcement and Regulators Network, and several other agencies have expressed interest.

In relation to the BSA, feedback from management indicates that training in mediation skills has had a positive impact on the manner in which disputes are mediated. In 2005 \$1.8million was saved as a result of more effective mediation processes reducing claims against insurance. Queensland BSA has won the National HR Magazine Awards for Best Learning and Development Strategy two years running based on the mediation skills course provided by QUT.

DETA has reported that the training has resulted in disputes between apprentices and employers resolving at an earlier stage. DETA Field Officers have been able to use the skills to prevent the escalation of disputes and obtain mutually satisfactory settlements within their own regulatory environment.

QUT promotes itself as a university for the ‘real world’. The research and training in the Mediation Training consultancies with the BCC, BSA and DETA are all examples of a university engaging productively and effectively with its wider community.

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