

Confidential

*Greg O'Connor /
back to KC*

**CAROL PERRY & ASSOCIATES
CONSULTANTS
MEDIATION AND CONFLICT RESOLUTION
The Channon
N.S.W. 2480
Telephone: (066) 886269**

To: Dr. Robin Chapman
Assistant Director-General
Department of School Education

Options for conflict resolution and mediation training for teachers and parents.

Trainer: Carol Perry B.A.Melb., Dip.Ed., Dip.Soc.Sci.

Mediator, five years experience; experienced trainer in conflict resolution and mediation. Broad experience in community development, administration, meeting facilitation, community consultation and conference organisation.

Introduction: In the broad range of roles taken on by teachers and parents of school-aged children, there are numerous opportunities for conflict to arise.

Parents are demonstrating an increasing interest in decisions about education and at the same time a change in structures demands a greater degree of dialogue and group decision-making. These opportunities for dialogue play a valuable role in community building. This potential is enhanced when participants possess skills in communication and conflict management.

Conflict is generally regarded as negative and something to be avoided. However, a positive attitude to conflict can be achieved by accepting it as a legitimate process for the expression of differences and feelings. Well managed conflict results in positive change, a cohesive community and, in the education arena, contributes to the maintenance of quality in our schools.

Training Programme:

Participants will have the opportunity to:

- * Identify various types of conflict styles
- * Identify personal conflict types
- * Examine how conflict arises and escalates
- * Explore commonly held fears about conflict
- * Practice no-blame communication
- * Sharpen listening skills and identify communication styles that hinder the resolution of conflict
- * Practice analysing the conflict and developing options
- * Examine the difference between needs-based conflict and values-based conflict
- * Practice the steps in a mediation session
- * Explore ways in which impartiality can be maintained

Methods will include presentations, discussion, demonstrations, work in small groups, role-plays and handouts will be provided.

Some Training Options:

2-day workshop, 2 Saturdays, or Sat. & Sun.

9.30 - 4.30, 12 hours total,

up to 20 participants

\$1,600.00

20 - 36 participants, 2 trainers

\$2,000.00

4 x 3 hour sessions, evening or day,

up to 20 participants

\$1,800.00

20 - 36 participants

\$2,200.00

Further options can be arranged on discussion of your particular needs.

21.4.93

File MASTER
✓ Graham
✓ Simon/Carol.

Law Society Mediation Rules

To be used in the mediation of a dispute pursuant to the Law Society's model dispute resolution clause

Functions of the Mediator

1. The Mediator will assist the parties to explore options for and, if possible, to achieve the expeditious resolution of their dispute ("the Dispute") by agreement between them.

2. The Mediator will not make decisions for a party or impose a solution on the parties.

3. The Mediator will not, unless the parties agree in writing to the contrary, obtain from any independent person advice or an opinion as to any aspect of the Dispute and then only from such person or persons and upon such terms as are agreed by the parties.

Conflicts of Interest

4. The Mediator must disclose to the parties to the best of the Mediator's knowledge any prior dealings the Mediator has had with either of them and any interest the Mediator has in the Dispute.

5. If in the course of the mediation the Mediator becomes aware of any circumstances that might reasonably be considered to affect the Mediator's capacity to act impartially the Mediator will immedi-

ately inform the parties of those circumstances. The parties will then confer and if agreed continue with the mediation before the Mediator.

Participation

6. The parties must participate in good faith with the Mediator and each other during the mediation.

7. Each party must use its best endeavours to comply with reasonable requests made by the Mediator to promote the efficient and expeditious resolution of the Dispute.

Authority & representation

8. If a party is a natural person, the party must attend the mediation conference. If a party is not a natural person it must be represented at the mediation conference by a person with full authority to make agreements binding on it settling the Dispute.

9. Each party may also appoint one or more other persons including legally qualified persons to assist and advise the party in the mediation and to perform such roles in the mediation as the party

requires.

Conduct of the Mediation

10. Subject to Rule 21, the mediation, including all preliminary steps, will be conducted in such manner as the Mediator considers appropriate having due regard to the nature and circumstances of the Dispute, the agreed goal of an efficient and expeditious resolution of the Dispute and the view of each party as to the conduct of the mediation.

11. The mediation conference shall be held within fourteen (14) days of the selection of the mediator or within such other period as the parties may agree.

12. Without limiting the Mediator's powers under Rule 10 the Mediator may give directions as to:

12.1 Preliminary conferences prior to the mediation conference.

12.2 The exchange of experts' reports, the meeting of experts and the subsequent preparation of a joint experts' report with a view to identifying areas of agreement, narrowing the area of disagreement and clarifying briefly the reasons for disagreement.

12.3 The exchange of brief written outlines of the issues involved.

12.4 Service on the Mediator prior to the mediation conference of any such reports and outlines.

Communication between the mediator and a party

13. The Mediator may meet as frequently as the Mediator deems appropriate with the parties together or with a party alone and in the latter case the Mediator need not disclose the meeting to the other party.

14. The Mediator may communicate with any party orally and/or in writing.

15. Subject to Rule 16, any document relied upon by a party and provided to the Mediator must immediately be served by the party on the other party.

16. Information, whether oral or written, disclosed to the Mediator by a party in the absence of the other party may not be disclosed by the Mediator to the other party unless the disclosing party permits the Mediator to do so.

Confidential Information

17. A party may prove objective facts, whether or not confidential, by direct evidence in any proceedings in respect of the Dispute. Subject to that, all confidential information disclosed during the mediation, including the preliminary steps: 17.1 may not be disclosed except to a party or a representative of that party participating in the mediation or if compelled by law to do so; and 17.2 may not be used for a purpose other than the mediation.

Privilege

18. Subject to Rule 25, the following will be privileged and will not be disclosed in or relied upon or be the subject of a subpoena to give evidence or to produce documents in any arbitral or judicial proceedings in respect of the Dispute:

18.1 Any settlement proposal, whether made by a party or the Mediator.

18.2 The willingness of a party to consider any such proposal.

18.3 Any admission or concession or other statement or document made by a party.

18.4 Any statement or document made by the Mediator.

Subsequent proceedings

19. The Mediator will not accept appointment as an arbitrator in or act as an advocate in or provide advice to a party to any arbitral or judicial proceeding relating to the Dispute.

20 Neither party will take action to cause the Mediator to breach Rule 19.

Termination

21. A party may terminate the mediation immediately by giving written notice

to each other party and to the Mediator at any time during or after the mediation conference.

22. If, after consultation with the parties, the Mediator forms the view that the Mediator will be unable to assist the parties to achieve resolution of the Dispute the Mediator may immediately terminate the engagement as Mediator by giving written notice to the parties of that termination. The mediation will be terminated in that event only if a party gives notice to that effect to each other party. If no such notice is given the parties must appoint another Mediator.

23. The mediation will be terminated automatically upon execution of a settlement agreement in respect of the Dispute.

Settlement

24. If settlement is reached at the mediation conference, the terms of the settlement must be written down and signed by the parties and the Mediator before any of the participants leave the mediation conference.

Enforcement

25. In the event that part or all of the Dispute is settled either party will be at liberty:

25.1 To enforce the terms of the settlement by judicial proceedings.

25.2 In such proceedings to adduce evidence of and incidental to the settlement agreement including from the Mediator and any other person engaged in the mediation.

Exclusion of liability and indemnity

26. The Mediator will not be liable to a party except in the case of fraud by the Mediator for any act or omission by the Mediator in the performance or purported performance of the Mediator's obligations in the mediation.

27. The parties shall jointly and severally indemnify the Mediator against all claims, except in the case of fraud by the Mediator, arising out of or in any way referable to any act or omission by the Mediator in the performance or purported performance of the Mediator's obligations in the mediation.

Costs

28. The parties will share equally and will be jointly and severally liable to the Mediator for the Mediator's fees for the mediation. The Mediator may, at any time and from time to time, require each party to deposit with the Mediator such sum as the Mediator considers appropriate to meet the Mediator's anticipated fees and disbursements. The Mediator may decline to embark upon or continue the mediation until all such deposits are made.

29. If the mediation does not result in an agreement to resolve the Dispute, the costs of the mediation will be costs in the cause. □

Law Society revises ADR clause to enhance enforceability

By ROBERT ANGYAL

UNTIL A RECENT DECISION OF THE NSW Supreme Court discussed in this note, there was some doubt whether the courts would enforce an agreement to mediate. That decision, *Hooper Bailie*, enforced such an agreement. It also required some changes to the ADR clause published by the Law Society in 1989 to ensure its enforceability. The revised clause published with this note was approved by Council on 26 August 1993. This note explains what sort of ADR clauses the courts will enforce and how they will do it.

Background

Until a recent decision of the Supreme Court of New South Wales, *Hooper Bailie Associated Limited v Natcon Group Pty Limited* (1992) 28 NSWLR 194, there was some doubt whether an Australian court would give legal effect to an agreement to conciliate or mediate. In that case, Giles J considered whether an agreement to conciliate should be given effect in law, or whether it lacked the certainty necessary for legal recognition of an agreement.

Clauses requiring the parties to mediate in the event of a dispute are increasingly often being used in commercial agreements and other types of agreements as well.

Conciliation and mediation (the terms are often used interchangeably) are both processes of structured negotiation in which a neutral third party — the conciliator or mediator — uses a number of proven techniques to assist the parties to frame their own agreement to resolve the dispute. The neutral, unlike a judge or an arbitrator, has no power to impose a result on the parties.

Because the neutral has no decision-making powers, he or she, unlike a judge or arbitrator, can talk privately in confidence with each party and its advisors. These private discussions, called 'caucuses', are often effective in exposing the weaknesses and strengths of the parties' cases, as well as any common ground between the parties, and thus facilitating settlement.

The existing law

In *Hooper Bailie*, the Court considered a summons seeking to prevent the defendant from continuing with an arbitration between the parties. The suit was brought on the basis that the defendant

had agreed by exchange of letters that the arbitration would not continue until a conciliation between the parties had concluded, and that it had not concluded. The agreement was quite specific as to the manner in which the conciliation was to be conducted, and the conciliation had in fact got under way with some success — but was brought to a halt by the winding up of the defendant, whose liquidator some time later demanded that the arbitration resume.

Whether agreements to mediate or conciliate were enforceable was uncertain in light of what seemed to be the only Australian decision on point, *Allco Steel (Queensland) Pty Limited v Torres Strait Gold Pty Limited & Ors* (unreported, 12 March 1990) in which Master

Horton QC refused to stay proceedings in the Supreme Court of Queensland on the basis of a contractual disputes clause requiring conciliation. The question was even more uncertain in the light of the recent decision of the House of Lords in *Walford v Miles* [1992] 2 AC 128 refusing to recognise a contract to negotiate, and similar English authorities such as *Paul Smith Ltd v H & S International Holding Inc* [1991] Lloyds' Rep 127.

The Hooper Bailie decision

In a learned judgment, Giles J considered US, English and Australian authorities and statutory provisions. In a perceptive passage, his Honour set out the arguments for and against forcing par-

Model clause making ADR mandatory

If a dispute arises out of or relates to this contract (including any dispute as to breach or termination of the contract or as to any claim in tort, in equity or pursuant to any statute) a party to the contract may not commence any court or arbitration proceedings relating to the dispute unless it has complied with the following paragraphs of this clause except where the party seeks urgent interlocutory relief.

A party to this contract claiming that a dispute ("the Dispute") has arisen under or in relation to this contract must give written notice to the other party to this contract specifying the nature of the Dispute.

On receipt of that notice by that other party, the parties to this contract ("the Parties") must endeavour in good faith to resolve the Dispute expeditiously using informal dispute resolution techniques such as mediation, expert evaluation or determination or similar techniques agreed by them.

If the Parties do not agree within seven (7) days of receipt of the notice (or such further period as agreed in writing by them) as to:

- (i) the dispute resolution technique and procedures to be adopted;
- (ii) the timetable for all steps in those procedures; and
- (iii) the selection and compensation of

the independent person required for such technique,

the Parties must mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales and the President of the Law Society of New South Wales or the President's nominee will select the mediator and determine the mediator's remuneration.

NOTES

1. The clause will require amendment if there are more than two parties to the contract.
2. An arbitration option can also be included.
3. Other options are set out in the "Australian Dispute Resolution Handbook" published by the Australian Commercial Disputes Centre Limited (authors, Michael C. Ahrens and Gavin M. Whitcombe).
4. The courts will not grant specific performance of the above clause but may grant a stay of proceedings commenced in breach of the clause until the dispute resolution procedure is concluded. (Please see *Hooper Bailie Associated Ltd v Natcon Group Pty Ltd* (1992) 28 NSWLR 194. (Giles J.)).
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File Copies with Simon Ker-Str

MEDIATION IS ...

- Cost efficient
- Confidential
- Voluntary
- Impartial



69 Jonson St,
Byron Bay, NSW, 2481
(PO BOX 309)

Tel (066) 855 070
Fax (066) 857 830

Printed in Byron Bay by Lighthouse Print



BYRON COMMUNITY MEDIATION SERVICE

Incorporated

WHO CAN USE THIS SERVICE

Everyone including people who:

- Live together
- Work together
- Belong to the same organisation
- Are neighbours.

WHAT SORT OF ISSUES -

A range of disputes including:

- Family conflicts
- Relationships
- Living arrangements
- Landlord-tenant disputes
- Noise, smoke, fences, trees, pets.

WHAT THIS SERVICE OFFERS

- Experienced staff who can arrange mediation between people in dispute
- Refer you to other agencies if appropriate.

WHAT IS MEDIATION?

People coming together voluntarily, sitting down with mediators and settling their conflict in a fair and acceptable manner to all ...

Mediators do not take sides, decide who is right or wrong, tell people what to do or give legal advice.

MEDIATION HOW IT WORKS

STEP 1

Phone us. We will ask for information about the problem and the other people involved.

STEP 2

We contact the other person(s) and invite them to participate in mediation.

STEP 3

We arrange a mediation at a time and place convenient to both of you.

STEP 4

During mediation two mediators will listen to all sides of the problem. They assist you with discussing concerns and examining possible solutions.



7/7/94 Tony Belton - Tatable Co re MEDIATION

Kerry Edgecomb (from SA) 891592

Karlin Tracewait 891 544

(Put in expression of interest re mediation X LLC)
(Practices counselling)

Both make claims to be practicing mediators.

5/1/94 Dan feedback on Girards Hill Mediation
1st meeting re process. re "Clouby"

Dan attended this meeting 4-7-94. Referred to a Prelim Meeting
Identification of main issues.

- seen as being a 'precident' for other dev in area - & perhaps wider influence
- density
- excavation impact.

- Council staff to be present re technical comment.

Rep meetings to be held for users & developer, then a joint meeting.

6 Rep to attend joint meeting, 4 being neighbours + 2 others (Doris one of these)

○ (Does this include my agent/solicitor?)

Next meeting before Mon 11. July.

Dan to seek clarity from Council on

If mediation reached, will ^{can} this bind the parties?

Does Council claim a veto?

Do Councilors agree to relinquish their power?

1/7/94

Carol on Mediation process.

- Sumo Pl. of Casano
- (A) Carol is engaged to mediate re Gumpston Hill Heritage dispute residents/owner/applicant/Council in Elton St - heritage house "Clovelly" between Cathcart St & Wyrall Rd.

2x Duplex involved adjoining

Family life have 3 regular mediators (all 8⁺). They get co mediators sometime outside 8⁺ to get a good balance. (B)

↑ In respect to (A) Council selected 3 applicants for co-med. & asked Carol's opinion on same. Decision made by Council.

- (B) The mediators meet together with a supervisor once per month for face to face "supervision", to discuss

where participants have agreed to tape recording, this is sent to Sydney for monitoring.

- Debriefing built in between co mediators & prior Council. (in part a self learning/evaluating process/value)

- (A) Hugh Johnson is the planner involved. He will be present only for comment to questions of a planning/building nature. He does not participate but in my view this is one sided, as he is not accountable on a face to face basis.

Carol has recommended residents have an invited present. She has no problem with parties bringing a solicitor

Carol has worked with/for the Byron Bay Mediation Service & has had contact with Fitzday whom she respects.

Re acting in a DA involving an m.o. of the Chamber.

She has no problem with this, on basis that why should she be discriminated against. The test is acceptance by the parties that she will act impartially.

She puts this to everyone at the outset & if anyone is not totally accepting of this, she will withdraw.

• She takes the view that if living in embarrassment or being a lawyer one is not asked to justify their impartiality. I agree.

Carol believes Council overriding criteria in selection was/is cost. Lawyers are likely to ask more than others.

She has no immediate comment on any draft process.

(A) Council imagined this would/could be done in one session.

✓ Setting Texts - William Orr
Business Books 1991

£18

Good Good Resolving Conflict. So Pines. 1991
Carol did up with ^{with Tillet} ^{with OOP} Macquarie course.

Similar to Saps

✓ The Mediation Process. Christopher Moore HB
Jossey-Bass Inc. Cal USA 1986

Multiple disputants.

Adv. disads of Co-m.

1 eye contact, and watching body language etc. /
discomfort

○ Q. (Cynthia) If Co-m would/can you supply the / or do you
work with a partner / preferred co-mediator.

Is / may it be app to invite mediator to provide /
nominate a co-m?

○ John offered to supply copy for ^{for m.} "code of conduct" for
lawyers.

? Ent. ^{likely} time of mediation sessions

✓ Aust. Disputes Res. J. Law Books
(Pub. in assoc with. Aust DR Association)
44-50 Watkinson Rd, Nth Ryde 2113

Times = 4 pa \$165 pa

Carol has -

○ "Mediation News" Vic-SA?

○ Law Society Code on Mediation

○ Macquarie Mediation Newsletter 2002

DRAFT

CRITERIA FOR THE EVALUATION OF APPLICANTS
FOR COUNCIL INITIATED MEDIATION

by Peter Hamilton 18 June 1994 (Draft)

MASTER-
220433
FAX ✓
Loren + Doc

Consideration of the following:-
(These are not in any priority order).

James, Bobbi
Tina
Carol
Ros? after replies
PANCOM 28

1. Formal academic qualifications/ training in mediation
Alternative Disputes Resolution (if any)?
2. Professional academic qualifications (other than in mediation)
if any?
3. Experience in mediation where:-
 - a. it has involved legal planning issues,
 - b. it has involved Multiple Occupancy development,
 - c. the issues have been primarily of a social nature or
where there is a break down in communication,
 - d. other?
4. How many mediation cases have been conducted and over what
period of time?
5. What is the extent of co-mediation experience(if any)?
6. Code of conduct and typical examples of procedure and that may
be used depending on the circumstances?
7. Availability?
8. Cost?
9. References (if any)?

End

COMMENT

Any notion of just boiling the candidates down to a "short list" and
for example, rotating these as the need arose, could in my view, be
totally inappropriate. See my suggestions below for the selection of
a mediator/s on a case by case basis.

not be conducive to producing the ^{max} most likely chance
of reaching a settlement.

=====

CRITERIA FOR THE SELECTION OF A MEDIATOR/S
IN RESPECT TO A SPECIFIC ^{dispute} CONFLICT OR ISSUE

=====

by Peter Hamilton 18 June 1994 (Draft)
(The following list is not in any priority order)

1. Review those mediators listed on Council's list? *publically and/or advertise for same.*
2. Consider if the experience of each applicant has relevance to the ~~specific~~ ^{Re} subject of the issue/ conflict? *specific*
3. Does the issue/ dispute require detailed knowledge of the relevant law and if so, does the candidate have this knowledge or means to address this situation?
4. *Are the circumstances of this dispute similar to those encountered by the candidate in the past?*
~~Does the candidate have a background in mediation where the issues or circumstances are similar to past experience?~~
the candidate.
If so, is this seen to be an advantage or a disadvantage?
5. In the circumstances of the case, will the mediator be seen to be impartial? *from the point of view of both, the parties & Council?*
(For example, if the dispute involved a Multiple Occupancy DA would it be appropriate or inappropriate to appoint a mediator who had good qualifications on all accounts AND lived on an MO community?)
6. Is this a situation where a co-mediator may be necessary or desirable?
7. Would it be desirable to consult the parties on the selection of the mediator/s?
8. Would it be desirable to obtain from a preliminary selection of (say 1-3) candidates an outline of how they would envisage conducting the mediation, and forward this to the parties for their preferred option, as to candidate and process?
9. Availability? *What form of reference should be included mediated appointment in the typical curriculum - est duration proposed process*
10. Cost?

In regard to cost, consideration might be given to inviting a small selection of candidates to tender for each appointment on its merits. This would require giving each selected candidate a summary/ overview of the dispute.

An advantage of adopting this process is that the cost fee would be self adjusting taking into account, the benefits if any, of a "free market" approach, cost fluctuations over time, availability, etc.

End

*is aiming to reach a mutually legally binding agreement
or aiming to reach a mutually non-binding agreement
What form of report to Council, report to the parties is required, if any?
As the mediation to be formal*

=====

CRITERIA FOR THE SELECTION OF A MEDIATOR/S

IN RESPECT TO A SPECIFIC CONFLICT OR ISSUE

=====

by Peter Hamilton 18 June 1994 (Draft)
(The following list is not in any priority order)

1. Review those mediators listed on Council's list?
2. Consider if the experience of each applicant has relevance to the specific subject of the issue/ conflict?
3. Does the issue/ dispute require detailed knowledge of the relevant law and if so, does the candidate have this knowledge or means to address this situation?
4. Does the candidate have a background in mediation where the issues or circumstances are similar?
If so, is this seen to be an advantage or a disadvantage?
5. In the circumstances of the case, will the mediator be seen to be impartial?

(For example, if the dispute involved a Multiple Occupancy DA would it be appropriate or inappropriate to appoint a mediator who had good qualifications on all accounts AND lived on an MO community?)
6. Is this a situation where a co-mediator may be necessary or desirable?
7. Would it be desirable to consult the parties on the selection of the mediator/s?
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9. Availability?
10. Cost?

In regard to cost consideration might be given to inviting a small selection of candidates to tender for each appointment on its merits. This would require giving each selected candidate a summary/ overview of the dispute.

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End

 CRITERIA FOR THE EVALUATION OF APPLICANTS
 FOR COUNCIL INITIATED MEDIATION

by Peter Hamilton 18 June 1994 (Draft)

Consideration of the following:-

(These are not in any priority order).

1. Formal academic qualifications/ training in mediation or Alternative Disputes Resolution (if any)?
2. Professional academic qualifications (other than in mediation) if any?
3. Experience in mediation where:-
 - a. it has involved legal planning issues,
 - b. it has involved Multiple Occupancy development,
 - c. the issues have been primarily of a social nature or where there is a break down in communication,
 - d. other?
4. How many mediation cases have been conducted and over what period of time?
5. What is the extent of co-mediation experience(if any)?
6. Code of conduct and typical examples of procedure and that may be used depending on the circumstances?
7. Availability?
8. Cost?
9. References (if any)?

End

COMMENT

Any notion of just boiling the candidates down to a "short list" and for example, rotating these as the need arose, could in my view be totally inappropriate. See my suggestions below for the selection of a mediator/s on a case by case basis.

**EXPRESSIONS OF
INTEREST
MEDIATORS —
DEVELOPMENT
APPLICATIONS**

Council is creating a register of suitable mediators which may be called on from time to time when the need arises. Accordingly, Council is calling for expressions of interest from persons capable of fulfilling the role of Mediator to assist Council in the resolution of disputes associated with development applications. Typically, such disputes arise from concerns expressed by objectors to a development application. Parties likely to be involved in mediation include developers, objectors, residents, councillors and Council staff.

The mediator's role is envisaged to include facilitating a meeting of all interested parties and providing Council with a written report of the results of mediation. Persons interested in being considered as mediators should include the following information:

- details of mediation experience and relevant or supporting qualifications.
- outline of proposed mediation process.
- costs to Council.
- skills and attributes which you possess as a mediator.
- availability.

Expressions of interest should be lodged with Council no later than Friday June 10, 1994. Inquiries may be directed to Council's Manager of Planning Services, Mr Nick Juadowitch phone (066) 25 0428.

Fax to: Peter Hamilton 856624
cc Carson 220433

From: Carol Perry 886193

13.6.94

File.

Some criteria for selecting a mediator:

In most professions, the number of years in practice gives a clear indication of the experience of the professional, but this is not as true for mediators, because the profession itself is a new one. A more accurate indication of a mediator's experience is the number of cases mediated.

You may also want to consider:

What issues does the mediator mediate?

What percent of their practice is devoted to mediation?

Do they have another professional practice, if so what is it?

What mediation training have they had?

How many mediations have they done?

What is their experience/knowledge in: negotiation or dispute resolution?

What is their understanding of mediator ethics and codes of conduct?

Co-mediation is a frequently used model in family mediation, disputes that involve large numbers of people, disputes that require a range of substantive knowledge of the dispute, or where a gender balance is thought to be necessary.

In this regard a mediator's experience in co-mediation would be relevant. How many co-mediations have they done? What is their attitude to the value of co-mediation as a process?

The nature of the training which is available in Australia, and the amount and type of training which is considered necessary or sufficient by different organisations and individuals, vary considerably.

With the current enthusiasm for Alternative Dispute Resolution there is a diverse group of people who hold themselves out to be mediators. The training received by these mediators varies enormously.

Training Available:

Community Justice Centres in NSW - mediators receive 70 hours which is regarded as basis training only. Further training entails working as a co-mediator which includes regular feedback, further in-service and on-going training.

Family Mediation Centres - 160 hours of training, five supervised co-mediations and a stipulated number of hours of mediation work.

Short training courses - these range from a single day to a week in duration; examples are the courses presented by the Commercial Disputes Centre, Bond University, the Conflict Resolution Network, LEADR (Lawyers Engaged in Alternative Dispute Resolution), the Harvard Negotiation Program & Centre for Dispute Resolution, Colorado (who conduct course in Australia from time to time).

+ Macquarie Uni.

Adapted from: "Dispute Resolution in Australia" H. Astor and C.M. Chinkin, Butterworths. 1992
"Divorce Mediation", D. Neumann, Henry Holt & Co. N.Y. 1989

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"Divorce Mediation", D. Neumann, Henry Holt & Co. N.Y. 1989

WORKPLACE MEDIATION FOR MANAGERS AND SUPERVISORS

A Certificate Course

Mondays August 15th & 29th

WHY MEDIATE?

As a Manager or Supervisor responsible for the work of at least two others, you will be spending some of your valuable time sorting out conflicts between colleagues or subordinates.

Mediation is a powerful dispute resolution tool which you can use to achieve effective and productive resolution of conflicts in the workplace. A well-handled conflict can be transformative and creative for your organisation.

Mediation is an effective lubricant of CHANGE. Any development in an organisation which demands changes of roles, culture, authority, purpose, can be eased by mediation.

This course presents mediation strategies which can be readily applied by managers in the workplace.

Topics will include

- * The difference between mediation, arbitration and counselling
- * The ethics of workplace mediation
- * Stages in mediation
- * Mediation microskills
- * Team mediation for creative management.

The course is structured so that the interval between Day 1 and Day 2 can be used by participants to apply the skills learned on Day 1; Day 2 will include time for discussion and problem-solving of issues encountered in the workplace.

EXPECTED OUTCOMES

You will take back to your organisation the skills of constructive and creative influence for the resolution of conflict, taking into account the needs of those involved.

THE TRAINER: BOBBI ALLAN is a trained (Bond University) and experienced Mediator and Mediation trainer. She has conducted Mediations and Mediation training for Government Departments, Businesses and Community organisations. Having worked and conducted Management training in all three sectors, she has an excellent understanding of the issues involved.

VENUE: Goonellabah Community Centre, Oliver Ave., Goonellabah, Lismore

FEES: \$300 per person. **Discount** for 2 or more persons from one organisation: \$250.

Bookings received by Monday 1st August: 10% discount. Bookings must be accompanied by \$50 deposit - non-refundable after Friday 5th August. Cheques payable to Bobbi Allan, P.O. Box 6172, South Lismore, 2480

ENQUIRIES: Telephone: (066) 886147

Empowering Processes presents:

A Certificate Course in

CONFLICT RESOLUTION SKILLS

with Bobbi Allan & Katrina Shields
Conflict Resolution Network Trainers

Mondays: August 8th & 15th (2 days)



Conflict is an inevitable part of life. Unresolved conflict is stressful, demoralising, and often leads to ineffectiveness and inefficiency. Conflict that is handled skillfully can lead to creative solutions, improved relationships and higher morale. This two-day seminar introduces the twelve skills of conflict resolution that have proven to be highly effective in families, schools and workplaces. This course is for anyone who lives or works with people!

Bobbi Allan and Katrina Shields are trainers, counsellors and mediators. They have been teaching Conflict Resolution and providing other training to a wide range of community groups, businesses and Government Departments in Australia and New Zealand for seven years. Katrina is the author of "In the Tiger's Mouth - An Empowerment Guide for Social Action."

VENUE: Studio Art School Building, 31 Tweed Street, North Lismore
9 am - 5 pm

COST: \$120 (fully waged) - \$75 (unwaged) on a sliding scale

This also covers the cost of the course manual.

(LETS accepted as part payment, by negotiation)

\$20 deposit to P.O. Box 6172, South Lismore by 28th June, 1994

(cheques payable to B. Allan or K. Shields)

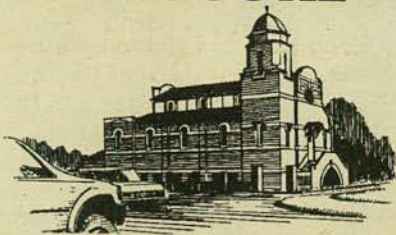
INQUIRIES: Katrina Shields : 886 116 (a.h.)

Bobbi Allan 886 147 (a.h.)

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3) SANCTURY HILLS ESTATE

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4) HILLTOP ESTATE

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PROPERTY Profile

Church site offers heavenly opportunity

Like the real estate market in our City, The congregation of the Lismore Church of Christ is on the move. The Church is planning to relocate the centre of its activity to the growing area of Goonellabah. As a result of this relocation the current Church of Christ on the corner of Keen and Magellan Streets, Lismore, is to be sold by public tender. Closing date for tenders

mate conclusion concerning the downtown site is that it is not in the best location for a family-gear'd Church".

The building, built in 1922, is ideal for a number of alternative uses.

Associate Director of Capminster, Alex Nicholson, said that the church could be refurbished to accommodate a range of uses which require close proximity to the CBD.

"Possible alternative uses include interior conversion to offices, video shop, bedding



Jeff Stone, of Paint Mate, puts the finishing touches on the paint specialist's new Lismore location in Dawson Street.

should be lodged with the exclusive marketing agents, **Capminster Realty**, by June 6 1994.

Ian Phillips, Pastor of the Lismore congregation, said that "Part of our hope is to see a Church building complex developed which will better serve people's needs". "People are social beings, designed by God to live in a positive relationship with others. Sadly these relationships have broken down for a lot of Australians. As a Church we seek to provide some of the supportive nature of the extended family.

"For us it becomes a question of how to use our present resources effectively. Our ulti-

shop, carpet barn, antique warehouse or even a restaurant".

This is a rare opportunity to acquire a prime CBD location that should not be overlooked. For further information on the Church of Christ tender, contact Alex Nicholson or Peter Burge at Capminster Realty on 221 077. And remember that the tenders close on June 6.

Paint specialists relocate

Lismore paint specialists, **Paint Mate**, have relocated this week from their former Ballina Street premises to 139 Dawson Street.

"We're now just around the corner from our previous site, opposite the car wash", explained proprietor Jeff Stone.

"Our new shop is larger, offers easy access and has plenty of parking space".

This week Paint Mate also welcomes a new staff member, Andrew Hazell, who brings with him experience, enthusiasm and a high level of commitment to service.

"Our aims have not changed", Jeff said. "We want to offer the highest levels of service, advice and product knowledge, but at the most competitive prices".

Paint Mate may well be unique in the way they test and evaluate products. They have an 'exposure rack' in Ballina where many products are tested to assess their performance in 'real' conditions, such as sun, rain, salt and spray.

A recent arrival in the store is **Hammerite** metal finishes.

Hammerite is a tough, durable coating for metal which requires no primers or undercoats and can even be applied directly over rust.

The top seller in Europe and the USA, Hammerite claims their product is 'The world's best rust proofing paint'.

Paint Mate still has its popular bargain bin with many pre-tinted paints, all seriously reduced.

There's also a large selection

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and REDUCED- \$99,000 buys you a 3 bedroom timber home, positioned on one of the highest points around. Ensuring Spectacular Views over Tree tops for many miles. The property consists of natural trees, dam and abounds in flora and fauna. Your own secluded piece of Australia.

TEA TREE FARM

Home with a difference on 35 Acres - 25 of which is Tea tree. This solidly constructed 2 storey timber home has 4 bedrooms, plus study and games room. Features include circular stairs case which surrounds a massive Tea Tree trunk. Skylights, Solar Power, Combustion Stove, Open Fireplace, Wide Balcony. Also on property is large shed approved as workmans cottage. This property must be seen to be appreciated, \$180,000

EVANS HEAD

Delightful 2 Storey 2 Spacious bedroom home. Dining, lounge and kitchen all have quality inclusions. Enjoy ocean views from balconies off bedrooms. Downstairs fully equipped self contained flat plus garage and workshop. \$179,500

Spectacular 4 bedroom brick/tile home with Permanent Views, all built-ins, 3-way bathroom, Spacious Lounge, Separate Dining, Family room off kitchen. Quality inclusions. \$178,500

BUSINESSES- Leasehold Clothing Shop, modern Designs, Exclusive Labels. Local and Holiday Trade. \$49,500 + SAV.

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all insurance agents to maintain an appropriate level of professionalism whilst protecting the interests of the clients".

Mediation can ease court backlog

Much has been said about mediation – often described as alternative dispute resolution – which is an excellent way of allowing people in dispute to resolve their differences.

Although it is different to the adversarial process usually involved in going to court, there is still a high level of skill involved in negotiating an outcome – sometimes even more skill than in arguing in court!

Statistics show that only about 5 per cent of all types of disputes end up in court, so there is a lot more negotiation going on than advocacy. That is why there is so much emphasis on understanding negotiation and structuring negotiation, not only in 'the law' but also in business. Some recently mediated settlements have involved hundreds of millions of dollars. (Even the so-called Children of God case was resolved ultimately by mediation).

essential.

If the parties can negotiate a settlement that they are content with it will enable them to retain control of their own destiny.

– John Hertzberg

Zoe Nielsen, 23, holds the silver replica "Quaich" – an ancient Scottish drinking cup – she received as winner of the 1994 Louis M Brown International Client Counselling Competition in Glasgow, Scotland.

Real lawyers win Quaich

Despite having "the clients from hell" in the grand final of the Louis M Brown Client Counselling Competition, former Barker's Vale resident and Kyogle High School student, Zoe Nielsen stuck to her belief in dealing with people on a wholistic level to win the prestigious international competition from the seven other finalist countries.

The competition, under the auspices of the American Bar Association, has been international since 1985 and places emphasis on communication skills for lawyers, using actors as clients, creating complex scenarios that blend legal, ethical and moral issues which teams of two are expected to resolve.

Ms Nielsen, a final year Law Student at University of Wollongong was partnered by part-time Law student and Policy Officer with the NSW Department of Transport, Patrick Culbert. The finals were held in March at the University of Glasgow, Scotland.

For the 30 minute Grand Final, judged before an international committee, two aggressive partners were unable to agree on new directions for their business, with one resisting new initiatives.

"We had two business partners constantly screaming at each other. At one stage,

one even got up and walked out, they were the clients from Hell, it was incredibly real and difficult" Ms Nielsen said.

"But the emphasis is on mediation and negotiation as an alternative form of dispute resolution. We consider people wholistically rather than just looking at the legal problem".

After defeating teams from Canada, the UK, Eire and, much to their annoyance (since they enter almost 500 teams), the USA, Ms Nielsen says she would be guaranteed



a \$100,000 starting salary in the USA. But plans to remain in Australia, although she holds dual American/Australian citizenship, looking for a position that combines her pending law qualifications with her three years studying for a Bachelor of Landscape Architecture.

"Planning, environmental or conservation law are the areas I'm interested in" she said.

After a brief rest at her parent's Barker's Vale beef property, Ms Nielsen returned to Wollongong and the relentless workload of a Law student, hoping the letters BA LLB will be her next major win.

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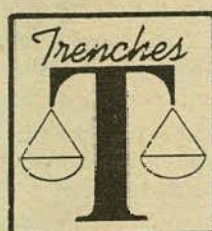


John Hertzberg... experienced mediator

Mediation is widely used in Family Law.

To be an effective negotiator requires knowledge and experience in the law as well as familiarity with the nature of the dispute.

It is recognised that Family Law can be more complex in terms of negotiating agreements that will work and stick. There are also skills in getting another party to negotiate and timing is important. Knowledge of both court and non-court procedures is



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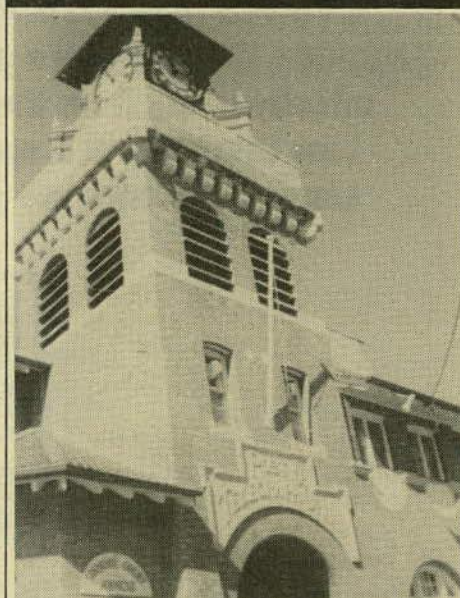
opportunity of improving their knowledge on road safety, first aid, and the law;

2. To make traffic offenders more aware of the need to prevent road accidents;

3. To provide an alternative for the Courts when dealing with traffic matters.

To date, participants have been placed in the Program after appearing before the Courts on a wide range of offences, including Special, Low range and Mid range Proscribed alcohol content, or PCA; Aid and Abet under the influence of Alcohol or Drug; Unlicensed Driving; Uninsured vehicle; Plates calculated to deceive; Failure to Stop after an Accident; Exceed Speed Limit; and, Carrying Illegal Pillion, amongst others. Participants attend for a total of eight weeks and may commence on any evening of the program. The cases are adjourned for a suggested ten weeks while they complete the Program.

To the Tower ... and off with his head!



It may be a while since the judiciary has had the opportunity to make such outrageous statements, but the temptation may strike one or two of its august members as they sit in session at the Lismore Court Annex. The old Lismore Posts and Telegraph Office, with its distinctive bell tower, was opened in 1897 by the Post Master General – and later Prime Minister – Joseph Cook. It's currently seeing service as the Lismore Court Annex until the completion of renovations at the Lismore Courthouse in Zadoc Street.

Renouf, J.P. and Angela Sullivan.

The scope of talent at Walters Solicitors is so vast that they can supply advice and quality legal service in all areas including sales and purchases of property and businesses, mortgages, bills of sale, agreements, leasing and multiple occupancies; family law, company law, personal injuries, wills, police matters, motor vehicle accidents, court representation, arbitration and mediation.

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For further information, Walters Solicitors can be contacted on 218 833.



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For further information contact:

The Director

Professional Development Programs

Faculty of Law and Criminal Justice

Ph: (066) 20 3109 Fax: (066) 22 4167.



Lismore campus
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Lismore NSW 2480

**the
INAUGURAL
YEAR**

Firm's diversity enhances effectiveness

One of the most respected firm of solicitors in Lismore, Walters Solicitors, operates under a company profile that ensures a dedication to providing the best and most effective service to their clients.

The firm's four partners are: Senior Partner Tony Pagotto, Corporate and Commercial Law; John Walker, Civil and Criminal Court specialist; Managing Partner Gilbert Victoire, Family Law, Leases and Mediation; and Geoffrey Manion, Court, Compensation and Contractual Dispute Litigator and Advocate. They are ably assisted by Associates Stuart Garrett, David Wolff, Carl Spence and Phillipa Howsan and their clerk and para-legal division of Joanna Carusi, J.P., Margo

Insurance code to protect standards

The insurance industry is about to undergo a change which is bound to increase the industry's standing in the community.

The Insurance and Superannuation Commission is currently undergoing negotiations with the Life Insurance Federation of Australia to put in place an insurance industry Code of Practice by the end of the year.

Already some companies, National Mutual for instance, operate with a code of ethics to ensure consistent quality of service for their clients. The new Code of Practice will ensure that all agents are accredited with the national body.

Another advantage of the Code is that clients would, in future, receive a needs analysis to ensure that they are taking out appropriate cover. Clients will also receive a detailed customer information brochure specific to the policy that they are taking out. In endorsing the negotiating process being undertaken to bring the national Code of Ethics into place, National Mutual's Peter Scrutin told *The Echo* that "While we already have many of the elements of the code incorporated into our on-going company practice, we believe that this Code of Ethics will help

Lismore gets Community Law Centre

A community based legal centre will soon be operating in Lismore.

With the cutback of Legal Aid services during the past few years, people are finding it more difficult to gain access to the legal system.

Community Legal Centres meet this problem by servicing the needs of those people who fall through the legal system's net.

Such centres have been operating in metropolitan areas for many years. They are - as the name suggests - community bases and ours will operate from the Lismore Neighbourhood Centre. It will be run by a community-based Management Committee, with support from the Southern Cross University.

The Legal Centre will provide free legal advice to those who cannot afford legal services. Planning is under way for the Centre to be operational at some time during July this year.

Once it is established the Centre will also be able to provide case work services and community legal education programs as well as lobbying for law reform in areas relevant to the region.

The steering committee, which to date has guided the creation of the service, has named it the 'Lismore and District Community Legal Centre' to ensure that the community outside Lismore feels comfortable in making use of its services.

As well as the involvement of members of the local legal profession, the students and staff from Southern Cross University have indicated their

This week the Australian law community celebrates Law Week, established in NSW back in 1983. In Lismore, those involved in the law are making great inroads towards making the law more accessible to the wider community. Initiatives such as the Lismore and District Community Law Centre and a special free seminar on Law at the Lismore Library are just a couple of those initiatives.

enthusiastic support. Eventually, para-legal and law students at SCU will be given an opportunity to get involved in hands-on legal work.

Obviously this will be done under the strict supervision of qualified legal practitioners. If you are interested in volunteering some of your time to the Centre, they would love to hear from you.

People from all walks of life are encouraged to take an active role in the Centre. The next meeting of the Management Committee will be conducted at the Lismore Neighbourhood Centre at 6pm on Wednesday 1st June. To be discussed at the next meeting will be the composition and structure of the Centre's management.

Anyone interested in getting involved in this major community initiative should contact Jennifer Nielsen on 203 081 or Warwick Fisher on 203 169.

Those who feel that they could make use of the Centre's services can contact the Neighbourhood Centre on 217 397 after June 6.

Jennifer Nielsen
Associate Lecturer
Southern Cross University



Free legal advice and video

The Lismore Library is getting into the swing of Law Week by holding a special seminar and video showing at 4.30 pm on Thursday May 26.

Entry to the session is free and there will be four local solicitors on hand to give legal advice and answer questions free of charge.

After a short introduction, a brief questionnaire will be

given out to help stimulate those in attendance towards the type of questions they might wish to ask.

A video titled 'The Legal Check-up', produced jointly by the State Library and the Law Foundation of NSW will then be shown.

The video shows a check list of legal problems the public may encounter along with potential solutions.

A free-for-all question and answer session will follow giving the opportunity for the public to seek advice from local solicitors Stephen Tester, Judy Munroe, David Hunter and Somerville, Laundry and

Lomax's Robert Warren, coordinator of Lismore's Law Week activities.

The Lismore Library has asked that anyone wishing to attend this free session contact them on 25 1415 or 21 2464 in advance so that numbers can be well accommodated.

Program keeps offenders out of court

The Lismore and District Traffic Offenders program commenced on September 14, 1993 as a result of an identified need for a program of this type in the Lismore District. The program is similar to a successful pilot program which has been running in Newcastle for some time. Other similar programs are running in Gosford and Sydney, although in those centres the program is youth oriented.

The Lismore program, the only one catering for offenders of all ages, is co-ordinated by local solicitor Ralph James who also has experience with the Newcastle program.

The aims of the program are-
1. To give traffic offenders the

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The Legal Check-up



The Legal Check-Up Video is presented by:
Solicitor Geoff Roberson and the State Library's Kathleen Bresnahan



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~~to the~~
to the mediation
has the issue been appealed
to the Court?

Is it ~~proposed~~ alleged that
the case will be lodged
as an appeal to the Court?