

"Challenging Observations in Brisbane"

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Imagine a large interior room with five desks facing the walls, each with a computer and hands-free telephone separated by five-foot high dividers. Add a large table in one corner with seating for six. Keep the centre of the room open. Now think "Mediation".

The people who work in this room are all intake workers with Queensland's Dispute Resolution Centre (DRC) in Brisbane. I was privileged to watch them work, and to interview some of them last year.

As a consequence, several of my beliefs about pre-mediation activities were changed, or, should we say exposed and expanded? Here are a few.

The person who conducts intake ought to be the mediator. All the intake staff is trained in integrative dispute resolution theory. Some are practicing mediators. The supervisor is also a mediator with the service. The DRC uses a co-mediation model. If the mediation looks like it may be difficult, then the supervisor schedules herself, or another senior mediator with the service, to co-mediate with an ad hoc mediator. The details of the case are entered into pre-determined computer forms. They can be accessed and updated during subsequent phone calls between a disputant and an intake worker. In addition to being file records, these forms are also checklists as they are organized to follow the logical progression of a conversation with a disputant. And, it is easy to generate the Instructions to Mediator form which contains those details that the mediators will require.

It would be difficult and challenging to work in one room with other mediation personnel. On the contrary. The room and the equipment provide adequate privacy for conversations while supporting easy discussions with other workers. I watched staff take calls from angry disputants. Immediately following the call, the intake worker de-briefed with the supervisor or another intake worker. During the conversation, the worker talked about what happened, how it impacted him, and he explored how to deal with that person, or a similar problem, in the future.

As a "fly-on-the-wall" for the weekly meeting with all the in-take workers, their supervisor and the Director of the service, I listened to constructive discussions about challenging phone calls and difficult decisions. When I asked these intake workers what they thought was special or unique about their mediation service, each respondent expressed how much they benefited from being able to immediately discuss a dispute with another professional. For example, one of the intake workers that I spoke with said:

The ability to interact with all the intake staff [was special and unique]. All draw on each other's skills and experience to work as a team. The quick de-brief with a co-worker is important.

There is simply no such thing as a quick way to screen inappropriate cases out. The usual length of the first phone call from a disputant was five minutes. During this call, the intake worker ascertained the type of dispute. If it was the not one of the many types of disputes for which the DRC provided mediation, the caller was referred to the appropriate service. If it was, the intake worker described mediation, emphasizing that each disputant needed to be willing to give and take. The worker then asked for some dispute details as well as the disputant's preferred outcome. The disputant was invited to hunch how the other disputant would react to this outcome. Answers to these questions gave the intake worker clues about the willingness of the caller to negotiate as well as whether the caller held realistic outcome expectations.

In several cases, I listened to the intake worker again provide information about the voluntary and collaborative nature of mediation followed by a question about how this information may have changed the caller's approach. There were occasions when the intake worker concluded a call with something along the following:

Mr. Billabong, given what you've told me about your desired outcome, and the fact that you will accept no other outcome, it seems that mediation is not the right process for you. Thank you for calling and, if I can give you any other information, let me know.

On most occasions, the intake worker agreed to forward an application form to the disputant. These intake workers are trained to effectively describe mediation, to efficiently draw out pertinent conflict data and, with the assistance of guidelines, to screen out inappropriate matters and make referrals.

Civil and criminal mediation services are so different; the same office cannot provide services for both kinds of disputes. The DRC delivers mediation services for community conferencing for young offenders as well as for family, community, commercial, insurance, indigenous, victim-offender and work place disputes. Frankly, I was skeptical about the notion of combining civil and criminal mediation services. I was informed that the DRC developed a model where, in most disputes, preliminary conferences were conducted separately with disputants by one of the mediators prior to the joint meeting with the co-mediators. The preliminary conference is an extension of intake. In family matters, there is a specific checklist to complete that addresses family violence. In community conferencing the preliminary conference is focused on ensuring that the victim and the offender are ready to participate.

My observations and discussions with the staff mediators and intake workers at the DRC convinced me that, not only was there no reason to not combine civil and criminal mediation services in one office, doing so created opportunities for the transference of skills and practices from one type of dispute to another. For example, I noted competence in ensuring that disputants for all types of conflict knew what to expect at the mediation meeting. My hunch is that this preparedness was one of the explanations for the high dispute resolution rates enjoyed by the DRC.

One of my goals for studying for my Master of Laws in Australia was to challenge my own biases – particularly as they related to mediation and conflict resolution. The time I spent with the DRC was a critical component in reaching this goal.

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