Vulnerability in Court-Connected Mediation

Workshop presented by
Nina Harding, Leader
Lola Akin Ojelabi, Facilitator
Archie Zariski, Facilitator
Workshop Agenda and Format

- See Agenda and Scenario handout
- Format:
  - Roleplay illustrating a vulnerability issue
  - Group discussion at tables and record possible responses
  - Full group discussion and feedback with optional demonstration of responses
Introduction - What is Vulnerability?

- Presenters’ perspectives
- Participants’ perspectives
Some Perspectives and Approaches to the Issue of Vulnerability

- pre-mediation
- mediation preparation
- procedural and interpersonal justice
- therapeutic jurisprudence
- mindfulness
- questioning
- empathy
- reflective practice
- others?
Procedural Justice

The *quality* of the interaction between people is the most important determining factor of their satisfaction with and acceptance of the result of the interaction.
Procedural Justice Principles

In their interactions with others people value:

- Being able to present their point of view and have it taken seriously ("voice")
- Engaging in a process that is fair and open ("transparency")
- Interacting with someone who has an open and unbiased mind ("impartiality")
- Being treated as someone equal in dignity and worth ("respect")

See: Procedural Fairness.org
Interpersonal (Relational) Justice

Emphasises demonstrating respect for the individual as an autonomous being equal in dignity to all others.

Being treated with respect is more highly valued when it comes from someone in a position of power or authority.

Justice is perceived as an affirmation of one’s identity as a valued member of a social group or community.
Therapeutic Jurisprudence ("TJ")

Paying attention to the impact that law and legal processes have on people’s psychological health and well-being and promoting positive (therapeutic) effects.
TJ Principles

- Interact respectfully
- Recognize individuality and the right to self-expression
- Promote self-determination and transparent decision-making
TJ Techniques

- Direct address
- Eye contact
- Motivational questioning
- Solution-focussed dialogue
Mindfulness

‘ways in which ... mediators can enhance [their] presence [in the process] to increase the likelihood of conflict transformation’ (T Fisher, 2005)

‘paying attention in a particular way: on purpose, in the present moment and non-judgmentally’ (Kabat-Zinn, 1994 at 4)
Mindfulness

Simply:

- Awareness - self and parties
- Alertness - picking up cues
- Attentiveness - deep and active listening
Questioning

- Closed questions - Yes or No answer
- Open questions - information seeking; uncovering/discovering; clarifying; promoting understanding
- What, how questions
Empathy

- Affective empathy:
  - Automatic response - “Spontaneous concern for another’s distress as opposed to an understanding of the experience causing the upset.” (Irvine and Farrington, 2017)
Empathy

- **Cognitive empathy:**
  - ‘requires reflection, effort and control and clear self-other differentiation’ and ‘capacity for ‘self-awareness’ and ‘self-empathy’
  - Emotion regulation
  - Perspective taking - self-perspective and other-perspective

(Irvine and Farrington, 2017)
Reflective practice

- Reflect on:
  - The intervention
  - Purpose of the intervention
  - Alternative intervention
  - Purpose of the alternative intervention

Scenario Introduction and First Roleplay

- See scenario handout
- First roleplay:
  Identifying the problem when it occurs - recognising vulnerability arising from different and often multiple sources - what skills are necessary?
  Roleplay 1 - demonstration of vulnerability in opening statements
Second Roleplay

- Second roleplay:
  Engaging vulnerable people - engaging vulnerable people in the mediation process - what skills are necessary?
  Roleplay 2 - demonstration of vulnerability in setting a mediation agenda
Third Roleplay

Third roleplay:

The disempowered advocate or mediator - keeping legal representatives constructively involved (if they are present), while recognising mediators’ own possible vulnerabilities - what skills are necessary?

Roleplay 3 - demonstration of lawyer vulnerability in caucus
Fourth Roleplay

Final roleplay:

Inability to resolve - what to do when the pure facilitative approach just doesn't seem to be working - non-paternalistic interventions to empower vulnerable people in decision making; and recognising when the pure facilitative approach may not produce the best outcome for vulnerable parties - what skills are necessary?

Roleplay 4 - demonstration of disempowerment or vulnerability in making decisions
Plenary Discussion and Close

- What approaches and perspectives will work for you?
- What skills and techniques do you need to learn or improve?
Vulnerability in Court-Connected Mediation

Thanks!