

A MEDIATION SERVICE GROWS OUTWARDS TO PROVIDE INCREASED PROFESSIONAL DEVELOPMENT, EVALUATION AND SUPPORT FOR MEDIATORS

A public sector mediation service in New Zealand focuses on developing capability and raising standards of practice.

Jessica Carter

Senior Advisor Mediation Practice
Department of Building and Housing, New Zealand
jessica.carterdbh.gov.nz

Abstract

This session looks at the experiences of the Department of Building and Housing, New Zealand, and the systems that have been developed to support the growth of mediation practice in order to deliver better services to parties in mediation and to prepare for new mediation opportunities in the future.

In 2006, new systems were developed within the Department to support and enhance mediation practice. The purpose of developing a new approach was to focus on the quality of mediation practice and meet best practice standards, which included access to external support for mediators, a mechanism for evaluating mediation practice, a training and development programme to support each stage of a mediator's development and a revised code of conduct. The process considered national standards of competence for the Department's mediators, the Department's codes of conduct, and the ethical obligations of mediators.

A new 3-level framework was developed which considered the different knowledge, skills, abilities and other attributes of mediators during stages of their professional development. A revised Code of Conduct included ethical guidelines for mediation practice. The updated Code set out practice for the Department's mediators and enabled participants to mediation to be informed about what they could expect from the mediator and the mediation process. A new observation, coaching and support framework was developed to incorporate the following four streams: external mentoring, observation and evaluation, individual coaching, and group meetings for training and the exchange of new ideas and developments. The purpose of a new framework was to establish processes to support reflective mediation practice.

Keywords: ethics, reviewing practice, training and development, support

INTRODUCTION

The mediation service of the Department of Building and Housing, New Zealand has, until recently, focussed exclusively on working alongside the Tenancy Tribunal by offering an alternative to adjudication for landlords and tenants in dispute. In recent years, the Department's service has extended to offer mediation in other building and housing matters. The new opportunities for mediators, the proposed expansion of the

service and a new management structure which introduced team leaders to manage mediation groups were the changes which underpinned the next stage of the mediators' professional development.

BACKGROUND

In New Zealand, the Residential Tenancies Act 1986 sets out the provision of information, advice and a dispute resolution service for landlords and tenants, plus a facility for the receipt and refunding of residential tenancies bond monies. The Act was first administered by the former Housing Corporation of New Zealand, and later the Ministry of Housing following its establishment in 1992. Since 1987, mediators have provided an opportunity for parties in dispute to meet and, where possible, reach an agreement as an alternative to proceeding directly to the Tenancy Tribunal for adjudication. The Residential Tenancies Act enabled landlords and tenants to participate in New Zealand's first mediation service in the public sector.

In 1996, during the years of the Ministry of Housing, the Ministry developed the *Mediators' Handbook* which set out the duties and obligations of mediators, the process of mediation, and human resources processes for employees. For 10 years this document was a reference for mediators in Tenancy Services, the Ministry's mediation service. It contained a background of mediation practice, the process of mediation and included sections which were specific to mediation and the Residential Tenancies Act (1986). It set out the practice guidelines that mediators were to follow, a Code of Conduct and ethical principles, the duties of mediators and ways in which tenancy mediators would interact with the community. There was a section which contained a summary of the clauses in the Residential Tenancies Act (RTA) which articulated mediators' responsibilities. The Mediator's Handbook also contained a quality assessment section which contained a prescriptive list of behaviours as a basis for consistent assessment of mediators. The list of competencies was not exhaustive and was set down as guide for mediators and observers for feedback and self-evaluation.

DEVELOPMENT OF A CODE OF PRACTICE

The Mediator's Handbook 1996 included ethical guidelines for mediation practice. This document was revised in 2006/7, and named the *Mediator's Ethical Code* with reference to the Australian National Mediation Draft Practice Standardsⁱ, LEADRⁱⁱ Ethical Standards for Mediators and the AMINZⁱⁱⁱ Code of Ethics. The updated Code set out the practice standards which the Department's mediators must comply with and enabled participants to mediation to be informed about what they can expect from the mediator and the mediation process. The Code includes the following core principles: The Mediator's Role; Voluntary Participation; Informed Consent; Confidentiality; Impartiality; Process; Dual Roles; Termination; Competency; and Mediation Practice.

In 2003 the method of mediator assessment moved from peer assessment to a model of using 'supervising mediators' as a way of conducting more formal observation,

feedback and support. Assessment was mandatory and the frequency was a minimum of four observed mediations per annum. Mediators who fulfilled these roles used an assessment form to give their colleagues feedback, and supervising mediators passed this report to Regional Managers as evidence of observations completed. Supervising mediators later gave feedback that the model of having senior mediators as supervisors received a wide and variable response from those being observed – some highly-valued the experience and others did not wish to participate by electing not to be observed at all. Similarly, only some of the feedback data was forwarded to the regional managers, although there was an intention to report findings, and this compromised the opportunity for further development as a result of an assessment.

In 2006, changes to the management structure of the Department's mediation service introduced 6 team leaders whose responsibilities included a part-time mediation workload and the management of a team of mediators. The new team leaders were to be responsible for a new method of observing their teams during their mediation practice at intervals of 8 weeks, in order to

- support coaching and training of mediators
- develop increased capability
- raise standards of mediation practice
- enable mediators to access mentoring
- jointly track professional development
- develop a reflective approach to mediation practice.

Formal observation and review of mediation practice was already a process that some of the mediators had experienced. In 2004, the Department had introduced an opportunity for mediators to complete the Public Sector Training Organisation's *National Certificate in Mediation, Level 5 (NCIM)*, a course endorsed by the New Zealand Qualifications Authority. It was envisaged that all mediators would complete this training course by 2007 and the opportunity to be sponsored for this certificate programme has been valued by most departmental mediators.

In 2006, a new model for observing and evaluation mediation practice was developed, titled '*Reflection and Review*'. The model was developed after examining several assessment and grading systems for mediators, and several mediation 'competency' systems. Most of these involved an assessor using a series of prescriptive competencies, tick-boxes and grading systems which were completed while observing a mediation in progress. Following the mediation, the assessor would give feedback and grading to the mediator under review. Two professional organisations, undertaking competency assessment, made a video of a mediation in progress – one a role-played scenario - and reported back to the mediator. After considering the academic papers and case studies of researchers^{iv} in the area of testing competency and standards of mediators, a model was developed to provide increased professional development, evaluation and support for mediators in the Department.

An integrated system to develop and support mediation practice was implemented in 2006, to provide an opportunity for mediators to reflect on their practice, for team

leaders to participate in this review, and for the model to be linked to regular training and development.

REFLECTION AND REVIEW – FOUR STREAMS

External mentoring, observation, self-evaluation, individual coaching, and group meetings for training and the exchange of new ideas and developments are the four streams of *Reflection & Review*.

The Mentor Programme

A key aspect of the support for self-reflective practice is the development of a mentor programme. Senior mediation practitioners in New Zealand are invited to support and develop mediators' practice by meeting with the department's mediators for 2 hours every 8 weeks. These meetings are attended in work time and paid for by the Department as part of a mediator's professional development. A comprehensive list of guidelines for the mediator mentor and the mentee are provided and a Memorandum of Understanding is entered into before the relationship is established. The mentors all provide a short biography which all mentees can peruse. This biography acts as a guide to the Department's mediators in each area of New Zealand, and enables a mentee to select the person that they think they will be most comfortable working alongside. The first meeting is a preliminary conversation for both parties and in most cases, there is a commitment to proceed after this. The meetings between mentors and mentees are confidential and do not report back into the organisation – a departure from the model of 'supervision' which is perhaps most familiar in a clinical setting. While the mentor programme borrows some of the principles of the health sector model, the aim of the mentor programme is for a more experienced practitioner to be available to support a mediator in the *Reflection & Review* process, and for them to receive expert and personal assistance to develop as a reflective practitioner.

Observation and Evaluation

Mediators are observed by their managers (who are also practising mediators) every 8 weeks when one stage of the mediation process is highlighted for discussion and development. *Reflection & Review* encourages mediators to reflect on their professional practice and several formal processes have been established to support this. The purpose of an 8-week interval is to give Team Leaders and mediators the opportunity to engage in joint-evaluation of the ongoing progress of a mediator's professional practice. A distinctive feature of the 8-weekly observation is that it asks a mediator to put one part of the mediation process under the spotlight and examine its importance and impact on the whole. Skills that are particularly crucial at each stage are discussed and mediators are encouraged to identify areas of strength and needs for future development.

Coaching

The coaching conversation which follows an observation is an opportunity to discuss the mediation and, in particular, the stage which is selected for focus. In this forum, mediators have an opportunity to reflect on their practice, and identify areas for development during the following 8-weekly cycle. At the commencement of the next

observation, there is an opportunity to discuss how the previous 8 week's practice has evolved. These two stages in the *Reflection & Review* are particularly valued by mediators who work in isolation, away from their Team Leader's office. Where a mediator is located in a small office, possibly 3-4 hours drive from their regional office, or by air as is the case in the Southern Region, the regular visit by a colleague to observe and engage in discussion about ongoing practice development is highly-valued.

Group Exchange

Monthly team meetings in larger offices provide an opportunity for sharing and exchanging information, and for presenting new ideas, books, articles, reflections, practices and developments. These meetings are easier to set up in larger offices where meetings are regularly scheduled. The difficulty for all mediation teams is that some of their practitioners are located in sole situations or remote offices, and the challenge of reaching the entire team for group exchanges of information is significant. A successful strategy to involve mediators in smaller offices is being developed to provide the fourth stream of *Reflection & Review*. When a monthly meeting is difficult to achieve, a half-day group meeting is planned to focus on a skills' need which has been identified by several mediators and observers.

The success of *Reflection & Review* is dependent on supporting each stream of the model, and supporting the 6 Mediation Team Leaders to observe their entire team every 8 weeks.

TRAINING AND DEVELOPMENT

In 2006, a new 3-level framework was developed which considered the different knowledge, skills, abilities and other attributes of mediators during stages of their professional development.

In Year One of a mediator's tenure, initial training focuses on preparing the new appointee for practice as a mediator. As recruits generally have a degree of mediation experience, knowledge, skills and understanding of mediation practice is revised as well as instruction in the relevant Act and the workings of the Tribunal.

In Years Two and Three, mediators participate in the National Certificate in Mediation, a programme which is funded and supported by the Department, and can access further skill-based training programmes.

In Years Four and beyond, the professional development is partly lead by the mediator who may choose from a number of training and development opportunities. In addition to the regular training symposium which is attended by all mediators, the Level 3 practitioners are encouraged to pursue an individual professional development programme which may include academic study, attendance at a conference and the opportunity to present new developments to colleagues and delegates. In a new initiative, Level 3 mediators have been supported to attend and present papers at several conferences in the past 12 months, including the 2007 LEADR Conference (Wellington), the 7th Australasian Residential Tenancies Conference (Melbourne), and the AMINZ Conference (Auckland).

CONCLUSION

While it has not been highlighted in this summary, attention to recruitment and selection of mediators has been a concurrent focus in 2006. An established methodology for selecting, training and evaluating mediators has been referred to during the implementation of *Reflection & Review* so that the qualities identified by the Test Design Project^v which contribute to a mediator's [likelihood of] future success are regarded by those who have the responsibility of selecting mediators.

As well as the popular view that mediators are 'hungry for peer discussions about their practice', the Team Leaders are responsible, as managers, for implementing the system of quality control via regular observation.

A system to develop and support mediation practice requires ongoing evaluation to properly develop the outcomes of increased quality and competence. *Reflection & Review* contributes, in part, to a mediator's overall performance which is assessed on: (1) caseload and productivity; (2) out of court settlement rates; (3) customer feedback, which is surveyed annually and (4) evaluation of mediation skills and practice, as set out in *Reflection & Review*.

This process offers a methodology for supporting mediation practice, developing the skill-base and enhancing the practice of an existing group of mediators.

References

Bowling, Daniel. Hoffman, David. "Bringing Peace into the Room: How the Personal Qualities of the Mediator Impact the Process of Conflict Resolution." Jossey-Bass, September 2003

Goleman, Daniel. "Emotional Intelligence: Why It Can Matter More Than IQ." Bantam Books, July 1997

Honeyman, C. "Performance-Based Assessment: A Methodology for Use in Selecting, Training and Evaluating Mediators." *The Test Design Project, National Institute for Dispute Resolution*, Madison, WI, June 1995

Honeyman, Christopher. "Five Elements of Mediation." *Negotiation Journal*, April 1998

Honeyman, Christopher. Pou, Charles Jnr. "F. & H. Quality Mediators: Finding and Hiring Quality Neutrals – What Every Government Official Needs to Know." 1996

Lang, Michael D. Taylor, Alison. "The Making of a Mediator: Developing Artistry in Practice." Jossey-Bass, San Francisco, 2000

Pou, Charles Jnr. "Mediator Quality Assurance: A Report to the Maryland Mediator Quality Assurance Oversight Committee." *Dispute Resolution Services*, Washington DC, February 2002

"Australian National Mediator Standards: Draft Practice Standards", *University of Queensland, ACPACS, La Trobe University*, June 2007

Author

Jessica Carter
Senior Advisor Mediation Practice
Department of Building and Housing, New Zealand
jessica.carter@dbh.govt.nz

Jessica Carter

Jessica, based in Auckland, provides national support and advice to regional managers, team leaders and mediators regarding mediation best practice, training and professional development. Jessica's role includes responsibility for training and development, quality control systems and implementation, ethical guidelines for mediation practice and ensuring that the mediation practices within the Department meet the highest standards. The Department of Building and Housing employs 56 mediators, and approximately 34 contractors. Mediation is offered at more than 85 locations around New Zealand. More than 45,000 applications are made to the Tenancy Tribunal each year, and there are more than 500 active claims within the weathertight homes dispute resolution process. For both areas, more than 60% of claims are mediated before going to the Tribunal.

Endnotes

ⁱ *Australian National Mediator Standards: Draft Practice Standards*, University of Queensland, ACPACS, La Trobe University, June 2007

ⁱⁱ LEADR: Association of Dispute Resolvers

ⁱⁱⁱ AMINZ: Arbitrator's and Mediator's Institute of New Zealand

^{iv} The Bibliography contains a list of references

^v The Test Design Project, National Institute for Dispute Resolution, 1995