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Issue 10

Mediation Matters!

The quarterly newsletter of the
University of Strathclyde Mediation Clinic

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Editor: **Patrick Scott**

Assistant Editor: **Adrienne Watson**



University of
Strathclyde
Glasgow



Editorial



Patrick Scott

Welcome to 2025 and another issue of *Mediation Matters!*.

We have two interesting articles to share with our readers. Kwame Sarfo gives us an insight into mediation in Ghana. In his article, *Effectiveness of Mediation as a Conflict Resolution Mechanism in Ghana*, he discusses the effect of culture on mediation, as well as a particular matter in which he was involved.

In my article *Lawyers and Mediation: The Role of Lawyers in Promoting and Enhancing the Process of Mediation*, I discuss the role that lawyers can play in assisting mediators and enhancing parties' experience of mediation. I also touch on some of the ways in which lawyers can derail the entire process, if they do not understand how mediations are conducted, and adopt an adversarial, litigious approach.

Adrienne Watson, our assistant editor, interviews Ben Cramer on his Master's dissertation entitled *Experience and Meaning of Bodily Movement in Relation to Conflict Work and Mediation*, which he completed in 2018. In the interview, Ben discusses his exploration of the possible interactions between movement, conflict, and mediation as conflict work.

In November last year, the *International Mediation Clinic Network* brought together 17 delegates from the USA, Ireland, Czech Republic, India and the UK for its first conference. Pauline McKay reviews the conference, and the four presentations are included in this issue.

We have the usual contributions, *From the Director*, *From the Chair* and *Clinic News*. In *Patrick's Ponderings*, I discuss the principle of confidentiality, and *Aunt Minerva* and Worried, from Kinlochsporrán, bid us farewell for now. We also welcome a new column from Alan Jeffrey, entitled *Mediation Mulligans*, in which he discusses his trials and tribulations as a mediator.

I would also like to remind readers about the 5th Annual Mediation Clinic Conference, entitled *Growing mediation, your practice and beyond*, which is being held online on Friday, 28th March 2025.

My thanks to Adrienne, our assistant editor, for all her hard work in helping to compile this newsletter. And thank you, too, to our readers who completed our survey, enabling us to know what you want to see more of in this newsletter. I hope that you enjoy this issue, and Adrienne and I wish you all a happy new year.

Patrick Scott
Editor

From the Director.....



Charlie Irvine

The midwinter break is a good time to take stock – time seems to stand still for a few days in Scotland’s low-light Central Belt. One of my special treats is a long walk with an audiobook, and last month’s offering was Malcolm Gladwell’s latest, *Talking to Strangers*. Like his other books, it’s highly readable (and listenable) and gets you thinking.

His headline is that humans are pretty poor at understanding people they don’t know. Unsurprisingly, Gladwell points the finger at contemporary phenomena – social media, political polarisation – for worsening the problem, but it’s nothing new. He documents Prime Minister Neville Chamberlain’s failure to predict Adolf Hitler’s intentions during the 1930s; the Munich Agreement to deliver “*peace in our time*” has become a by-word for hopeless over-optimism. Yet Chamberlain wasn’t alone, and Gladwell quotes several others from the British political and diplomatic elite who shared his view.

The real problem is less our failure to read other people than our belief that we can; as Mark Twain said “*It ain’t what you don’t know that gets you into trouble. It’s what you know for sure that just ain’t so.*” When it comes to knowing whether someone is lying,

experiments suggest most of us perform little better than chance. Even experts struggle to get this right much above 55% of the time. This has worrying implications in all sorts of areas, not least the justice system, but I made a connection to mediation.

I’ve noticed something interesting when people are new to the process. Presented with examples of human conflict, our first instinct is usually to work out who’s in the right and who’s in the wrong. This is almost universal, though it’s possibly greater for those with a legal background who have to make that assessment daily. I’m not suggesting that new mediators act on this; most know instinctively that they should keep these thoughts to themselves. But this knowledge can make it hard to remain even-handed. Imagine empowering the party we think is ‘in the wrong’ to achieve their goals. How does that feel? Is it possible? Are we betraying ourselves?

The good news is this: the solution lies in the work itself. If you ask mediators with five, ten or twenty years’ experience to predict what will happen in a given case, they tend to say they have no idea. The longer they do it the less they think they can predict. There’s something about walking with people in the midst of conflict that seems to *reduce* our certainty. (I’ve written about this before; see [Truth. No longer useful?](#))

Why is that good news? Because repeated exposure to seemingly incompatible views helps inoculate us against overconfidence, especially in our own predictions. Gladwell’s book is full of examples where that overconfidence plays out disastrously, from

the CIA's inability to believe that a trusted colleague, *The Queen of Cuba*, could be a double-agent; to public condemnation of Amanda Knox, an innocent but socially awkward American student who was convicted of murder in an Italian court (and later cleared when the real killer's DNA was found at the scene).

Of course, mediators still get things wrong. Yet some growing instinct warns us to reserve judgment until we hear more. John Forester, in his 2009 book, *Dealing with Differences: Dramas of Mediating Public Disputes*, noticed that when everyone connected to a dispute said it couldn't be resolved, experienced environmental mediators would respond: "*let's wait and see.*"

All of this points to the importance of getting more cases under our belt. Each mediation knocks the rough edges off our certainty. Eventually it's not an effort to suspend judgment; it just happens. We become more confident in handling conflict, partly by becoming more comfortable with uncertainty. We may have seen cases like this before, but never *these* people with *those* facts in *this* meeting. That's what keeps it interesting. Maybe it's as simple as this: the more you know, the more you know you don't know.

Charlie Irvine

Director, Mediation Clinic

Dr Charlie Irvine is the Course Leader on the University of Strathclyde's MSc/LLM in Mediation and Conflict Resolution, and Director of Strathclyde Mediation Clinic. He is an experienced mediator specialising in organisational and workplace disputes. Charlie's academic work focuses on mediation in the justice system, and he has recently been awarded his Doctorate for his PhD research into mediation participants and their reasons for settling.



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Mediation Clinic at University of Strathclyde



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- A Place of Safety Transformed, Community Mediation - Rhona Wilson
- How Strathclyde Mediation Clinic helped me build my Practice - Patrick Scott
- Learning and Adapting in Mediation with Dr Roy Poyntz & Gordon McKinlay
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Effectiveness of Mediation as a Conflict Resolution Mechanism in Ghana

by Kwame Sarfo



Kwame Sarfo

My work as a project lead in the health sector of Ghana brings me into contact with a variety of issues that need resolution. These include conflicts or disagreements between the Ministry and contractors, contractors and sub-contractors and even sometimes colleagues at work. I have managed to resolve many of these situations with positive outcomes.

Culturally, conflict resolution in the Ghanaian context is usually not adversarial or litigious, except in matters of grave criminality or fraud. Conflict is usually resolved by way of informal types of mediation brokered by the family elder(s) in the family context or the Chief in the Chief's palace. This practice now lends its form to the way we conduct business in our society. The results are generally positive and, to a large extent, have maintained the cohesion of the society.

Recognising the complexity of elevating issues to the courts, the Courts Act of 1993 (Act 459) and the Alternative Dispute Resolution (ADR) Act (Act 798) of Ghana, were passed to encourage parties to resolve their differences through mediation. This has given some credibility to conflict resolution through mediation and there is a gradual shift in that direction. One of the positives of the Ghanaian indigenous systems of mediation is that its aim

is to ensure a win-win outcome, which I achieved in my mediation session elaborated below.

I will now proceed to describe a peculiar case that I mediated in June 2024 between a contractor and his employee in the construction of a COVID-19 Treatment and Holding Centre for the Ministry of Health in a border town in Ghana.

The Ministry of Health awarded a contract to a developer to build a treatment and isolation centre. The contractor (1st Defendant) then engaged a sub-contractor (2nd Defendant) to perform part of the works. During the execution of the sub-contracted works, an unfortunate incident occurred where one of the sub-contractor's employees (Claimant), tasked with performing plumbing and tiling work, climbed onto the roof and was electrocuted by an overhead high-tension cable. The incident led to the worker falling from the roof of the 2nd floor to the ground, resulting in severe injuries, including partial paralysis and neurological impairment. The incident was first picked up by the project team but there was no resolution. The matter then came to the Social Safeguards Team of the project financiers, who encouraged the Claimant to lodge a claim against the main contractor for compensation.

Following the incident:

- The subcontractor settled part of the injured worker's medical bills but ceased further assistance.
- The injured worker, through the Environmental Safeguards Team of the financing party, reached out to the Ministry of Health and the World Bank due to concerns over his well-being and

social safeguards.

- The matter raised issues regarding worker protection, safety measures, and compliance with the financing institutions social and environmental safeguards.

My objective with this mediation session was to resolve the dispute by determining an equitable solution that ensured the injured worker's recovery and well-being, while addressing the responsibilities of the sub-contractor and the main contractor. I started off by phoning all the parties and gave them the date and time for the mediation, and the address of the mediation venue, which was the headquarters of the Ministry of Health. I commenced the mediation session by introducing myself to the parties and allowing the parties, as identified below, to introduce themselves.

1. The injured worker (affected individual)
2. The CEO of the construction firm (Main contractor) and his associate
3. Representatives from the Ministry of Health
4. The financier's Environmental and Social Safeguards Team

I commenced by outlining the reason for the mediation, which was primarily to resolve the issues surrounding the injured worker's medical care, rehabilitation, and future employment prospects, while addressing responsibilities under the contractual and safeguards framework.

One clear omission from the attendees at the mediation was the sub-contractor (2nd Defendant), under whose supervision and employment the electrocution of the Claimant had taken place. As a project lead, I started the informal mediations between the 2nd Defendant and the Claimant, but the issue dragged on unnecessarily, leading to a

breakdown of talks. This left the Claimant helpless, and he then resorted to other means to find help. To enhance the mediation process, when the matter was raised, I advised against the involvement of the sub-contractor in the proceedings. My recommendation was based on the fact that the sub-contractor was not a party to the contract and could be a disruptive force. The contract for the project was between the Ministry of Health and the main contractor.

As the normal practice in Ghana, each party was allowed to present their perspective without interruption. The following points were made by the parties:

Injured worker: He described the incident, the impact on his health, and his current inability to support his family due to his injuries. He expressed disappointment over the subcontractor's abandonment after partial assistance with hospital bills. Although he sounded angry and emotional at a point, I allowed him to talk freely without any interruptions.

Main contractor: The contractor acknowledged the incident but stated that the responsibility for the injured worker lay with the sub-contractor, citing the contractual arrangement between them. However, he emphasised that the sub-contractor had ignored this issue until he was duly informed of it by the project team from the Ministry. He expressed his sympathy to the Claimant and indicated his willingness to take care of him until he fully recovered.

I guided the discussion with open-ended questions to explore the root issues and possible solutions:

1. What support did the injured worker require in the short and long term?
2. How could the sub-contractor fulfil their obligation to the injured worker?
3. What measures could ensure compliance with the World Bank's social safeguard policies?

The parties brainstormed potential options, focusing on ensuring the injured worker's recovery and long-term stability. I then went ahead to summarise their positions and identified viable options for resolution, enabling me to ensure that we were all on the same page as far as the issue was concerned:

- The contractor would be required to provide long-term support to assist the injured worker in regaining employability or finding an alternative livelihood.
- The Ministry of Health would monitor the implementation of these measures to ensure compliance with project safeguard requirements.

In Ghana, beyond the establishment of salient points, there is the need for the parties involved to accept the resolution points without feeling patronised or coerced. The following points were agreed on:

1. The main contractor would ensure continued support for the injured worker until he had fully recovered and was fit to return to work or engage in alternative means of earning an income.
2. The injured worker would provide medical reports and updates to the contractor to facilitate timely payment of medical bills and effective management of his recovery.
3. The Ministry of Health would monitor the implementation of these terms to ensure compliance and adherence to the agreement.
4. A review meeting would be held monthly to assess the progress of the injured

worker's recovery and address any further concerns.

During the session, I adhered to the principles and stages of mediation as follows:

1. Voluntary participation: All parties willingly participated in the session, demonstrating a commitment to resolving the issue collaboratively.
2. Neutrality and impartiality: During the session, I acted as a neutral facilitator, ensuring that no party was favoured or prejudiced during the discussions.
3. Confidentiality: The session was conducted in a private setting, and the discussions and agreements remained confidential and protected.
4. Empowerment: Each party was given equal opportunity to voice their concerns and suggest solutions, empowering them to take ownership of the resolution process.
5. Focus on mutual benefit: The session prioritised a resolution that addressed the injured worker's needs, while ensuring that the contractor could fulfil his responsibilities without undue burden.

Conclusion

The mediation session successfully facilitated an agreement that prioritised the injured worker's well-being while ensuring compliance with contractual and safeguard requirements. The parties committed to implementing the agreed terms and maintaining transparency throughout the process.

It is worth noting that for sessions held at the Chief's palace, the authority of the local chief provides a semblance of enforcement which may not stand the test if placed in a court of competent jurisdiction. To overcome this, Ghana has actually formalised mediation as an alternative dispute resolution method which is widely accepted.

Several other matters handled informally as described have yielded the desired results, but the outcomes are not enforceable by any court. They are purely based on mutual trust, respect and an understanding of the cultural values of our society.

Kwame Amponsah Sarfo is the Head of the Capital Investment & Project Management Unit at the Infrastructure Directorate of the Ministry of Health in Ghana. He is an architect by profession and currently studying the LLM in Construction Law at the University of Strathclyde. His job focuses on managing projects which invariably brings to the fore the ability to manage people and conflicts.

Lawyers and Mediation: The Role of Lawyers in Promoting and Enhancing the Process of Mediation

by Patrick Scott



Patrick Scott

The Role that Lawyers Play in Mediation

This article is going to touch on two different levels of contribution that lawyers can make to mediation. Firstly, on the macro level, lawyers are important players in the promotion of mediation as an alternative means of dispute resolution. And, secondly, lawyers can play a key role in achieving a positive outcome in a particular mediation.

The Role of Lawyers in Mediation Generally

Lawyers have been described as being the gatekeepers of the legal profession.¹ Clients generally do not know that mediation is an option (unless, of course, the sheriff orders mediation in a particular matter) and, even if they are aware that it is and they are legally represented, they will defer to their lawyers for advice on whether or not they should

mediate. Litigants who do not have personal knowledge or experience of mediation, and that would be the majority of them, are unlikely to challenge the advice about the value of mediation in their particular case.² This may be a more complex situation with commercial clients, where lawyers may not hold the power cards in the lawyer-client relationship.³ Perhaps the best example of this is insurance companies, who are able to exercise power over their lawyers by paying lower rates, entering into fee arrangements, limiting lawyers' discretion and having their own agendas that they require to be followed.⁴

Of course, before lawyers can promote and encourage the use of mediation as an alternative to litigation, they have to know what it is and how it works, and believe that it is indeed a viable alternative. Hence, to increase the use of mediation it is necessary to increase lawyers' familiarity with it. In 2002, Roselle Wissler, a law professor at Arizona State University, conducted a study to determine whether education or experience were more effective in encouraging lawyers to advise clients to attempt ADR processes⁵ and concluded that gaining experience with an ADR process was by far the stronger factor.⁶ One of

¹ Hazel Genn and others, 'Twisting Arms: Court Referred and Court Linked Mediation Under Judicial Pressure' (2007) Ministry of Justice Research Series 1/07. Ministry of Justice, London.
<webarchive.nationalarchives.gov.uk/+/http://www.justice.gov.uk/docs/Twisting-arms-mediation-report-Genn-et-al.pdf> accessed 27 September 2018 203-04. See also Bryan Clark and Charles Dawson, 'ADR and Scottish Commercial Litigators: A Study of Attitudes and Experience' (2007) *Civil Justice Quarterly* 26 228, 246.

² Genn, 'Twisting Arms' (n1) 203-04.

³ Clark and Dawson (n1) 246.

⁴ John Lande, 'Lessons from Mediators' Stories' (2013) *Cardoza Law Review* 34(6) 2423, 2424.

⁵ Roselle L. Wissler, 'When Does Familiarity Breed Content? A Study of the Role of Different Forms of ADR Education and Experience in Attorneys' ADR Recommendations' (2002) *Pepperdine Dispute Resolution Law Journal* 2(2) 199.

⁶ *ibid* 237.

the persuasive arguments in favour of mandatory mediation is that it exposes more lawyers to the process, which should increase their recommendation of mediation to clients.⁷

Rogers and McEwen, professors of law and sociology respectively, had come to a similar conclusion in 1998.⁸ They were of the view that mandatory mediation would result in lawyers more frequently referring clients to mediation, even when not required to do so. Lawyers would also more often promote early settlement with clients taking part in the settlement discussions, even when the negotiations did not include a mediator.⁹ Like Wissler, Rogers and McEwen were of the view that experience was a far stronger factor than education in encouraging lawyers to refer their clients to mediation.¹⁰

The Role of the Lawyer in a Mediation Process

The second level at which lawyers can contribute, is with regard to achieving a positive outcome in a mediation. This can occur at two stages: in assisting the client to prepare for mediation and at the mediation itself.

The preparation stage:

1. Position papers

Whilst mediations do not require any formal documents, or 'pleadings', it is useful for each party to set out a written statement of their case (called 'position papers' in mediation), particularly in more complex commercial matters. Lawyers can be of great assistance to their clients in preparing such position papers. Whilst there is no prescribed format for such

documents, it is useful for them to contain a list of what the parties are seeking to achieve from the mediation. Such a list may be more comprehensive and imaginative than in a court pleading, since the relief which the parties seek in a mediation may not necessarily be something which would be a recognised legal remedy. This is one of mediation's distinguishing characteristics.

2. Brainstorming

Lawyers can brainstorm with their clients and assist them in identifying what they actually want to achieve with the mediation. The clients may not initially themselves know what they want, and their original claim may not actually be the main cause of the dispute between the parties.

3. Reality testing

Parties may not fully appreciate the strengths and weaknesses of their case, and lawyers can assist them in doing reality testing even before the commencement of the mediation. This will help the parties to weigh up what they want to get out of the mediation against the risks they face if they were to proceed to court.

4. Expectations

Lawyers can shape what parties expect to happen in a mediation and how they approach the mediation, which has an impact on what actually happens.¹¹

5. Documents

They can assist their clients in identifying any documents that they may want to use at the mediation. Documentation is not usually of any great importance at a mediation since the focus of the discussion is forwards and not historic, but a document may be important in, for example, establishing the quantum of a

⁷ *ibid* 238.

⁸ Nancy H. Rogers and Craig A. McEwen, 'Employing the Law to Increase the Use of Mediation and to Encourage Direct and Early Negotiations' (1998) *Ohio State Journal on Dispute Resolution* 13 831.

⁹ *ibid* 833.

¹⁰ *ibid* 845.

¹¹ Sharon Press, 'Lawyers and Mediation: Lessons from Mediator Stories' (2013) *Cardozo Law Review* 34 2433, 2435.

party's claim. In such an instance, the document is useful since it demonstrates to the other party how the claim is quantified and may dispel suspicion of an inflated claim. Thick bundles, containing every conceivable document that may be relevant to the adjudication of the matter, are of little assistance in a mediation.

During the mediation:

1. *Right parties*

Lawyers can ensure that the right parties are at a mediation. In a matter where the respondent is insured, there is no sense in bringing the claims adjuster to the mediation without the respondent, particularly where the claimant may be looking for an apology or an admission of fault.¹²

2. *Expressing themselves*

Some parties are less articulate than others in expressing themselves, and lawyers can assist them in formulating and conveying their views and concerns during a mediation.¹³

3. *Legal advice*

Lawyers can provide legal advice to their clients during a mediation and assist with reality testing. When advising parties of their BATNAs¹⁴ and WATNAs¹⁵, the mediator has to be acutely conscious of maintaining neutrality. Whilst a good rapport may exist between the mediator and the parties, the parties may not build up the same level of trust with the mediator as they would have with their lawyer. This, of course, is expected as the mediator adopts a neutral stance towards the parties and has to maintain that stance throughout the mediation. When the mediator discusses BATNAs and WATNAs with the parties, they may perceive that the mediator is trying to

pressurise them into a settlement, despite this not being the case. Lawyers are in a much better position to discuss BATNAs and WATNAs with their clients, and to advise them on the strengths and weaknesses of their case.

4. *Power imbalance*

There are also times when the one party is in a stronger position than the other due to greater oratory skills, superior intelligence or a higher status than the other party (particularly when there is an existing relationship between the parties, such as employer/employee). This can create a power imbalance which can be managed to an extent by the mediator, although the mediator must refrain from moving away from a neutral position in the mediation. In extreme cases of power imbalance, a mediator might be forced to terminate the mediation if an injustice is likely to result due to the superior position of the one party over the other. Lawyers are often able to correct this power imbalance.

5. *Relieve pressure to settle*

Some clients may feel pressure to settle. This can be due to a perception that, if the mediation is mandatory, they may believe that they are obliged to settle, as they may see the mediator as a court official (particularly in court-annexed mediation). Lawyers can relieve this pressure.

6. *Drafting settlement agreement*

Lawyers can assist in drafting the settlement agreement and ensure that the terms agreed to by the parties are practicably able to be implemented.

It is important for lawyers to have "a client-centered approach to lawyering, to pay attention to the needs and interests of their

¹² *ibid* 2437.

¹³ Nancy H. Rogers and Craig A. McEwen, 'Employing the Law to Increase the Use of Mediation and to Encourage Direct and Early Negotiations' (1998) *Ohio State Journal on Dispute Resolution* 13 831, 854.

¹⁴ The best alternative to a negotiated agreement.

¹⁵ The worst alternative to a negotiated agreement.

clients, and then to help them to develop strategies to achieve those needs and interests to the greatest extent possible".¹⁶

As much as lawyers can play a positive role in mediation, enhance the process and contribute to the quality of the resolution, they can also derail the entire process if they do not understand how mediations are conducted, and adopt an adversarial, litigious approach. Some of the ways in which lawyers can do this are the following:

1. By attending the mediation without their client. The other party may want to hear from his/her counterpart, to be able to understand the situation from his/her perspective and to explain his/her own feelings and concerns to the other party. Having only a lawyer present does not allow this to happen. Of course, this is not always the case and, in some cases, particularly when large companies (such as financial institutions and large utilities) are involved, lawyers may attend the mediation without a representative from their client and conduct all negotiations with full knowledge of the matter and complete settlement authority.
2. Lawyers should let their clients speak at the mediation. It is important for both parties to hear each other, and this creates a better prospect of a resolution.
3. A narrow approach to possible options turns the mediation into a bargaining process, again limiting its prospects of success.
4. If lawyers are economical with the disclosure of information, and curtail their clients in disclosing information, no proper

ventilation of the issues will take place, again limiting the chances of a resolution.

5. An aggressive, adversarial approach will seldom allow for a proper ventilation of the issues and will often attract aggression from the other party.

I conclude this article with a few quotes, first from **Wayne Brazil**, an American Magistrate Judge, and then from **Dame Hazel Genn**, Professor of Socio-Legal Studies, Faculty of Laws, University College London. Judge Brazil, in an essay on court-annexed mediation¹⁷ says the following about lawyers and mediation:

*"Lawyers have been indispensable sources of support and service in a great many court ADR programs. Many court ADR programs exist today only because of initiatives taken and hard work performed by lawyers. In some courts, the judges have agreed to adopt ADR programs only after and because leaders of the bar have urged them to do so. Lawyers are credited with inventing and promoting, first in the private sector, several of the types of ADR processes that have been incorporated into court programs. So we must never forget that a great many lawyers have been our leaders and our allies over the quarter century since the Pound Conference."*¹⁸

"Good court ADR programs must attack ignorance, inertia, and fear by (1) educating lawyers and client groups, (2) building into the ADR and case management program a series of incentives and pressures to give real and fair consideration in each civil case to the use of ADR (with full inputs to and from clients), and (3) establishing

¹⁶ Press (n35) 2441.

¹⁷ Wayne D. Brazil, 'Court ADR 25 Years After Pound: Have We Found a Better Way?' (2002) Ohio State Journal on Dispute Resolution 18(1) 93.

¹⁸ *ibid* 132.

*and publicizing tight quality control mechanisms aimed, in part, at reducing lawyers' fear that the neutral will not be competent or will displace them or invade their relationship with their client."*¹⁹

*"Being involved in ADR processes can improve the quality of a lawyer's professional life and make the lawyer feel better about being a lawyer. It can be very satisfying to help clients explore prospects for settlement earlier and more reliably, to enhance the efficiency and rationality of dispute processing, and to improve the interpersonal dynamics that attend negotiation and litigation."*²⁰

Dame Hazel Genn, in a study for the Ministry of Justice on court-annexed mediation²¹, made the following comments on lawyers' contribution to mediation:

*"In nearly three-quarters of the settled cases about which report forms were completed, mediators attributed part of this success to the contributions made by the legal representatives. Mediators commented favourably on the competence of legal representatives, whom they found helpful, and on lawyers' willingness to negotiate. They also commented favourably on lawyers' approach to settlement – particularly where they had clear authority to settle."*²²

"Mediators always defined "competent" lawyers as those with experience of mediation and therefore familiar with the process. Positive

*qualities referred to also include a flexible approach to settlement discussions."*²³

*"Where lawyers appeared willing to negotiate, mediators always found this helpful in reaching a settlement and the ways in which lawyers participated indicated to mediators their willingness to reach an agreement."*²⁴

Patrick Scott completed the LLM in Mediation and Conflict Resolution course at Strathclyde University in 2018 and was awarded an LLM in Mediation and Conflict Resolution with Distinction. He is currently an Accredited Mediator with Scottish Mediation, serves on the SLCC Panel of Mediators and volunteers as a lead mediator with Strathclyde Mediation Clinic. He is also on the Board of Trustees of Scottish Mediation.

¹⁹ ibid 133.

²⁰ ibid 134.

²¹ Hazel Genn and others, 'Twisting Arms: Court Referred and Court Linked Mediation Under Judicial Pressure' (2007) Ministry of Justice Research Series 1/07. Ministry of Justice, London.

<webarchive.nationalarchives.gov.uk/+/http://www.justice.gov.uk/docs/Twisting-arms-mediation-report-Genn-et-al.pdf>

²² ibid 115.

²³ ibid.

²⁴ ibid.

Research Conversations...

Ben Cramer discusses his MSc dissertation with Adrienne Watson



Ben Cramer



Adrienne Watson

This series of interviews looks at some of the research our students and established academics have undertaken. We will be discussing the lessons that have been learnt, the impacts of the research and recommendations for those who are yet to undertake their dissertations.

This month, Ben Cramer is interviewed by Adrienne Watson. Ben completed his MSc dissertation, *Experience and meaning of bodily movement in relation to conflict work and mediation* in 2018.

How did your interest in mediation develop?

Having studied medicine and psychology, I worked in medicine for a few years and began psychiatry training before quitting. A simplistic critique of the psy-disciplines is that they risk individualising, medicalising and depoliticising distress.

One reason that I was drawn to conflict resolution and mediation is that it can be a way of looking at distress, or the problems and challenges we face, in a way which is more interpersonal, relational or social. Mediation, for me, was a way of being in an alternative

Experience and meaning of bodily movement in relation to conflict work and mediation

This research is an exploration of the possible interactions between movement, conflict, and mediation as conflict work.

The existing literature on communicative movement, and movement in relation to conflict work, was reviewed. Then, primary research was undertaken with interviews of two movement practitioners, focusing on their experience of the relationship between conflict and movement. The research was completed with a freer and broader theoretical exploration, starting from an ontology of movement, and developing ideas of spatiality, listening, understanding, self-awareness and stillness as components of conflict work.

discourse and practice, and I still think the psy-disciplines can learn something from the ethics of mediation.

What brought you to the Mediation and Conflict Resolution course at Strathclyde?

I spent a couple of years as a volunteer meditation leader at an interfaith spirituality centre in Edinburgh, which was a meeting place for different therapeutic modality groups, spirituality and religious groups, meditation and practice groups. A common thread amongst those groups was cultivating peace, and embracing and transcending difference. On the wall there was a written piece, a sort of invocation of peace, which I think was influential in me moving towards conflict resolution. Doing the Master's degree

at Strathclyde was a way for me to find structure and focus in my learning, and to begin to develop a specific practice.

While searching online for courses, I remember seeing some YouTube videos with the Strathclyde Course Leader, Charlie Irvine. One was an SCCR (Scottish Centre for Conflict Resolution) conference¹ where Charlie was speaking, and in another video he was interviewing a Strathclyde student who had just finished her Master's in Mediation and Conflict Resolution.

Importantly, the Strathclyde course includes both theory and practice. Coming from a background of medicine, and having explored different meditative and movement practices, I think the emphasis on the practice of mediation, alongside conflict resolution theory, was influential on me deciding to study at Strathclyde.

What drew you to the Mediation Clinic?

I couldn't imagine completing the Master's without being engaged in the practical work of mediation. The opportunity to practice it felt like a key part of the studies, and I remember being surprised that some students didn't want to engage with it. After observing, and doing, two or three mediations I wondered why other students were missing out on the opportunity. I think that has changed in recent years with more students wanting to engage in the Clinic's work.

How did you decide on your dissertation research area?

Before starting the course, I already had an interest in specific movement and communication practices as transformative

modalities; for example, Ashtanga yoga and nonviolent communication.

My choice of dissertation research was influenced by some of Charlie Irvine's work on movement and conflict resolution. In particular, *Mediating from the neck up*² and *Building Emotional intelligence: A grid for practitioners*³. This work discusses the intersection of conflict, movement and neuroscience. Early in the course, I was also influenced by a social sciences lecturer who spoke in an engaging way about their work on gesture.

Initially, I was planning to write about gesture in conflict, but this expanded to include movement practice.

How would you summarise your dissertation's aims?

I had both personal and research aims for the dissertation, what I remember most are the personal aims. I wanted to engage in a playful inquiry that could explore human experience in the spaces between disciplines, using language from theory and from people's accounts of their experience. I was keen to connect to my own somatic experience and, in an empirical way, explore through listening and dialogue how others make meaning from their experience of conflict.

I chose to interview two experienced movement practitioners. I wanted to speak with people who had a somatic, reflective capacity, who were in touch with their experience and could give a nuanced description of what they had learned about conflict and movement.

¹ [SCCR Conquering Conflict 6th National Conference - Do You See What I'm Dealing With Here?](#)

² [Mediating From the Neck Up](#) (accessed 16 January 2025)

³ C Irvine, 'Building Emotional Intelligence: A Grid for Practitioners' in M LeBaron, C MacLeod and AF Acland (eds), *The Choreography of Resolution: Conflict, Movement, and Neuroscience* (Chicago, IL, American Bar Association, 2013) 107

What were your main findings?

I'm a bit allergic to conclusions! In my dissertation, I think one of the things I was doing was attempting to find a way of writing that was evocative, philosophical and poetic, and would invite the reader into their own process of finding openings and resonances that would be personally meaningful to them. So, in a way, I don't want to be too general or prescriptive. Some general takeaways for mediators could be that conflict is experienced somatically – it impacts the body. Movement practices can serve as tools for emotional regulation and insight, fostering empathy and deeper understanding during conflict and mediation. Somatic and bodily communication play a significant role in expressing emotions and framing conflict interactions; and intentional somatic awareness can facilitate reconciliation. Specific moves, like grounding, breathing and moving can shift and resource us in challenging interactions. I would encourage anyone training in mediation to explore ways to develop their own somatic awareness and incorporate it into their work. I'd like to see more CPD around this.

Somatic and bodily communication play a significant role in expressing emotions and framing conflict interactions; and intentional somatic awareness can facilitate reconciliation.

Bitesize pieces that I've gathered from the interviewees are:

- Conflict impacts the body and social relationships.
- Conflict can diminish our sense of personal agency.
- People carry conflicts inside them.

- Conflict is a source of energy and life, and can be a resource.
- Conflict can arise from unmet individual or collective needs.
- Conflict can arise from miscommunication, particularly lack of honesty or congruence.
- We can register conflict through the body.
- Conflict response is withdrawing from the world, or withdrawing from the self or body.

When did you start planning your dissertation and how did you keep on track through the process?

In terms of planning, my approach was intuitively following what was most alive and meaningful for me in that moment. I tend to jump from one place to another and things tend to elaborate and proliferate. I was lucky because I had time to follow the threads of theory that seemed most alive to me.

There was pressure as the deadline approached. I had much more written material than I needed, so I kept selecting and editing the material and trying to bring everything together in a coherent enough way. My approach was to continue working up to the deadline and to submit the dissertation when time had run out.

Did you develop any new skills during the dissertation? If so, what were they?

Reading and research in the humanities, conflict resolution reading and movement literature were new areas for me. Also, I used Interpretive Phenomenological Analysis (IPA)⁴ to analyse my interviews, which was a new skill. I had hoped to learn IPA by spending time with someone doing IPA or undertaking IPA training, but I didn't have the time or resources to do so. I learnt the technique by

⁴ J. Smith and M Osborn, 'Interpretive Phenomenological Analysis', *Qualitative Psychology* (Sage).

reading about IPA and reading examples of IPA, then doing it.

What aspects of your dissertation were particularly challenging?

I struggle with keeping things focused, coherent and simple, and I embraced my tendencies to elaborate, to proliferate, to complicate, to jump from one theme to another, to take detours, to meander, to take tangents, to think associatively. So, I think, looking back through the dissertation, that it is a bit messy.

I also think the dissertation could have been more self-aware. When working with two epistemologies, you can look at the interviews through one of them, and then look through the other epistemology. This can produce a really interesting diffractive pattern of what is happening between the two lenses. If I had engaged more with a supervisor who understood what I was doing, they might have helped me with this.

What aspects of your dissertation are you most proud of?

Looking back, I'm happy that I managed to piece together a coherent enough body of writing to form the dissertation, in an area that was completely new to me.

There was also something more personal, which involved exploring the space between the theoretical and the experiential in relation to movement. In mediation there's a synergy between practice, theory and reflection. I experienced something like that with my dissertation, which I'm calling integrative learning. This involved the interviews on conflict and movement, reading and summarising theory, and evocative writing. I found ways of thinking and inquiring that were new to me, some in a structured way like IPA,

and others in ways which are implicit and not easy to articulate.

Was your dissertation helpful in shaping your mediation practice?

Potentially, yes, the dissertation work probably opened a door for me to deeper awareness of ways of transrational problem solving, and holding in mind the complexity of understanding and making meaning of our experience. I'm still interested in operationalising some of this, and reflecting on how mediator awareness of, and attention to, somatic layers can make a difference in the room.

With the benefit of hindsight, would you change anything about your dissertation?

My dissertation was what it was, and I'm happy with that. For next time, I'm curious about working more collaboratively and inclusively, for example co-designing and co-writing in a particular practice context. For further academic inquiry, I'd definitely consider beginning with a commitment to a particular theoretical position and working closely with someone who has in-depth knowledge of the method I'm using. I also think it would be helpful to have an audience in mind, or know where I want the written work to land.

What do you wish you had known before you embarked on your dissertation?

I only met my supervisor once. If I had known how to make better use of a supervisor and an academic community, I think the way that I was working and what I was doing might have been different.

Is there anything you would like to say to students who will be working on their dissertations this summer?

I suppose I would say something like... Don't be afraid to follow what is most meaningful for you personally. Follow and attend to what is most alive for you and follow the inquiry wherever it leads.

Ben Cramer completed the MSc in Mediation and Conflict Resolution at the University of Strathclyde in 2018. He currently mediates with Strathclyde Mediation Clinic, Lothian & Borders Court Mediation Service, Restorative Solutions North Yorkshire, Scottish Mediation, Help Employment Assistance Programme, Cyrenians Mediation & Whole Family Support, Edinburgh University and independently. He is also a tutor on the Mediation & Mediation Advocacy module in the Strathclyde Diploma in Professional Legal Practice and facilitates peer support for the Clinic. He is interested in co-mediation and reflective practice and regularly facilitates philosophical dialogue in small groups.

Adrienne Watson trained as an Accredited Mediator in 2016 and completed the MSc in Mediation and Conflict Resolution at the University of Strathclyde in 2023. Adrienne is a lead mediator with Strathclyde Mediation Clinic and is Assistant Editor of the Mediation Matters! newsletter.

From the Chair.....



Tom Scade



**Sneha Selina
Bonomally**

As we welcome in the new year, it's a perfect time to reflect on our achievements and look ahead with excitement to the opportunities that 2025 will bring. The past year has been filled with hard work and meaningful progress, and we are incredibly proud of what we've accomplished together. It is also a moment to think about how we can continue to build on the Clinic's success and further strengthen our work in the year to come.

On the 8th of October, we held the Clinic's AGM, and we would like to share some key highlights from the event. The Director's report, which can be accessed via the Clinic [website](#)¹, outlined the continued support we receive from the Scottish Government, which is crucial in helping us maintain and expand our mediation services across the Scottish Sheriffdoms. It's also reassuring to know that the Scottish Government continues to appreciate our model.

One statistic in the Director's report particularly stood out: *"Over the past ten years, the courts have referred 2,038 cases, of which 1,006 went on to mediate and 658 settled."* This is an impressive accomplishment

and reinforces the importance of the Clinic in Scotland's justice system.

As we begin this new year, we would also like to take a moment to express our gratitude to those who are stepping down from the Board. A heartfelt thank you goes to Andrew Boyd and Alastair Sharp, who are retiring as Co-chairs, as well as to Gordon Davies, Alan Jeffrey, Eunice Olatunji and Andrew Reid, whose contributions to the Clinic have been invaluable. We are also deeply grateful to Rosie McBryne for her excellent work supporting Pauline and our mediators, as she moves on to a new role in the Law School.

We are excited to introduce the new Mediation Clinic Board. In addition to Charlie Irvine, the Director, and Pauline McKay, the Clinic Coordinator, the Board now includes returning members Linn Phipps, Tom Scade, Alison Welsh, Bronwyn Sutton, James Claxton, and Oyinkro Olobio. We also welcome new members Daniel Donaldson, Sneha Selina Bonomally, Lisl McDonald, Cordelia Gayler and Abdul Zeeshan.

We are pleased to announce that Sneha Selina Bonomally and Tom Scade have been elected as the new Co-chairs of the Mediation Clinic Board, with plans to alternate chairing meetings. Daniel Donaldson will serve as the new Secretary. We're confident that these new office bearers, alongside the rest of the Board, will bring fresh ideas and energy as we move forward.

This year, the Board's focus will be on maximising the benefit of the diverse backgrounds and expertise of its members,

¹ It is also published in Issue 9 of Mediation Matters!.

advising the Director and Clinic Coordinator on key issues. Tom and Sneha Selina will work closely with Charlie and Pauline to develop thoughtful agendas and provide pre-reading materials to ensure more informed and productive discussions. We will strive to keep Board meetings focused on key topics, with ongoing updates available via SharePoint for those interested.

Our Board members are also involved in a number of subcommittees, including the Conference Planning Group, Funding Group, Training Group, Document Review Group, and Standards Group. The Board will continue to review and refine the Clinic's strategy to ensure we stay on track to meet our goals.

One significant accomplishment this year was the revision of the Clinic's Constitution by the Document Review Group. The updated version, which better reflects the Clinic's functions and the advisory role of the Board, was approved at the EGM held on the 10th of December. The final document will be available soon.

Looking ahead, planning for the 2025 Mediation Clinic Conference is well underway. The conference is scheduled for Friday, the 28th of March, and the programme is available [here](#).

Additionally, on the 27th of November, Pauline McKay organised a highly successful online conference for the International Mediation Clinic Network, focused on *Clinical Mediator*

Education. The event drew a strong attendance and was a great success.

Finally, we would like to offer our thanks once again to Patrick Scott and Adrienne Watson for their outstanding work in producing the excellent *Mediation Matters!* We deeply appreciate their dedication and contributions.

Wishing you all a happy and productive new year ahead, and we hope you enjoy this first edition of *Mediation Matters!* in 2025.

Tom Scade and Sneha Selina Bonomally
Co-chairs, Mediation Clinic

Tom Scade completed the LLM in Mediation and Conflict Resolution course at the University of Strathclyde in September 2022 and was awarded an LLM in Mediation and Conflict Resolution with Distinction. He is currently an Accredited Mediator with Scottish Mediation and volunteers as a lead mediator with Strathclyde Mediation Clinic, carrying out mainly Simple Procedure related mediations.

Sneha Selina Bonomally is currently a PhD candidate in Environmental and Planning Law at the University of Strathclyde, focusing specifically on the use of mediation as an alternative dispute resolution mechanism. She is a registered practitioner with Scottish Mediation, actively contributing to the Strathclyde Mediation Clinic as a lead mediator, handling Simple Procedure cases. In addition to her mediation work, Sneha is also a qualified architect by profession.

Clinic News



Pauline McKay

Welcome to another new year! It is fantastic to see it getting a bit lighter for longer in the evenings. Roll on Spring!

Undergraduate Intake Training

We have completed intake training with our undergraduate law students who are all very enthusiastic. There is even one student who wishes to become a mediator after being involved in the intake process. The training involves the students getting an overview of the intake process, viewing two mock intake calls and a mock mediation. Students are observed undertaking a call with a party. There is ongoing training where they observe a real mediation, and we keep them apprised of any guidance. This is a valuable part of our cross curricular activities within the Law School and may even encourage students to take mediation electives or apply for our [LLM/MSc in Mediation and Conflict Resolution](#).

Mediation Clinic Board Members

We would like to welcome our new and existing Board members for 2024/2025.

These are Sneha Selina Bonomally (Co-chair), James Claxton, Daniel Donaldson (Secretary), Cordelia Gayfer, Charlie Irvine (Director), Lisl MacDonald, Pauline McKay (Co-ordinator), Oyinkro Olobio, Linn Phipps, Tom Scade (Co-chair), Bronwyn Sutton, Alison Welsh and Abdul Zeeshan.

The Board meets monthly on Zoom. Minutes of our meetings are available to Clinic Members only via [SharePoint](#).

Civil Mediation Council (CMC) Conference

Charlie, Eunice Olatunji, and I were delighted to speak online at the [CMC Conference 2024 A Broader Reach](#) about the impact of the Mediation Clinic here at Strathclyde. Our breakout session generated a lot of questions. Charlie explained that it was about “bringing society into academia and academia into society.” Charlie also spoke in the main session about the findings from his PhD.

International Mediation Clinic Network Conference

A review and papers from the conference can be found elsewhere in this issue. Please check out our [webpage](#) if you wish to access the recording.

Mediace Conference

Charlie and I were invited to speak online about the History of the Mediation Clinic at the Mediace 2024 Conference held by [Palacky University](#) in Olomouc in the Czech Republic. They hoped our experience would inspire the development of mediation in their country. The conference addressed topics such as research, education and mediation practice.

Au revoir

As well as saying goodbye to Rosie in November we have also said goodbye to our student assistant Charlotte. Charlotte was undertaking a 10-week workplace learning placement as part of her LLB. She was a welcome addition to the team, and we wish her all the best in her studies!

Peer Support Sessions

We are busy scheduling our peer support sessions. We encourage all mediators to attend at least one session per year. The Clinic will email sign-up links regularly to members.

5th Annual Mediation Clinic Conference: Growing mediation, your practice and beyond

Our [2025 conference](#) will take place online on Friday, the 28th of March (10:30am – 4:30pm UK Time).

It will be facilitated by [Dr Vanessa Collingridge](#), award-winning broadcaster, author, academic and leadership coach. We are delighted to welcome our Keynote Speaker, [Michael Jacobs](#), who will speak on *The Mediation Dilemma: Resolution or Peace?*

We have a wide range of workshops, and the day will close with a roundtable discussion facilitated by [Victoria Harris](#), Deputy Chief Executive at the Civil Mediation Council and Trustee of Mediation Hertfordshire. We have a fantastic panel discussing *Careers to conflict resolution: journeys to mediation*. The panel guests are:

- [Joanna Gosling](#), who is a Senior Associate Mediator (family and workplace) at Irwin Mitchell and one of the most experienced and best-known rolling news presenters broadcasting in the UK, as BBC News chief anchor;
- [Duncan Jarrett OBE](#), who is a volunteer mediator and trustee for Mediation Hertfordshire (which was awarded the Queen's Award for Voluntary Service during his tenure as chair) and who is a former senior police officer with a background in hostage negotiation; and

- [Kelly Stricklin Coutinho](#) who is a CEDR-accredited mediator and barrister and Chair of the Civil Mediation Council.

And lastly, thank you to all our lead mediators who have been willing to accommodate observers in their recent cases. You have been incredibly welcoming and helpful. It is such a valuable experience for mediators who are new to the Clinic.

Pauline McKay

Co-ordinator, Mediation Clinic

Pauline McKay completed the PG Certificate in Mediation and Conflict Resolution course at the University of Strathclyde in 2020. She is currently an Accredited Mediator with Scottish Mediation, the Clinic Co-ordinator of Strathclyde Mediation Clinic and volunteers as a lead mediator with the Clinic, Lothian and Borders Mediation Service and other Community organisations.

Patrick's Ponderings – How Confidential is Confidential?

by Patrick Scott



Patrick Scott

Confidentiality is one of the fundamental principles of mediation. Parties sign a written Agreement to Mediate containing a confidentiality clause. Does this mean that everything discussed at a mediation is only known to those attending the mediation? Do parties honour the principle of confidentiality? And, if not, what are the consequences?

Let me start this ponder by considering different levels of confidentiality. The mediation is confidential, and private sessions with the parties are also confidential. This second level of confidentiality is of the utmost importance. Nothing disclosed to the mediator in a private session can be disclosed to the other party without the first party's consent. Any failure by a mediator in this regard would constitute a breach of the ethical code of mediators and would be regarded as a serious matter, probably resulting in disciplinary action against the mediator. This is to ensure that parties can have a safe space within which to discuss matters with the mediator without fear of disclosure to the other party.

What of confidentiality within the mediation itself? These discussions are also covered by the confidentiality clause. Is confidentiality ever breached by the parties and, if so, what

are the consequences? I have no doubt that parties discuss what happens at a mediation with their family, friends and colleagues. I conducted a number of mediations involving unpaid parking charges where all the respondents worked in the same building. They all had intimate knowledge of each other's mediations. Is this something that requires censure? Are there deleterious consequences? I think not. There is essentially no way of policing this and I think that we would be naive as mediators to believe that this does not happen. And I think that parties themselves accept that this will happen. Some years ago, I did a mediation involving a housing estate where one of the homeowners had a claim against the developer for defective workmanship. The developer was reluctant to make any settlement offer for fear that other homeowners would raise similar claims. I pointed out to him that the mediation was confidential and the developer laughed and said that he had no doubt that if he made any offer, that would be disclosed to all the other homeowners by the claimant. And he was probably correct.

There are, however, certain parameters of confidentiality that are important. It is important that nothing discussed at the mediation should be disclosed to the court. And this can be policed by the sheriffs. Sheriffs are aware of the confidential nature of mediation, and would stop a party in the event that they started to refer to the content of discussions at the mediation. This is an easy way of preserving confidentiality where it can have an impact on the outcome of the hearing. Insofar as disclosure to other people is

concerned, whilst I don't condone any breach of confidentiality, I accept that it probably takes place fairly frequently and, in most instances, will do no harm. And, if any harm results from such a breach, the aggrieved party will likely have a claim for compensation.

Patrick Scott completed the LLM in Mediation and Conflict Resolution course at Strathclyde University in 2018 and was awarded an LLM in Mediation and Conflict Resolution with Distinction. He is currently an Accredited Mediator with Scottish Mediation, serves on the SLCC Panel of Mediators and volunteers as a lead mediator with Strathclyde Mediation Clinic. He is also on the Board of Trustees of Scottish Mediation.

International Mediation Clinic Network Conference November 2024 by Pauline McKay

Background



Pauline McKay

The International Mediation Clinic Network (IMCN) was established by Strathclyde Mediation Clinic to offer encouragement, support and learning opportunities for Mediation Clinics or Centres for Dispute Resolution. It is open to academics, practitioners, students and anyone interested in mediator education. It creates a platform for sharing best practices, fostering collaboration and promoting the work of Mediation Clinics within academic institutions. Mediation Clinics are increasingly emerging worldwide across a variety of settings.

The group meets periodically throughout the year to showcase workshops and presentations from Mediation Clinics or Centres from around the world.

Introduction

On the 27th of November 2024 the International Mediation Clinic Network brought together 17 delegates from the USA, Ireland, Czech Republic, India and the UK for an engaging evening facilitated by Dr Charlie Irvine.

Charlie opened the session with the evolving role of Mediation Clinics and how they highlighted a blend of various educational philosophies, all aimed at fostering better

mediators who can effectively serve their communities. While Mediation Clinics are still emerging and often linked to legal processes, they represent a promising direction in mediator training and development.

Presentations

Peer Support Sessions – Learning & Growing

Dr Roy Poyntz is an accredited university teacher and teaches on the Negotiation course at the University of Strathclyde. He is a member of the Strathclyde Mediation Clinic and regularly acts as a facilitator for Peer Support Sessions. This presentation draws on the author's research into mediator development.

Roy delivered a detailed exploration of mediator development through the lens of his research via his PhD. He challenged mediators to critically examine their assumptions. Roy introduced the concept of a *Personal Theory of Practice* (PTP), emphasising its role in helping mediators refine their approach through practice and reflection. He also outlined the developmental journey of mediators, from unconscious incompetence to unconscious competence, where mediation becomes fluid and intuitive. His insights underscored the importance of peer support sessions, like those at Strathclyde, in fostering growth and confidence among mediators.

Integrating Ethical Frameworks in Clinic Mediator Education

Saniya Khan, Law Student, School of Legal Studies and Governance, Vidyashilp University, Bangalore, India.

Saniya presented on the integration of ethics into clinical mediator education. She

highlighted the significance of ethical principles in mediation, addressing challenges such as confidentiality versus legal obligations, cultural differences, and virtual mediation complexities.

She proposed an ethics-first curriculum for mediator education, featuring case-based learning, role-playing simulations, and cross-cultural training. She also compared global mediation practices with those in India, advocating for a standardised, ethics-centred framework to elevate mediation quality.

Mediators and the Intake Process

Patrick Scott, Advocate, Lead Mediator, Mediation Clinic at the University of Strathclyde

Strathclyde Mediation Clinic are sent referrals from court with contact details of parties. At that stage an intake call must be carried out with both parties. Patrick explained that the Strathclyde Mediation Clinic follow two ways for conducting the intake process.

Patrick proposed it was more beneficial for the mediator conducting the mediation to carry this out themselves. Patrick firstly explained the process that is carried out by the Mediation Clinic intake workers. He felt it required extra capacity; intake workers were not able to answer all questions and there was a certain amount of duplication involved. Patrick continued to explain the process involving the mediator allocated to the case conducting the call. He explained that the mediator was already part of the process; trust would be developed; it would relieve the work of the intake workers; and it could deal with any pre-mediation issues. Patrick also felt this was good experience for mediators especially when dealing with cases outwith the Clinic that would not necessarily provide intake information.

Students as the Hope of Mediation in the Czech Republic

Paper by Dr Lenka Holá and Mgr. Kateřina Macigová and presented by Mgr. Kateřina Macigová, Year 2 Doctoral Programme, Department of Political and Social Sciences, Faculty of Law, Palacky University in Olomouc, Czech Republic

Katerina explained the situation in the Czech Republic whereby their Law Faculty is perceived by the public as a leading driver and supporter of research and education in mediation. She detailed the university's efforts to integrate mediation into its curriculum, with courses like Mediation Clinic 1 and 2, and highlighted the pivotal role of students in these initiatives.

She also shared the success of projects such as *Mediation in Schools*, which introduces primary school students to mediation as an effective conflict resolution tool. Her presentation reflected the vital role universities and students play in advancing mediation in the Czech Republic.

Conclusion

This first conference set a high bar for future gatherings, showcasing the diversity and innovation in mediation clinics across the globe. It offered a rich exchange of ideas and practical insights into mediation clinic practices worldwide. Delegates left with a deeper understanding of the challenges and opportunities in mediation education and practice. Thanks go to all presenters and participants.

The papers which were presented are published below and are also available on the [webpage](#), together with a recording of the conference.

Pauline McKay completed the PG Certificate in Mediation and Conflict Resolution course at the University of Strathclyde in 2020. She is currently an Accredited Mediator with Scottish Mediation, the Clinic Co-ordinator of Strathclyde Mediation

Clinic and volunteers as a lead mediator with the Clinic, Lothian and Borders Mediation Service and other Community organisations.

IMCN Conference: Peer Support Sessions – Learning and Growing by Roy Poyntz

Strathclyde Mediation Clinic ('the Clinic') provides Peer Support Sessions as a forum for mediator learning, a means to interrogate our experience of mediation and develop as practitioners. We are each encouraged to articulate what we seek to learn from presenting a case in advance of the session. That creates a useful focus, anchoring the reflective process to individual needs and making clear to supporting practitioners where their facilitation – questions, summaries and frames – should be aimed. Many clinic members are graduates or students of the university Master's programme in mediation, who continue to practice with the clinic post-qualification. This offers an unparalleled opportunity to engage – critically and systematically – with theory and practice, and thereby develop as mediators.

The overarching purpose (meta theory) of reflection in general, and Peer Support Sessions in particular, is the development for each of us of a Personal Theory of Practice (PTP).

Personal Theory of Practice is a term coined by Argyris and Schön – two social psychologists who wrote extensively about professional development and reflective practice. A theory of practice enables us to understand the frames we use as practitioners to guide our decision making in response to the interaction playing out in mediation. Professional development is typically measured by accrediting bodies as attendance at CPD sessions – the counting of *inputs*. An ability to clearly articulate a PTP is a measure of *output*,

a better indication of development and a hallmark of the professional mediator.

In our early development as mediators, we focus on embedding what was acquired in basic training, learning good habits, recognising patterns in mediation and then selecting appropriate techniques and interventions. There appear to be right and wrong ways to approach mediation, and we seek to emulate more experienced practitioners. Valuable as such learning is, we become aware that mediators do not respond uniformly – there is clearly a personal element to practice. Moreover, we begin to recognise a tension between espoused theory – what we learn in foundational (40 hour) training – and theory-in-action – what we actually do in the mediator's chair.

Developing a PTP draws on theory to examine practice, to build an updated theory which in turns informs and shapes our practice. Thinking about practice in the light of theory acquired on the Master's course is a useful point of departure. Unpacking the theory behind the model learned in initial training is a helpful first step. Take, for example, the purported clash between a problem solving and relational approach to mediation.¹ What does our knowledge of mediation models tell us? How does our experience of mediation – particularly in different fields – inform us? Where do our personal values and beliefs lead us?

Professional learning has been conceptualised as taking place at two levels: single loop and

¹ Wall, J. and Kressel, K. (2012) 'Research on Mediator Style: A Summary and Some Research Suggestions', *Negotiation and Conflict Management Research*, 5(4), pp. 403–421. doi: 10.1111/j.1750-4716.2012.00117.x.

double loop.² Reflection, centring on **what** and **how** questions, operates as single loop learning, 'problem solving, identifying, and correcting errors'.³ Double loop learning involves **why** questions – testing assumptions – and **who** questions - understanding the values, beliefs and expectations we each bring to the table.⁴ With the support of fellow practitioners, it is possible to explore both levels in a Peer Support Session.

We all have a PTP – and operate within it – even those who rely on intuition. As Kressel puts it,⁵ we start with simple personal schema and progress (hopefully) to complex schema. The former are less stressful – 'just follow the process' – the latter are richer but more challenging as there are many more options. A PTP is always a work in progress – theory moulding practice, moulding theory. The path to building a PTP commences with an awareness that we operate under one.

Approaches to building a PTP

Learning is best facilitated by being unsettled, when we are obliged to bypass the shibboleths of practice – aka espoused theory. Here are some exercises that might prompt that felicitous state.

Metaphors

We use metaphors frequently to explain or frame things when we communicate with others. They encompass a wealth of meaning that is fruitful to unpack. For instance:

What metaphor do you use to explain mediation (or the role of yourself as a mediator) to a participant with no previous experience? How does that sound to the rest of the reflective group? Unpack the meaning behind your choice. Would you use the same metaphor in a different field of mediation?

Would you describe mediation as a facilitated negotiation or a conversation? Might your choice of descriptor be contingent on context? What does this choice reveal about your view of the social interaction that takes place in mediation?

Underlying Assumptions

Do we have the same goals and objectives in mediation as our colleagues? A research paper by Zarankin et al⁶ explores this subject by focusing on four topics:

- *The purpose of mediation*
- *The goals of mediation*
- *The role of the mediator*
- *Criteria for success*

Researchers developed a questionnaire exploring these topics which was used to survey mediators individually. However, these questions can also be used as a group reflective exercise – particularly with a diverse group – to unearth differences which can prompt learning. Do the differences arise from context – say, family versus commercial mediation – or from our personal schema?

² Argyris, C. (1991) 'Teaching Smart People How to Learn', *Harvard Business Review*, 69(2), pp. 99–109. doi: 10.1162/152417302762251291.

³ Cunliffe, A. (2004) 'On Becoming a Critically Reflexive Practitioner', *Journal of Management Education*, 28(4), pp. 407–426. doi: 10.1177/1052562904264440.

⁴ Poyntz, R. (2018) 'The enactment of workplace mediation in British Universities: A study of mediator meta-theory and the integration of practice'. Sheffield.

⁵ Kressel, K. (2013). How do mediators decide what to do: Implicit schemas of practice and mediator decision making. *Ohio St. J. on Disp. Resol.*, 28, 709.

⁶ Zarankin, A., Wall, J. and Zarankin, T. G. (2014) 'Mediators' Cognitive Role Schema', *Negotiation and Conflict Management Research*, 7(2), pp. 140–154. doi: 10.1111/ncmr.12030.

You can of course invite the group to complete the questionnaire in advance and then discuss when you assemble. What might be more fun is to pick a selection of questions and pose these – in turn – when gathered. Have participants line up according to their answer – from one to six – and then have a facilitator quiz them (individually but gently) as to their reasoning. When complete, offer the group the chance to change their answers.

Critiquing Theory

Does theory line up with our own experience of practice? Taking a research paper and examining it critically can sharpen our own reflections – particularly where we might disagree with their findings. For instance:

In a study of community mediators Stokoe and Sikveland⁷ found that mediators formulate solutions and then use Solution Focused Questions to guide participants to this end.

Rothman⁸ in the Reflexive Mediator rejects the notion of neutrality – “in many ways the field of mediation has been built on the ideal of a neutral, objective third party, what is the field without it?”

Do sweat the small stuff

We often focus – in reflection – on the grand moments in mediation – the seemingly intractable problems, the dramatic breakthroughs. However, we shouldn't overlook learning from those micro moments that occur. Why did I turn to one party and not the other? Why did I choose to intervene (or not)? Who did I call upon to speak first? What do these choices suggest about our personal schema?

Roy Poyntz, the author, can be reached at roypoyntz@googlemail.com

Dr Roy Poyntz completed an MSc in Mediation and Conflict Resolution at the University of Strathclyde in 2012 before completing a PhD at the University of Sheffield in 2018, researching mediator practice as social interaction. Nowadays, his practice is largely focused on the field of Special Education Needs (SEN) mediation. He has completed 1300 mediations.

Roy is an accredited university teacher and teaches on the Negotiation course at Strathclyde. He is a member of the Strathclyde Mediation Clinic and regularly acts as a facilitator for Peer Support Sessions.

⁷ Stokoe, E. and Sikveland, R. (2016) 'Formulating solutions in mediation', *Journal of Pragmatics*. Elsevier B.V., 105, pp. 101–113. doi: 10.1016/j.pragma.2016.08.006.

⁸ Rothman, J. (2014) 'The Reflexive Mediator', *Negotiation Journal*, (October), pp. 441–453.

IMCN Conference: Integrating Ethical Frameworks in Clinical Mediator Education

by Saniya Khan

Clinical mediator training prepares prospective mediators for resolving conflicts using mediation techniques, with an emphasis on practical experience in real-life clinical environments. A clinical mediator is an impartial and fair professional who is trained to help resolve conflicts. This study investigates how ethical principles, including confidentiality, neutrality and informed consent, are incorporated into the training of clinical mediators. Since mediators frequently deal with complicated and emotionally intense scenarios, it is crucial to incorporate ethical training to guarantee fair and equitable results. Clinical mediator programs can promote ethical sensitivity and improve decision-making by integrating case-based learning and reflective practice. This study argues for a curriculum that prioritises ethics as a fundamental component in mediator training, ensuring that mediators possess both practical abilities and a solid moral direction to navigate complicated cases.

I. Introduction

The study *Integrating Ethical Frameworks in Clinical Mediator Education* reveals the potential of ethics in mediation practice. The effectiveness of communication as a conflict resolution technique depends on the mediator's capacity to maintain objectivity, ensure confidentiality, and obtain informed consent. The essence of the study is the ethical principles, which are considered as the basic element in mediators' training. In light of the fact that disputes are becoming more

complicated, and mediators are confronting diverse problems, this research will highlight the connection between the ethical principles and mediation practice. Since mediators handle issues that are emotionally charged, following ethical guidelines is crucial to maintaining the impartiality, credibility and confidence of the mediation procedures. This study intends to improve mediation's effectiveness and recognition as an alternative dispute resolution technique by reflecting on these ethical issues. Mediators deal with emotionally loaded cases, and thus adherence to ethical principles is essential for upholding the fairness, trust, and credibility of the process. It has been shown that through these principles parties can trust and be sure of fairness among each other. In the next stage, the study investigates the existing teaching methods in mediator training, pointing out the deficiencies in the ethics-centred instruction. The paper presents a curriculum that includes ethical sensitivity into mediator education to overcome these deficiencies and to provide a guideline for mediators to deal with complex disputes in an honest way.¹

The paper explores the aforementioned debates in depth, further analysing the cross-cultural and jurisdictional differences in ethical standards, which in turn stresses the adaptability of the training programmes and its inclusiveness. It thus points out the difficulties in conducting ethics-based teaching and makes some suggestions about how to work towards the consistency and the availability to all

¹The Importance of Ethics in Practice of Mediation

https://ink.library.smu.edu.sg/context/sol_research/article/5776/viewcontent/03_The_Importance_of_Ethics_in_the_Practice_of_Mediation.pdf

people in mediator education. Drawing attention to the potentially empowering outcomes of ethical training, this study argues for such instruction to become integral to all forms of mediator education worldwide.

II. Key Ethical Principles in Mediation

In mediation, three core ethical principles, namely confidentiality, neutrality and informed consent, serve as the foundation for effective and just processes.

a. Confidentiality

Confidentiality in mediation is the most crucial ethical principle. It is about the assurance that everything which has been shared during mediation will not be disclosed to others outside the mediation even if the law requires it. Such a principle gives the parties a chance to communicate without barriers, in a safe zone where they can come up with an innovative solution without worrying about the consequences. This is about the protection of sensitive information, with open discussion between the involved parties being the target. The legal and ethical implications in confidentiality emerge, when trying to find a balance between keeping trust and the possible legal obligations that might take precedence over confidentiality. To give an example, in situations where the parties might be endangered (such as domestic violence) or illegal activities are discovered, the mediator could be forced to break confidentiality. The situations then become ethically difficult because it is a question of breaking confidentiality for the sake of the safety of one of the parties or the integrity of the process.²

b. Neutrality

Neutrality is one of the most important ethical principles that mediators are obligated to maintain in order to keep the mediation process fair. Neutrality refers to the mediator's role as an impartial third party who does not take sides, favour one party over the other, or impose their own views or interests on the parties involved. A neutral mediator has the task of mediation and communication between the participants and aims to find common ground and mutually agreeable solutions. Neutrality of the mediator allows the establishment of trust by guaranteeing that everyone is listened to impartially. However, neutrality can be difficult to sustain, especially when there is an imbalance of power or resources in one way or another. For example, in a workplace mediation where an employee may be in a position of vulnerability in relation to their employer, the mediator may find it difficult to remain neutral if the power imbalance is too stark.³ In these situations, it is important for the mediator to try and correct the power imbalance between the parties, but without appearing to take sides or to be biased. Further complicating the issue is the potential of unconscious bias, whereby a mediator can inadvertently give one party an advantage over another, through their own personal positive or negative bias. As an intervention to avoid this, mediators must be self-reflective and make a genuine ongoing effort to identify and push back against potential biases that may contaminate their neutrality. There may also be situations where neutrality is tested by the mediator's role in addressing the emotional dynamics between the parties. For example, if one party

²Confidentiality of the Mediation Process and Ethical Dilemmas
<https://adryearbook.tsu.ge/index.php/ADR/article/view/7081>

³Neutrality In Mediation: A Study of Mediator Perceptions
<https://lr.law.qut.edu.au/article/download/88/83/88-1-168-1-10-20120619.pdf>

is controlling or aggressive and domineering, the mediator might have to intervene and control behaviour without appearing to side with one party or take a position on the individuals involved in the conflict. Essentially, neutrality in trust-building is fundamental, but needs to be carefully managed, perpetually monitored, and the balance tends to ensure that all participants are treated fairly and the process does not drift too far one way or another.⁴

c. Informed consent

It is an ethical cornerstone in mediation that relates to making sure that all participants are fully informed and voluntarily consent to the mediation process. It entails informing participants of how mediation works, what mediation can achieve, the potential result of mediation and also participants' rights and obligations. The purpose of informed consent is to ensure that each participant is endowed with the autonomy to give an informed and free decision on whether to engage in the mediation.

Informed consent encompasses several key elements, including the mediator's role within the mediation, the voluntariness of mediation, the informality of the process and the participant's right to withdraw from mediation at any time. It includes the mediator informing the parties that he or she does not have decision making powers and that any resolution is a product of the mutual agreement between the parties. Ensuring that all parties fully understand the process is critical because mediation is a consensual process; there can be no mediation without the voluntary and informed participation of all

parties involved. In practice, the validity of informed consent can be assessed when there is a suspicion of a lack of understanding on the part of the participants, or as it relates to the possibility of coercion, under which they are unable to give an affirmative answer. For example, if there is a power imbalance in family mediation, where one partner is coercive and attempts to pressure the other into accepting mediation or an agreement without fully comprehending what it means. At such moments, the mediator needs to properly consider whether both are consenting voluntarily to the process and whether they understand what they are agreeing to. Similarly, in workplace disputes, an employee may feel obliged to participate in mediation due to the pressure of an employer, even though they may not fully understand the voluntary nature of the process or their rights to withdraw.⁵ For example, consider a mediation scenario in which a participant is not fully aware that any agreements reached in mediation are not legally binding unless formalised in writing. The mediator must ensure that both parties understand this distinction before proceeding. If a participant is feeling threatened or unable to grasp the process (e.g. in situations of disabilities or the lack of ability to communicate), the mediator should ensure that there is informed consent in an appropriate way. This may include offering additional assistance, such as consulting a lawyer, to ensure that the parties are clear on their legal position. In certain instances, informed consent may be further examined when parties don't seem to appreciate what it means to be able to withdraw from the mediation. The mediator

⁴ *Impartiality and Neutrality in Mediation*

<https://ojs.maynoothuniversity.ie/index.php/jmaca/article/download/57/50/206>

⁵ *Informed Consent in Mediation: A Guiding Principle for Truly Education Decision Making*

https://heinonline.org/hol/cgi-bin/get_pdf.cgi?handle=hein.journals/tnd174§ion=26

should state explicitly that participation in mediation is voluntary, and either party may withdraw at any time, without any penalty. This is of particular significance in sensitive situations where one party may be coerced to continue participation despite negative consequences.

III. Integrating Ethics into Mediator Education: A Curriculum Proposal

In order to guarantee that practitioners are equipped to deal with the ethical issues involved in practice, their training should be integrated with ethics at all levels. This section proposes ways to effectively integrate ethics into clinical mediator training.

1. Foundation of Ethical Principles

The programme training must start with preparing students in the main ethics of mediation – confidentiality, neutrality and informed consent. These principles should not be understood only on a theoretical level, but also in a practical context.

Ethics-First Approach

Ethical considerations should be introduced from the earliest stage of mediator education as a guide through all future learning and practice. This method enables the students to learn that the ethical element is a permanent one in the mediation process.

2. Case-Based Learning and Simulations

Integration of case-based learning provides the students with the chance to actively participate in solving real-world ethical issues. Both past experience and simulations can be used to allow students to determine how ethical principles play out in a practical setting.

Role-plays and Scenarios

Students may engage in simulated mediation practices, role-playing both parties and the mediator. These tasks may expose the parties to ethical questions (for example, how to remain neutral in situations with great power imbalance or how to assure confidentiality in situations where public safety is in danger).

Case Study Discussions

Case studies can be grouped for analysis, inviting students to reflect on issues of what is ethically right, legally permissible, and what they would do in the same situations. Experiences of peer discussions contribute to the development and improvement of ethical standards.⁶

3. Reflective Practice

Mediators have to engage in reflective practice to develop their understanding of ethical deliberation. This phenomenon encourages the student to think about what they did, how they chose to do it, and how they felt after a mediation.

Supervision by Experienced Mediators

Mentors with experience should be given the role of providing technical and ethical advice to students. This supervision allows students to investigate ethical issues and to receive insights into the experience of professional mediators.

Self-Reflection and Journaling

Encouraging students to keep reflective journals will enable them to describe their own mediation experience, difficulties and ethical dilemmas in order to improve their own self-awareness and knowledge of ethical issues.⁷

⁶ Clinical Legal Education through Mediation Centres in Law Schools: An Analysis

<https://www.researchgate.net/publication/346341098>

⁷ The Importance of Reflection as a Mediation Professional <https://adr-ontario.ca/reflection/>

4. Cross-cultural Competence

Mediator education for cross-cultural competence, is an essential component of mediation in order to effectively mobilise and apply ethical principles in diverse cultural contexts.

Understanding Diverse Ethical Norms

It is important that students are exposed to how different cultures manage mediation and conflict resolution. Ethical values such as impartiality and confidentiality may differ across jurisdictions or cultures, and so it is crucial to equip mediators with a capacity for flexibility and sensitivity to such differences.⁸

Adapting Ethical Principles

Training should focus on how mediators can balance the core ethical principles with the cultural norms of the parties involved, maintaining fairness without imposing one's own cultural or ethical standards.⁹

5. Online Mediation

As mediation increasingly takes place online, mediator training should include the ethical challenges specific to virtual mediation environments.

Confidentiality in the Digital Age

Mediators should be trained to understand the importance of the security of digital platforms and confidentiality measures. They should ensure that all parties are aware of how their data is protected and take steps to minimise the risk of data breaches.¹⁰

Ensuring Informed Consent in Virtual Settings

In virtual mediations, it is paramount to guarantee the understanding of the whole process by all participants, of their rights and of their capacity to interrupt at absolutely any moment. Mediators need to be trained to verify comprehension and receive informed consent within an online context.¹¹

IV. Evaluation and Continuous Improvement of Ethics Training

For the education of mediators to be effective, there needs to be some mechanism in place for assessing and ensuring continued improvement of ethics training. Ethical competence is not a fixed condition but rather a fluid capacity that must be adjusted continuously as mediators face new challenges and contexts.

A central issue of this process is the continuous evaluation of ethical competence during training. Continuous assessment develops mediation training and a deeper understanding of ethical principles, as well as improving decision-making abilities. One of the effective strategies includes peer/supervisor feedback, in which both positive and negative criticism from the superiors and peers helps the trainees to identify the areas for improvement in their ethical reasoning and application. Other activities such as practical simulations, for example, role-playing and live simulations, offer the potential to examine how trainees cope with ethical issues in real decision-making situations.¹² These techniques

⁸ *Mediation Ethics: Ensuring Fairness and Neutrality in Conflict Resolution*

<https://themediationgroupinc.com/mediation-ethics/>

⁹ *Ethical Dilemmas in Conflict mediation*

<https://psico-smart.com/en/blogs/blog-ethical-dilemmas-in-conflict-mediation-11291>

¹⁰ *Mediators Ethics Guidelines* <https://www.jamsadr.com/mediators-ethics/>

¹¹ *Ethical Guidelines for Mediators* <https://lawcouncil.au/publicassets/a44d140e-0994-ea11-9434-005056be13b5/Ethical%20Guidelines%20forf>

¹² *Basic Mediator Training Curriculum* <https://rm.coe.int/basic-mediator-training-curriculum-en/1680ac4905>

ensure that ethical principles are not just abstract but implemented in practice.

Perhaps the most important factor is the requirement for ongoing professional development after certification. Mediators need to be kept informed of the changing ethical expectations, new societal concerns and the development of mediation practice. Workshops and seminars conducted by professionals can keep mediators up to date with innovations, for example, the impact of technology on confidentiality, or with ethical dilemmas related to cross-cultural mediation. Ethical refresher courses are imperative and provide mediators with the opportunity to review basic principles and remain up to date on ethical principles. In doing so, through both evaluative and developmental processes, mediator education is able to take on the challenges of contemporary mediation, where, as a condition of entry, mediators are trained to maintain ethical integrity in practice.¹³

V. Global vs. Indian Approaches to Ethics in Mediator Education

Ethical frameworks for mediator education vary widely across the world and in the Indian context, due to a variation in institutional settings, ethnocentric pressures and the extent of professionalism of the practice of mediation. Although countries such as the USA, the UK and Australia have been able to implement effective ethical principles in the training and application of mediation, India's strategy is still evolving.

Globally, countries with established mediation systems have developed codes of conduct and regulatory oversight. For instance, the USA applies the Model Standards of Conduct for

Mediators, a document that clearly sets out principles, like neutrality, confidentiality and informed consent. Mediators are required to have extensive training, often provided by accredited organisations, to guarantee best practice in mediation. Likewise, in England and Wales, the Civil Mediation Council provides regulations for ethical responsibility, and mediator training consists of practical tutorial experience with mediation in the field after careful consideration of the ethics of both hypothetical issues, and those arising in real life. The issue of cultural competence is a key aspect of the Australian population because Australia is a multicultural society. Mediators are taught to tailor ethical approaches to the cultural and social context of the interacting parties.¹⁴

In contrast, the terrain of Indian mediation is formed by both ancient and modern mediation practice. While the Commercial Courts Act, 2015, and related legislation seek to promote mediation, a comparable national level framework for ethical training is currently lacking. Mediator education in India is fragmented and ethical content (confidentiality, neutrality, reciprocity, and respect) is rarely delivered uniformly within faculties. In addition, India's cultural heterogeneity and community mediated dispute resolution processes frequently involve ethical issues. For example, mediators within rural environments adopt traditional practices, making compliance with neutrality and confidentiality more difficult. Despite these differences, there are shared priorities. Both from a global and Indian viewpoint, the importance of cultural sensitivity and identification of a local adaptation of ethical

¹³ *Essentials qualifications and Training for Mediators in India*

<https://www.mplegalfirm.in/2023/07/essential-qualifications-and-training.html>

¹⁴ *Ethical Standards for Mediators* <https://expert-evidence.com/ethical-standards-for-mediators/>

principles to the local environment is highlighted. Nevertheless, India poses a unique challenge of how to address the power disequilibrium based on hierarchy, while ensuring confidentiality, voluntariness and community participation in community-based projects. In order to fill these gaps, India could benefit by implementing a national ethical framework for mediators, using standards from across the world but retaining room for cultural and regional adaptation. Standardised training and modes of ongoing professional development will also bolster the ethical foundation of mediation in India, and more closely approximate India's standards to those accepted internationally.¹⁵

Conclusion

Ethical frameworks within clinical mediator education are imperative to maintain the legitimacy, credibility, and utility of mediation as a conflict resolution process. Through the instilling of core values of confidentiality, neutrality and informed consent at the level of the mediator's training, potential mediators will be better prepared to manage very emotionally charged and complex disagreements. An evidence-based, ethics-grounded curriculum, inclusive of learning-by-doing, in the form of case-studies, simulations and reflective practice, results in the

development not only of ethical awareness, but of decision making capacity appropriate to everyday situations. Also, the consideration of cross-cultural differences and the virtual mediation-related issues raise the issue of adaptive and inclusive ethical education.

To both comply with ethical considerations and provide some consistency, an internationally based ethical mediation education can also be a model to which regional and cultural differences can be tailored. Ethical competence in the current practice of mediation is deeply embedded in a process of continual evaluation. By virtue of the focus on ethical education, mediators can teach trust and encourage the creation of outcomes which are fair and equitable, and make mediation an established and a fair way of resolving disputes. At the end of the day this integration reaffirms the mediator's adherence to neutrality and impartiality, and the ethical primacy of neutrality and impartiality is in all mediation processes at every step.

Saniya Khan is a law student at the School of Legal Studies and Governance, Vidyashilp University, Bangalore, India.

¹⁵ *Essential Qualification and Training for Mediators in India*
<https://www.mplegalfirm.in/2023/07/essential-qualifications-and-training.html>

IMCN Conference: Mediators and the Intake Process

by Patrick Scott

The Strathclyde Mediation Clinic ('the Clinic') deals with mediations referred by the Court and the first stage in the process is that an intake is required. The parties have to be contacted to ascertain whether they agree to mediation, and certain details have to be obtained from them.

There are two options for the intake process, both of which are followed in the Clinic. The intake can either be done by a third party or by the mediator who will be doing the mediation. This presentation explains the difference between the two processes, and the benefits which I believe arise when the intake is done by the mediator.

Intake by Third Party

1. This requires extra capacity in the Clinic, as someone other than the mediator is required to do the intake.
2. This person is not always in a position to answer all of the questions that may be raised by the parties, particularly with regard to the process. The reason for this is that mediators follow different procedures – some mediators like to keep the parties in a joint session, whilst others prefer to have private sessions after the initial joint session. This is not something that the third party would know as they would not be aware of who the mediator is going to be at the intake stage.
3. There is a certain amount of duplication, particularly where the mediator likes to commence the mediation with private sessions.

Intake by Mediator

1. The intake becomes part of the mediation process.

2. This helps the mediator to build up trust with the parties.
3. It relieves the workload of the intake mediators.
4. The mediator can deal with all of the pre-mediation issues that may arise and answer any questions that the parties may have about the mediation process.
5. It provides good experience for the mediators and helps them to prepare for private practice as mediators.

Content of Discussion by Third party

The third party would usually canvas the following points with the parties:

1. The details of the case and the court.
2. The contact details of the parties.
3. The amount of the claim.
4. The basic details of the claim.
5. The third party would basically explain what mediation is, and the process that will likely be followed.

Content of Discussion by Mediator

The mediator would deal with the following additional matters:

1. The mediator will discuss the case in greater detail with the parties.
2. Settlement options can be explored with them, even at this early stage of the process, to try and determine a Zone of Potential Agreement.
3. The mediator can explain the process that he or she will follow.
4. The mediator can check that the parties are familiar with Zoom (if the mediation is going to be online) by using Zoom for the intake.
5. The use of breakout rooms can be explained.

6. Even at this early stage, the mediator can start doing reality testing, about such things as the cap on expenses in Simple Procedure (small claims) matters.

Conclusion

In summary, I believe that having the mediator do the intake by having a pre-mediation meeting with the parties has advantages over having third parties do the intake.

Patrick Scott completed the LLM in Mediation and Conflict Resolution course at Strathclyde University in 2018 and was awarded an LLM in Mediation and Conflict Resolution with Distinction. He is currently an Accredited Mediator with Scottish Mediation, serves on the SLCC Panel of Mediators and volunteers as a lead mediator with Strathclyde Mediation Clinic. He is also on the Board of Trustees of Scottish Mediation.

IMCN Conference: The Students as the Hope of Mediation in the Czech Republic

by Lenka Holá and Kateřina Macigová

Introduction

This paper discusses mediator education at universities in the Czech Republic. It focuses on the situation at law schools and their attention to mediation and, in particular, the mediation teaching programmes at the Faculty of Law of Palacký University in Olomouc.

The main part of the paper discusses the Mediation Clinic, which was introduced in the 2022/2023 academic year and is an important part of mediator education at this faculty.

Another leader in the field of mediation is the Centre for Conflict Resolution and Mediation, which covers all mediation activities - theory, research, practice and education. The last part is devoted to the annual presentation of an international scientific conference, with MEDIATION 2024, being held this year for the 7th time and is the only scientific conference in the field of mediation in the Czech Republic.

Situation in the Czech Republic

In the Czech Republic there are four faculties of law (Prague, Plzeň, Brno and Olomouc). In a diploma thesis entitled *Education in Mediation*, a student concluded that the faculty of law in Olomouc is a leading driver and the biggest supporter of research and education in mediation, whilst the faculty of law in Prague (the Charles University) pays more attention to competitions in mediation and they are very successful. The Faculty of Law in Olomouc focuses mainly on science and research, education and practice.

Courses and programs taught in the Faculty of Law in Olomouc

The course *Out of court dispute resolution methods*, focuses on gaining knowledge of alternative dispute resolution methods, that build on consensus and conciliatory approaches and the emphasis is on an interdisciplinary approach. The main aim of the course *Conflict resolution and mediation*, is to introduce the nature and basic characteristics of conflicts, people's reactions to them and the possibilities of resolution. The main focus is on mediation. *Negotiation* is also offered, with the aim being to gain knowledge of negotiation and its principles, to be able to choose an appropriate negotiation style in relation to the subject and to acquire basic negotiation skills. The most important course offered is *Mediation Clinic*.

Mediation Clinic

Mediation Clinic¹ is taught only in Olomouc. It was established in 2021 as a part of the Clinic legal education. Currently the Mediation Clinic (MC) cooperates with Clinic legal education and other regional mediation centres. The MC teaches students how to structure and conduct the mediation process, using in particular active listening and negotiation techniques. MC consists of two courses.

In *Mediation Clinic 1* the main aim of the course is the orientation of students in methods of ADR and its possibilities, as well as the promotion and development of practical mediation skills and knowledge. The course includes principles of mediation, the mediation

¹ The study agenda of the Faculty of Law of Palacký University.

process, the characteristics of relationships, applicable areas of mediation, ethical principles and the legal conditions relating to the practice of mediation in the Czech Republic. This is to enable students to establish a respectful and trusting relationship with the parties to a dispute, navigate their conflict situation and plan an appropriate course of action based on the subject matter of the dispute and the parties' needs and interests.

In *Mediation Clinic 2* the main aim of the course is to provide mediation in real cases and to gain competence for independent mediation in future practice. So, students select a case (based on the criteria) suitable for mediation and in collaboration with the teacher conduct the mediation practically. They work on real mediation cases – selection of a case suitable for mediation, preparatory phase, mediation itself, evaluation and conclusion. They learn how to structure and conduct the mediation process using in particular active listening and negotiation techniques.

The Center for Conflict Resolution and Mediation

The newly established Center for Conflict Resolution and Mediation² has been part of the law faculty since 2023 and is another pioneer in the area of 'education and mediation'. The Center supports all mediation-related activities such as science, research, education and practice. Students play a very important role, because they voluntarily participate in the activities. One of the main projects of the Center is an experiential-educational project, which is *Mediation in Schools*.³ Students from the faculty of law in Olomouc visited one of the primary schools in

Olomouc, specifically the 5th class and introduced them to mediation. The workshop was divided into 3 blocks, whereby the first and the second was to introduce dispute resolution and in the third block, to practise mediation, when children tried the mediation process. The feedback of the class teacher was very positive, saying that children had gained knowledge of what mediation is. They learnt that it is a better way to resolve a dispute than going to the court. Also, they understood that people may have different perspectives on a life situation. The students are involved in many activities, for example with the conferences, where students help with the preparation and organisation.

International Scientific Conference in Mediation

This is the only international scientific conference in the Czech Republic,⁴ with the 7th annual conference taking place this year. The conference has three sections. The first is theory and research, the second practice and the third an education and student section. The third section has been included for the first time this year, with the content being *student mediation*. There will be discussions about future education in mediation with the view of students from different faculties of law and other professionals.

Conclusion

Some of the faculties of law in the Czech Republic are dedicated to education in mediation. The leader is the Faculty of Law of Palacky University in Olomouc. A number of courses focus on mediation, with the main one being *Mediation Clinic*. Students promote and develop practical mediation skills, mediation

² Hrudníková, Eva. Chceme zkvalitňovat výuku, poskytovat mediační služby i provádět výzkum. 8.11.2023. Žurnál Online.

³ Hrudníková, Eva. Studenti práv budou učit školáky řešit konflikty pomocí mediace. 8.12.2024. Žurnál Online.

⁴ Faculty of law in Olomouc. Mediation.

knowledge, the principles of mediation and they also work on real mediation cases. An important part of the faculty is the newly established Center for Conflict Resolution and Mediation, where students voluntarily participate in the activities and projects. One of the main projects was mediation in schools. Students also help with organisation and preparation of conferences, for example the upcoming International Scientific Conference on Mediation.

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Lenka Holá is an Associate Professor at the Faculty of Law of Palacký University Olomouc, where she focuses on the theory, research, and teaching of mediation. Additionally, she has over twenty years of experience as a practising mediator in civil, family, criminal, and consumer disputes. She served as a member of the advisory body to the Minister of Justice of the Czech Republic for alternative dispute resolution. She was actively involved in the legislative process of the Mediation Act and the preparation of the mediator exams. Currently, she serves as the Chair of the Examination Committee for mediator exams under the Mediation Act and is a member of the Mediation Working Group of the Ministry of Justice of the Czech Republic.

Kateřina Macigová is a second-year doctoral student of the European and International Law program at the Faculty of Law of Palacký University in Olomouc. In her doctoral research, she examines mandatory mediation and its aspects in selected EU member states. She completed a course at Harvard University on "Child Rights and Child Protection." Additionally, she is involved as a volunteer in the development of the newly established Centre for Conflict Resolution and Mediation.

Mediation Mulligans

by Alan Jeffrey



Alan Jeffrey

In this column, mediator Alan Jeffrey candidly shares examples of the mistakes, missteps, and gaffes he has encountered on his mediation journey – and, most importantly, the lessons that he has learned from them!

Michael Lang, award-winning mediator and writer, gave a wonderful presentation at last year's Scottish Mediation Conference, an event I would have loved to attend in person were it not for the untimely arrival of the soul-sapping symptoms of a Covid infection. Luckily, the presentation – primarily focused on the art of reflective practice for professional mediators – translated well to being viewed online from the confines of my bed. Sporadically cocooned in my dressing gown, I attempted to listen intently whilst simultaneously divining whether my current body temperature was positive or minus 100 degrees Celsius.

I am hesitantly confident that I did not hallucinate Michael speaking passionately about examining one's practice so as not to keep repeating the same techniques, assumptions, and practices *ad nauseam*. So, when I had regained the ability to use my brain a significant number of days later, I accepted the invitation to reflect on my own repetitive routines.

I have many examples of problematic practices that seem to rear their ugly heads with predictable consistency. This remains true despite self-identifying as a reflective practitioner – I do not shy away from torturing

myself as I claw my way out of the mire of predictable consequence time and again. If, as Google leads me to believe, Einstein truly did say, *"Insanity is doing the same thing over and over again and expecting different results,"* then I must be one stop away from the asylum as I fatiguingly refuse the call of self-improvement and embrace my own inescapable Groundhog Day. Such self-deprecating wealth can be found in this topic that I find myself tempted to list them here. In fact, why not? I will limit myself to three, for fear of outing myself as a moron:

[A Sisyphean Nightmare – Alan's Continual Errors: A Seriously Condensed List](#)

[1. Not conducting pre-mediation meetings on Zoom](#)

As sure as the sun rises in the East, the opening ten minutes of every online Zoom mediation are not dedicated to a carefully practiced recitation of the mediation process, but instead to a frantic fixing of IT faults. Despite claims to the contrary, an overwhelming number of participants are not intimately familiar with the quirks of Zoom meetings, making delays inevitable. A simple solution for this – one that has been recommended to me on an embarrassingly frequent number of occasions – is to conduct

the pre-mediation meetings on Zoom itself, rather than by phone, to iron out technical difficulties in advance. Great advice...which I have followed exactly zero times.

2. Not having tissues at hand for in-person meetings

“What do you do if someone cries in a mediation?” A common question I receive from practitioners earlier in their mediation journey than myself. My response typically sees me monologuing about the importance of authenticity, emotion and understanding, painting myself as a Zen-like monk, undisturbed by participants’ emotional outbursts. In reality, when someone cries during a mediation, I am usually scrambling around looking for the tissues that I have once again forgotten to buy despite chastising myself repeatedly. This is typically solved in the moment – not gracefully, I add – by running to a nearby toilet to retrieve a depressing wad of crumpled toilet paper.

3. Not going to the toilet before a mediation starts

Speaking of toilets... between wrestling with Zoom and poring over intake forms, I inevitably find myself doing an Elvis-worthy shuffle about 60 minutes into any mediation session. This may seem like an inconsequential ‘problem,’ but I can assure you that when you are concerned with your bladder, active listening, empathy and curiosity become significantly more challenging.



Photo by [Jelleke Vanooteghem](#) on [Unsplash](#)

WHEN WILL HE LEARN?

These repeated regrets not only make a mockery of my own abilities to adapt and learn, but also spit in the face of the Mediation Clinic’s systems and the fine people who have put them in place. I have now, on an embarrassingly large percentage of the clinic’s post-mediation reflection forms, lied – certainly even to myself – by writing something to the effect of, “I did this thing again – next time I won’t do that thing,” knowing, whether consciously or subconsciously, that I was absolutely going to do that thing again.

Here, I find myself wanting, as a good mediator surely would, to reframe the lack of learning and adapting as a positive – perhaps as evidence that I do not sweat the small stuff and instead focus my energy on investing in the conflict at hand. Yet, that wouldn’t be honest. Truthfully, I have very little idea why I keep making these and other mistakes on an ongoing basis.

I *do* know that the reason I am so aware of them – beyond their continual recurrence – is that I *have* taken up the invite from Michael, as well as my role-models, peers, and colleagues, to strive to be a reflective

practitioner. I may not always follow through on what I say I will do in my reflections, but I genuinely don't lie on those forms. In the moment, I truly believe I will make those changes, and hey, maybe one day I will!

Michael Lang says, *"Reflective practice is an ongoing process, not a one-time event. It's a continuous spiral of learning and development that unfolds throughout a practitioner's career."* Which is extremely lucky for me, because at 39 years old, unless a speeding bus has any contrary ideas, I plan to be alive and practicing mediation for a long time yet.

Of course, that wealth of potential time also allows plenty of room for sufficient mistakes to be made to fill this column! So here, today, in the first *Mediation Mulligans* monologue, I am promising to hold myself accountable. I promise to use this space to honestly reflect on my mistakes, missteps, and gaffes. Perhaps in time, I will also promise to learn from them!

Alan Jeffrey is the senior mediator at Cyrenians Mediation and Whole Family Support service with over a decade of experience in the area of conflict resolution. As a graduate of the MSc in Mediation and Conflict Resolution, Alan maintains a relationship with the University of Strathclyde in his role as one of the lead mediators with the Strathclyde Mediation Clinic.

Aunt Minerva's Agony Column

By her earthly intermediary Alastair Sharp

NOT QUITE THE END...

The Editor believes that readers might wish to have sight of this poignant exchange of correspondence between Aunt Minerva and her most faithful supplicant as it heralds the departure of each to their different pastures new, at least for the time being. We somehow doubt that we have heard the last of them, but we wish them well in their continuing journeys through the choppy seas and occasional Scylla and Charybdis of their respective lives.

Dear Auntie

I have some sad but also most exciting news to impart. I am wrenching myself away from the remote splendours of Kinlochsporrán for an Adventure! I am not certain that my talents are currently best appreciated in the snug of the 'Rutting Stag' where I had been spending much of my time since acquiring my new boyfriend some months ago. He is a junior forester on the big estate which has been recently acquired by some Hedge Fund and is being planted with lots of trees to create carbon credits or something like that. The atmosphere in the snug is not what it was – all money and profit – and indeed my boyfriend has left me for a lady forester called Holly (Ugh). Good luck to them I say as he never appreciated my mediation work in the first place.

I have therefore decided to strike out anew and have been offered a place to study for a PhD at the University of Lesotho in Animal Mediation – a study of how the various species settle disputes and how relevant this might be to their human counterparts. I shall miss our discussions and your wisdom, and hopefully our paths will cross again in the future. As to the inhabitants of the Rutting Stag and their problems I say good riddance. They never really deserved, let alone appreciated the help that we have given them. They can stew in their own malt which actually is pretty good so not too bad a fate!

Yours optimistically

(no longer) Worried!

Dear No Longer Worried

What marvellous news. Leaving what I must confess I was beginning to consider was too small a repository for your talents and for such a fascinating subject in such a delightful country. The highest country in Africa they say. Beautiful wildlife of the smaller variety they also say, perfect for studying.

By interesting coincidence, I too am changing course. My cell in Mount Olympus – comfortable though it is – is beginning to feel a little claustrophobic. I move with the times and now that Syria is entering a new phase I have offered my services at the renewed excavations and restoration at Palmyra. A little-known fact about me is that in one of my many reincarnations I inhabited the body of Queen Zenobia who rebelled against Rome and established the Palmyrene Empire in the 260s. It has been through a number of devastations since then but has survived in spirit, if not in structural entirety, and I am told that its restoration will be a major ambition of the new regime. I am hoping my experience and deep knowledge of the city over the ages will be put to good use.

Soooo! We go our separate ways. Let us keep in touch and if our paths cross again it will be two older and wiser souls. Let us exhort the Gods of Mount Olympus and elsewhere to guide us to a fulfilling, contented and rewarding future.

Your ever-loving Auntie

Minerva



University of
Strathclyde
Glasgow



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Mediation Clinic
University of Strathclyde Law School
Level 3, Lord Hope Building
141 St James Road
Glasgow G4 0LS
Email: mediationclinic@strath.ac.uk



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