

I love you, I hate you: Emotions, Relationships and the Mediation Process

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ABSTRACT

Western understandings of mediation have for many years been based on a rational, problem-solving approach to the resolution of conflict. Authors such as Folberg and Taylor (1984), Haynes (1994), Boulle (1996) and Fisher and Brandon (2002) have all argued for a well-defined, outcome-based approach that minimises the role of emotion and the influence of relationships on the development and maintenance of conflict. This paper will argue that mediation that does not address emotions and relationships in a definite way is not always appropriate, especially for the members of many non-Western cultures and disputes in which respect for the community and each other is paramount. The paper will use examples of recent disputes within the Asia Pacific region to argue that relationship maintenance and the expression of emotions are two vital components in effective and long-lasting resolutions to disputes. A mediation approach that focuses on the processes of relationship reparation rather than a specific tangible outcome will be suggested as a more appropriate form of conflict resolution within the region. It will conclude with a consideration of the challenges facing mediators in working from a relationship-based mediation model.

Keywords: emotions in mediation; culture; relationship maintenance and mediation.

INTRODUCTION

The majority of Western models of mediation have been based on a number of premises that suggest a rational, staged, largely emotion-free, present- and future-based approach to conflict resolution, with a focus on principles of mediator neutrality and impartiality, confidentiality and measurable outcomes (Boulle, 1996; Fisher and Brandon, 2002; Folberg and Taylor, 1984; Haynes, 1994). In Australia, these models have experienced such privilege that they now form part of many mediator training programs and are embedded in the proposed new national standards for the practice of mediation. For example, one arguably powerful training organisation in Australia (LEADR Association of Dispute Resolvers, n.d.)

requires trainees to read Fisher and Ury's (1981) volume on negotiation, and appears to base its five-day training program on the suggestions of these authors. Thus, trainees are introduced to the ideas of separating "the people from the problem" (p. 18), not reacting to "emotional outbursts" (p. 32), focusing on "interests, not positions" (p. 41), focusing on the future rather than the past, and evaluating issues objectively rather than subjectively. These concepts form the basis of a rational and emotion-free approach to the resolution of conflict, as described by authors such as Boule (1996) and Haynes (1994).

Australia's national practice standards, too, support a rational problem-solving mediation approach¹. These standards acknowledge the existence of "a range of different mediation models in use across Australia" (Practice Standards, p. 4), but do not specify what these models might be, beyond evaluative mediation and conciliation, two other rational problem-solving approaches. The standards prescribe specific tasks in preparing for mediation and in managing mediation sessions. These tasks indicate a rational problem-solving approach where mediators are expected to remain impartial and neutral, where confidentiality is prized, where the mediation proceeds in a staged, linear approach, and where mediators will refrain from focusing on parties' behaviours or comments that might reflect a counselling approach to the work.

Other standards are being developed by the Australian Government for family mediators (Community Services and Health Industry Skills Council, 2007). These standards relate to a set of competencies which it is assumed all mediators will possess. Alongside a need to understand and respond appropriately to issues of family violence and abuse, family mediators will be obliged to demonstrate that they can "Facilitate dispute resolution in a family law context" and remain impartial throughout the process. While the standards don't appear to favour one mediation approach over others, they do imply a rational, non-emotive and neutral process that will be used by all family mediators.

This paper will seek to critique the Western models of mediation that privilege the rational problem-solving approach over alternative models. It will argue that a reliance on rationality, confidentiality, mediator neutrality, a linear approach to the mediation process and measurable outcomes is not always appropriate, or even useful, either in mediating with families or in diverse cultural situations. The paper will review approaches to conflict across the Asia Pacific region which indicate that a 'blind' adherence to specific rational processes

may sometimes be damaging to achieving an end to the conflict. Conclusions will suggest that mediators need to be flexible and responsive to the needs and concerns of their participants in order to gain effective and lasting resolution to the issues underlying some conflicts.

The paper will begin with a consideration of the specific assumptions of problem-solving mediation, before reviewing the lessons from conflicts within the region.

ASSUMPTIONS FROM PROBLEM-SOLVING MEDIATION APPROACHES

Assumption 1: Mediation is a staged, linear process

Several authors argue for a mediation approach that clearly establishes a set of stages through which the mediator guides the participants towards a resolution of the conflict. Boulle (1996), for example, describes a process that begins with “preliminaries” and progresses through a mediator opening statement and “party presentations” (p. 98) towards negotiation and decision-making. The process includes separate meetings with the participants as a matter of course, and implies that all mediation sessions should follow these stages.

Haynes (1994) also describes a staged and linear process, beginning with “gathering the data (p. 3) and moving through “defining the problem” and “developing options” (p. 4) to “bargaining “and “drafting the agreement” (p. 6). Folberg and Taylor (1984, p. 71) defines three broad stages: introduction and trust building; fact finding and isolating issues; and creating options and alternatives.

Descriptions of staged mediation approaches can lead practitioners to believe that an adherence to mediation stages is appropriate in every case and for every conflict. Indeed, when I took up the management of a mediation service in Melbourne in the late 1990s, this was the approach of choice for that organisation. The result was that those who sought mediation from the organisation were obliged to fit the process rather than having a process tailored for their needs. As Chau (2007) points out, specific approaches won't suit every case, and nor should we expect that they will. Chau concludes that it is important to be flexible in matching the approach to the dispute.

For some cultures, directly addressing a conflict and the people involved in it is extremely inappropriate (Hassall, 2005; Pirie, 2000). Hassall argues that in some cases, it's important to use subtle and indirect means of discussing the conflict and its resolution. This process may take days or weeks to complete, and will involve moving back and forth across a range of 'stages' towards a gradual conclusion. This suggests a more fluid approach to the work, with a circular process where participants move between 'stages' as they work through their concerns and issues, rather than a linear staged model where participants present the issues unambiguously, define the problem and then move directly towards negotiating a resolution. During the peace process between Papua New Guinea and Bougainville, representatives of both sides met on a number of occasions to talk, during which they sometimes discussed issues unrelated to the conflict itself (Sirivi, 2000). In another conflict, that between Israel and Egypt in the 1970s, Ayres (1997) described a series of meetings between the protagonists, both within the region and in the United States, that led to gradual movements towards peace. While there was forward progress throughout the talks in both of these conflicts, the approach was not at all linear, as suggested by Western approaches to mediation, but rather circular, allowing for other matters, not directly related to the conflict, but contributing to the eventually successful ceasefire to be considered. Western models of mediation do not appear to cater for discussions and meetings over long periods with gradual and circular moves towards resolution.

The issue of time in the mediation process represents another significant issue for Western models. As Pirie (2000) argues, in some cultures, called 'polychronic,' a number of different things can be done at once. Pirie states that in polychronic societies (such as Fiji), there is a strong focus on relationships and on managing small increments in progress over a longer time period. The needs of people from such societies suggest that Western models of mediation, that emphasise linear processes, do not cater well for these time and relationship issues.

A further issue related to time is the point at which the participants are ready to resolve their conflicts. Salla (1997) discussed the concept of a 'ripe moment' for the resolution of conflicts, when the conditions for resolution (defined as the existence of a "mutually hurting stalemate" [p. 451]; the presence of positive spokespeople or champions; and a plan for resolution) are optimal. An example of such a 'ripe moment' may be offered in the Bougainville conflict, when combatants from both sides began to tire and sicken of the

bloodshed (Ride, 1999), while at the same time the Chan Government was replaced by a moderate one led by Bill Skate (Sirivi, 2000), providing an opportunity for the two sides to begin to develop a plan for peace through the New Zealand talks (Regan, 2002). Salla (1997) suggested that in any conflict there may be a series of such moments, providing mediators with many opportunities to move the resolution forward, if they are alert to their presence. It seems clear that the occurrence of ‘ripe moments’ ensures that the process cannot follow a linear path towards resolution. Capitalising on the moments could perhaps only occur in a circular and time-consuming approach that does not fit the tight time frames and linear approaches of Western mediation models. Western mediators could perhaps learn from these experiences in developing new and more responsive approaches that take these issues into account.

Assumption 2: Mediation is a rational, non-emotional approach to resolving conflicts

Fisher and Brandon (2002) express a belief that mediators should have the skills to “recognise” (p. 43) expressions of emotion in order to manage them appropriately without becoming sympathetic to the participant’s pain. Folberg and Taylor (1984) make similar statements, but add the suggestion that mediators must show empathy for participants. For them, empathy involves an accurate reflection of a participant’s emotion at specific points in the mediation session. Folberg and Taylor argue that the use of empathic responding assists to build rapport and trust in participants. However, many authors seem very silent in providing advice in the positive expression of emotion.

When it comes to dealing with strong emotions, such as anger, for example, the mediation literature does not seem very helpful. Fisher and Brandon (2002) include two sentences about this emotion, in an attempt to explain its expression, while Folberg and Taylor (1984) suggest that anger is a form of stress, which “can then turn into distress” (p. 94). Barsky (2007) argues that in demonstrating their impartiality, mediators will respond in a very neutral manner to expressions of anger, while other authors suggest that anger is more appropriately addressed through counselling or other interventions away from the mediation session (e.g., Fisher & Brandon, 2002). Jameson, Bodtger, and Jones (2006) suggest a number of mediator interventions including convening separate sessions, exploring the complexity of the issues under discussion and separately evaluating the participants’ emotional states. Barsky implies, as do other authors such as Tan (2006), that the expression of anger in mediation poses difficulties that place the mediation itself in jeopardy. The conclusion is that mediation

should be managed in a rational manner, free as much as possible from emotional expression which could threaten to damage the process.

For some cultures and families, though, the expression of anger may not involve threat or an escalation of stress. Indeed, it may be nothing more than an approach to getting a specific point heard (Ayres, 1997; NADRAC, 2006). If this is the case, 'shutting down' the emotional expression may lead to unsatisfactory, or no, outcomes for the participants. Indeed, according to Brigg (2003a), attempts to 'control' arguments and emotional content can render the mediation process ineffective.

In their exploration of the place of emotion in mediation, Jameson, Bodtker and Jones (2006) considered the emotion of shame. They recommended that mediators should not focus on feelings of shame, because to do so may produce even more shame for the participants. Indeed, Jameson et al urged mediators to "Actively help the disputant suppress or deny feelings of shame" (p. 203). Again, these recommendations are not always appropriate; in some cultures, shaming is an essential part of the reconciliation process. During the Bougainville crisis, for example, upon their return to their villages, former combatants engaged in formal ceremonies which included shaming tactics to disarm young people who had shunned their village and family responsibilities to enter the conflict. The use of shaming was considered appropriate and positive in assisting people to integrate back into village life (Howley, 2002). This indicates that, rather than repress feelings of shame, in some mediation situations, focusing on them can result in very positive outcomes.

Jameson et al (2006) continued their exploration of emotions through a discussion of the place of pride in mediation. They did not consider pride as a negative emotion; indeed, they argued that under some conditions it can signal "feelings of high self-worth or self-esteem" (p. 204). They warn, however, that demonstrations of this emotion may compromise mediators' levels of impartiality, since mediators might easily identify with the participant who expresses pride. This construction of pride seems significantly Western-centric because in some cultures its expression may be perceived as wilful and disrespectful of family and community. Rather than identify with the one who expresses pride, mediators working in collectivist cultures may be expected to chastise the participant, helping him to understand that the demonstration of pride is inappropriate.

It seems, then, that the expression of emotions could be managed differently by mediators depending on where and with whom they are working. In some cases, mediators might encourage the expression of strong emotion for all participants (Douglas and Maier, 1994), rather than 'manage' it by reinforcing ground rules, asking for separate private sessions with participants or suppressing the emotion altogether. In other cases, emotions that might be considered positive in the Western world might be extremely inappropriate, leading mediators to actively discourage their expression.

Western mediators express a concern that if they 'allow' the expression of strong emotions such as anger and shame, they could lose their control over the process; the irony is that in some cases, not allowing this expression may lead to poorer outcomes for all. Other emotions that might possibly seem appropriate in Western mediation settings could be highly inappropriate in other cultures, leading to the mediator being perceived as 'weak' or ineffective. Understanding and positively managing all emotional expression is essential in mediation. Sometimes, when mediators accept and attend to the expression of strong emotion, the mediation process arguably becomes less rational. It could lead, however, to participants feeling more heard and respected due to the perception that the mediator has a deeper understanding of the issues under discussion.

Assumption 3: Mediation is about the present and the future; the past is irrelevant

Arguments that hold that mediation must focus on the present and the future rather than the past point to the mediator's role (as a facilitator rather than a determiner of 'facts'), to perceptions that a focus on past events will escalate the conflict in the mediation session, or to an understanding that since we cannot change the past it's inappropriate to consider it in any way (Haynes, 1994).

I argue, though, that unless the participants have spent some time hearing from each other about how past events have affected them, they will find it difficult to move beyond the conflict during mediation sessions. It's one thing to talk with the mediator about past hurts, but a very different thing to talk to your protagonist about them. Evidence from the literature provides some support for this argument.

For example, Finkel, Rusbult, Kumashiro and Hannon (2002) discussed the role of forgiveness in the resolution of conflict and concluded that one factor that assists the

forgiveness process is the acknowledgement from the 'betrayed' that there have been transgressions in the past. This issue was reflected in local peace-making at the village level in Bougainville. As part of the reconciliation process, those who had left the village to enter the armed conflict were forgiven in ceremonies and other traditional practices, even when they had committed murder (Howley, 2002; Maclellan, 2004). On the other side of the coin, Menkel-Meadow (2004) pointed out that the ability to admit to a 'wrongdoing' can be a powerful contribution to a positive resolution of the underlying conflict.

In Australia, the National Alternative Dispute Resolution Advisory Council (2006) pointed out that for Indigenous Australians, it is often not possible to separate the past from current conflict issues, suggesting that mediators must consider the past during mediation sessions. When mediators then focus away from the past towards the future, it is possible that the conflict will become buried and remain hidden, making it more difficult to resolve in the long run. The evidence suggests that in some cases, considering the past to be irrelevant may actually increase the conflict rather than create the conditions for resolution.

Assumption 4: The role of mediation is to attend to substantive issues rather than underlying relationship difficulties

While the literature in mediation acknowledges the existence and role of interpersonal relationships in conflicts, discussions about where these relationships fit into the mediation process are sometimes very superficial. In their discussions about family mediation, Fisher and Brandon (2002) focus on descriptions of the decline of relationships towards separation, and power and control issues in mediating with two people who at one stage of their lives were 'in a relationship.' The majority of the book, however, details the practical aspects of assisting separating couples to divide their property and care for their children. In Haynes' (1994) work, there are passing suggestions that a relationship might need to continue when separating couples have children, but apparently little focus on what this means. Folberg and Taylor (1984) and Boulle (1996) do not appear to attend to relationship issues at all in their books, implying that they are not as important as working on the substantive issues and how to assist participants to negotiate agreements around them. Elsewhere, Bryan (1999) argued for mediators to focus less on the participants' relationship and more on moving towards positive outcomes for the work.

For me, every mediation I do is about relationships between people. Whether the participants are moving towards dissolving that relationship, or whether they wish to repair it in some way so they can continue to work together, I take the position that the relationship itself is central to my work. Thus, although I also attend to the substantive issues of the mediation, I will often focus for a significant period of time on how the participants want to relate together once the mediation is complete. This is based on evidence from the literature that suggests that better outcomes can be achieved if due attention is paid to the relationships that are at the core of conflict.

The peoples of Bougainville and Papua New Guinea, for example, met together in New Zealand on a number of occasions to try to resolve the conflicts between them over sovereignty of Bougainville. At the Lincoln talks, delegates were invited to spend time away from the negotiation table to get to know each other. They attended cultural events and visits. Many discussions were conducted informally and with smaller groups. Time frames were not rigid, but flexible to allow people to feel comfortable with each other and their environment (Boege, 2007). The focus on relationship building seemed instrumental in assisting the move towards an effective outcome of the substantive issues.

In discussing traditional Chinese approaches to conflict, Chau (2007) argued that attention to one's duty to others and positive moral codes of behaviour is essential in the resolution of conflict. Chau argued that participants' attitudes towards each other were related to the quality of outcomes from mediation. This argument is reinforced somewhat in a study of forgiveness, undertaken by Finkel, Rusbult, Kumashiro and Hannon (2002). These authors argued that a commitment to the relationship represents a strong component of forgiveness. They found that commitment was unrelated to emotional reactions to betrayal; if a person wished the relationship to continue and to strengthen, that person could forgive the transgressor irrespective of feelings of betrayal.

In a significant study, Ayres (1997) explored the relationship between outcomes of conflict and disputants' perceptions of each other. He studied three international conflicts that occurred between 1973 and 1985, analysing the speeches given by respective leaders of the conflicting nations about their protagonists. The study indicated that positive outcomes in these conflicts occurred only when the leaders' perceptions of their adversaries changed towards more positive portrayals. Ayres' study indicates the importance of relationship

building as a conscious focus of mediation, and suggests a specific focus on relationships independent of progress towards substantive outcomes.

In other discussions, Hassall (2005) argued that across the Pacific, processes of mediation and other ADR practices are embedded in traditional conflict resolution approaches. Central to these approaches is the significance of relationship maintenance and enhancement in resolving conflicts.

These several studies indicate that the ability of mediators to explore the strength of participants' commitment to the relationship may produce stronger outcomes than largely ignoring it. Centralising the relationship as a specific topic for discussion, exploring the meaning to the participants of their relationship and their hopes for their futures together (or apart) may ensure stronger outcomes from the mediation intervention.

Assumption 5: The mediator's role is to demonstrate neutrality and impartiality at all times and in all situations

It is generally assumed that mediators are never completely neutral. We all bring to the work our own values, beliefs and understandings that may colour our views of each participant and the issues at hand (Fisher & Brandon, 2002). In describing the concept of 'neutrality', Barsky (2007, p. 124) states:

In order to be **neutral**, the mediator must have no pre-existing biases, no decision-making authority, and no stake in a specific type of outcome. In addition, the mediator must not demonstrate bias toward one side or the other (emphasis in the original)

This kind of neutrality is not always appropriate, however. For example, during my years of managing a mediation service in Melbourne, we established a Chinese-language mediation service. This service worked with people who had migrated from mainland China, and who were accustomed to receiving assistance from revered elders and other authority figures in their villages. Our mediator struggled with the Western imperative for mediators to remain free of decision-making activities, because his clients often expected him to hear their concerns and then provide them with a resolution for their conflict. This experience led us to consider the development of different approaches for working with those from cultures where personal decision-making is not usual.

People from other cultures may also reach decisions in ways that are different from the Western decision-making approach. In some cultures, for example, decisions are made by the community or family as a whole rather than by individuals within it. Indeed, Pirie (2000) argues that many collectivist cultures do not prize mediator neutrality, expecting that they will participate in the work to a greater degree than is suggested in Western mediation models, while Kelly (2002) asserts that Indigenous Australian disputants can sometimes expect the mediator to have a direct interest in the outcome.

While I think that taking even a small part of the responsibility for the decisions reached at mediation may place mediators in danger of imposing a completely inappropriate solution on the participants, these research findings do suggest that it may sometimes be appropriate for us to take a more active role in developing resolutions to conflicts through suggesting options and helping the participants to evaluate those options in collaboration with us.

Assumption 6: Mediation is a strictly confidential process

The Australian National Mediator Practice Standards (2007, p. 9) state that in general, “A mediator should respect the confidentiality of the participants”. While most authors would argue that this requirement contains exceptions (in regard to issues of potential harm to participants or their family members, for example, or when mediators hear of criminal activities in the course of mediation), the majority would suggest that the ability to maintain confidentiality in relation to what is said at mediation is a hallmark of ‘good’ mediation practice. Indeed, Douglas and Maier (1994) argue that because mediation is conducted in private, it is essential for mediators to “convey to the parties that whatever is told to them will be held in the strictest confidence” (p. 34).

For some cultures and family groups, however, the requirement for strict confidentiality is inappropriate. In collectivist cultures, it is often essential for the discussions to be available in some form to others who may not be in attendance. For example, in discussing conflict resolution in Fiji, Pirie (2000, p. 56) points out that mediation is often conducted “in a social environment that includes extended family members, neighbours and colleagues,” while NADRAC (2006) suggests that mediation in Indigenous Australian settings may be attended by a diverse group including family members and external bodies. In these situations, the strict nature of confidentiality suggested by Douglas and Maier (1994) is waived in favour of

a more inclusive approach that honours the contributions of many people in resolving conflicts.

This seems true for the cultures in some families as well. Anecdotally, in my practice as a family mediator, I have often felt frustrated by participants' seeming reluctance to reach a resolution to their conflict. When I have explored this reluctance I have heard from participants that they can't make a decision alone without first talking with new partners, parents or other people close to them. The insistence in Australian family law for mediation to involve only the previously-married couple while refusing to include the significant people in their lives often leads to negative outcomes for the work. If there were some way to include these others, through exchanging agreed-upon information outside the mediation session, perhaps more appropriate outcomes might be realised.

IMPLICATIONS FOR CROSS-CULTURAL MEDIATION

The above analysis suggests that Western approaches to mediation may not always be appropriate in the resolution of conflict, especially when working with diverse cultural groups and issues. In conflicts involving cultures where the preservation of relationships is essential, and the resolution of conflict requires time and the presence of specific conditions that will lead to the 'ripe moment', a rational, linear approach that focuses on the outcome rather than building the relationships between participants and their communities may be very ineffective. In these situations, the use of a creative and flexible approach may lead to better and more lasting resolutions than might otherwise be possible.

The first step in developing such an approach might be to consider how the mediation session could depart from the linear, rational model suggested by Western practitioners. There are a number of ways to achieve this. Two other approaches, also developed in the West but perhaps offering more flexible processes, are transformative and narrative mediation. Authors who describe these approaches (e.g., Bush and Folger, 1994; Winslade & Monk 2001) suggest that their main focus is on building the relationships between the disputants rather than moving specifically towards a substantive outcome. The two approaches do not have specific stages as outlined in the problem-solving approach to mediation, providing possibilities for less strict processes.

Mediators might also consider altering the process to cater for diverse concepts of time. As has been suggested in this paper, in some cultures the resolution of conflicts occurs slowly, involving many meetings, including ceremony and gift giving, and the use of a linear approach that leads in a short time towards resolution and does not respect customary processes will be ineffective.

Yet another consideration will be the venue in which mediation is conducted. For many cultures and situations, 'hiding' the work behind closed doors and away from the context in which the conflict has grown is inappropriate. Participants may wish to consult with family and community as the mediation unfolds. In these situations, a linear and 'rational' process may not allow consultation and time for consideration of how the resolution might unfold.

The second step in developing an alternative approach might be to alter our responses to expressions of emotion in mediation sessions. It may be argued that if the participants do not hear the pain, anger and disappointment experienced by those with whom they are in conflict there can be no possibility of there being any genuine movement towards resolution. This poses a difficulty, in that if mediators allow for uncontrolled expressions of emotion it is possible that the conflict will escalate. Hearing the emotions, though, is different from simply receiving them; hearing requires building a deep understanding of how the person is feeling, and my experience has been that this can sometimes be very difficult for those in conflict. Thus, mediators may do well to 'tolerate' more emotional expression than is usual in Western approaches, intervening at appropriate moments to re-direct the discussion by inviting each participant to reflect to the other their understandings of the situation for that person.

The third step would be to shift the focus of mediation from outcomes to relationship development. I argue that if we were to perceive the relationship itself as our client, we may achieve better outcomes than if we continue to chase outcomes at the expense of the relationship. Indeed, even when the participants are working towards the extinction of a relationship, mediators might consider that working towards how that will occur, independently of discussions about outcomes, may prove effective in strengthening the quality of those outcomes.

Working with the relationship requires changes to the Western model of mediation. First, the issue of confidentiality may need to be re-defined to cater for discussions outside the

mediation that will impact on what occurs inside the room. Thus, participants may talk with family, community members, Elders, religious leaders and other significant people in their lives during the course of the mediation and the results of those talks may be incorporated in future mediation sessions. Alternatively, mediators may open the session, with the approval of those at the centre of the dispute, to the attendance of those from the community and family who have some kind of stake in the conflict and its outcomes due to their relationship with the disputants.

In some cases, decision-making responsibility will reside with people who are not directly involved in the conflict: religious leaders, Elders, other family members. Mediators may need to understand that although they have a limited number of participants in the room, decision-making may lie outside it. Thus, evaluating who will make the decisions and ensuring their inclusion, either directly or indirectly, in the process, may be vital.

In some cases, mediation might include opportunities for participants to take time out for discussions together without the input of the mediator. This might happen at strategic points during the mediation, depending on the needs of the participants. Mediators might facilitate these discussions by providing space and venue for the participants to engage in safe and supportive talk.

In other cases, it might be useful for mediators to facilitate participants having time away from each other. This may mean formally structuring discussions around participants' needs to suspend the process for a short time so that participants can re-evaluate their relationship and reach conclusions about it before proceeding further.

Ayres' (1997) study indicated that changes in the way in which disputants perceive each other can have a significant effect on the outcomes of a dispute. Thus, it is possible that, when mediators who work with participants from diverse cultures attend to issues related to their perceptions of each other, the outcomes will be more effective. This approach will require the mediator to invite participants to talk with each other about their histories, their values, their community and family, in order to facilitate a 'new' perception of each other that may lead to a softening of attitudes and a move towards an effective and lasting outcome.

To conclude, Western approaches to mediation will often inhibit effective and lasting outcomes to disputes that involve people from diverse cultures and belief systems. Mediators working in cross-cultural settings must be open to incorporating flexible and dynamic approaches into their practice. Departing from the rational, linear process recommended by many Western mediators, focusing on relationship building in preference to substantive outcome, and attending to emotional expressions more fully than is suggested by Western approaches, can potentially lead to more effective outcomes for participants from diverse cultural backgrounds. Our challenge is to build a greater degree of creativity into our practices while adhering to the central principles of mediation. I believe that in doing so, we will achieve greater satisfaction both for ourselves and for our clients.

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¹ The Australian National Mediator Standards arose from the biennial National Mediation Forums and were finalized in September 2007. The Standards comprise two documents, one covering approval of mediators and the other addressing standards of practice within mediation. The standards are available at <http://www.leadr.com.au/documents/Practice%20standards.pdf> and at <http://www.leadr.com.au/documents/Approval%20standards.pdf>