

Letter to the editor: reflections of a trainee

Geoff Farland shares some of his reflections inspired by a recent LEADR mediation training.

I recently undertook a LEADR mediation training course over five days in the LEADR office in Bridge Street, Sydney. It was excellent.

It led me to ask some questions:

1. Why do you use the word “alternative”?
2. Why are you “an association of dispute resolvers”?

Let me explain

Alternative Dispute Resolution

First, I simply do not understand why the word “alternative” is used in the context of mediation these days. “Alternative” is used to describe “different from mainstream”, such as “alternative medicine”. As such, it is tarred with that brush. The longer you use the word “alternative” in context, it will always be seen as a second-class means of dispute resolution.

From my limited training, but after many years as a participant in mediations, it obviously is a first-class, not second-class, means of dispute resolution.

You have to drop the word “alternative”.

Let’s break it down. “Alternative” is comprised of two parts: - “alter” and “native”. Looked at that way, you are actually trying to alter the native way of thinking. Bradley Chenoweth, our trainer, in the recent course I undertook, talked about villagers going to the village chief for dispute resolution. (This is what Moses used to do for the Israelites when they were in the desert, as well.)

I really think you should go back to basics and drop the word “alter”. When speaking to a number of people, I have been asked: “What would you call it then?” I would take out the word “alter” and leave the word “native”. That leaves *native* dispute resolution (NDR).

Litigation and resort to courts for the adversarial litigation should be seen as a subset of dispute resolution, not the other way round. It obviously is and NDR practitioners should try and avoid it like the plague. Why don’t you embrace this change and see litigation as a subset of what mediators do?

The process

I was fascinated about the process, as a lawyer. Bradley Chenoweth completely changed my view of listening. His summary of listening, that is, advisers – particularly lawyers – listen to fix, whereas mediators listen to understand, was one of those “aha” experiences in the week. It leads me to my second question: why do you call yourself “an association of dispute resolvers”? Mediators do not resolve disputes, do they? Surely that is what the parties do. It is a misnomer, is it not?

Trust

Frances Fukiyama, in a book entitled *Trust, the Social Virtues and the Creation of Prosperity*, written in 1996, said that there were two social taxes on the breakdown of trust in society, namely:

1. the cost of prison; and
2. the cost of lawyers' fees.

The use of mediation, by restoring trust (albeit temporarily), has the effect of reducing the cost of lawyers' fees, as it increases trust.

This is an issue I took up with Bradley Chenoweth, (Dr Trust as I began to call him). Most disputes arise because there is, or has been, a breakdown of trust. What a mediator does is act as a "trust substitute". People repose trust in the mediator to manage a process of trying to heal a relationship or resolve some other dispute. The process obviously has healing powers, if used well.

Hence, I began using the term "trust doctor". The quotation about what a mediator should do that Bradley Chenoweth used, is almost identical to the Hippocratic Oath, summarised in the words "do no harm". That is one of the hallmarks of a mediator, that they be scrupulously even-handed and lead the parties to their own result. That restorative process is what a doctor does. I think you should all start calling yourselves "trust doctors", and take your own version of the Hippocratic Oath before accreditation.

The reposing trust in the mediator is only temporary. Hence, all the notes are destroyed at the end. There is nothing at stake for the participant, especially when the record is destroyed.

Conclusion

I have been a lawyer for 28 years and have never looked at mediation in the way I have indicated above. I really think there are huge opportunities for the mediation profession as it has clearly slipped into the mainstream but not taken the language with it.

Come on mediators, go native! Stop being alternative and start occupying the high ground.