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Switch Off Your Autopilot

A Methodology for Improving Mediator Effectiveness

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1. INTRODUCTION

The aim of this paper is to introduce a methodology that can improve mediator effectiveness. It will outline factors that interfere with mediator effectiveness that bring rise to the need for this approach. Furthermore, it will introduce a values-based methodology for facilitating dialogue in groups, called The Skilled Facilitator Approach and illustrate how an approach of this kind could improve mediator effectiveness in addition to enhancing mediation outcomes. The Skilled Facilitator Approach was first developed in the United States by Roger Schwarz. Schwarz's approach is based on the premise that our behaviour and the consequences that result from our behaviour starts with the way we think, specifically the values, beliefs and assumptions we hold whether we're consciously aware of them or not.

The most significant aspect of this paper relates to how we think and act under certain conditions and how this can be problematic for mediators and users of mediation. These conditions are commonly ones of stress and high pressure and involve difficulties and challenges for those involved. The very conditions akin to those experienced during mediation.

This phenomenon has implications for mediator effectiveness, mediation outcomes and users of mediation. This paper will delve into the complexity of the human mind and consequential behaviours, highlighting factors that interfere with human effectiveness and in particular why this has implications for mediators and their ability to act effectively.

This paper aims to provide a basis for a new approach to teaching and practicing mediation that could improve mediator effectiveness, raise the standards of practice, make assessment, accreditation and regulation more transparent and robust and enhance the experience of users of mediation.

2. BLINDSPOTS

Research has shown that we all possess blind spots and are susceptible to a particular way of thinking when under certain conditions. (Argyris, 1991)
Crucially these blind spots increase when we experience conditions that are emotionally challenging or threatening in some way. However, the most significant aspect of this relates to the changes in our thought patterns as a result. When we are confronted with difficult or challenging situations we unconsciously activate a particular way of thinking that leads us to act in ways that create negative unintended consequences for ourselves and others.
(Argyris, 1982 a)

3. YOU ARE WHAT YOU THINK

Every action has an opposite or equal reaction, at least that's what Newton proved and this theory equally applies to human behaviour. Our behaviour (the things we do and say) creates consequences for ourselves and others and according to Chris Argyris, an eminent Harvard Professor of education and organisational behaviour, our thoughts represent the control centre for all our actions. Argyris (1982 b) spent a decade studying the mind of the Executive, groups of high achieving intellectual professionals with sound academic credentials. He specifically focused on the way this group reasoned while solving difficult human and technical problems. One of his significant discoveries led Argyris to conclude that there were deeply embedded patterns of thinking that were common to this group that had a major influence on the way they behaved

in given situations. Argyris chose the 'Executive' mind on the basis that this demographic, by virtue of their academic and commercial achievements, had reached positions of authority and were often dealing with difficult issues both in business and society.

His research found that when confronted with difficult or threatening situations, situations where they felt the need to exert some authority or influence, they unwittingly acted in ways that created negative unintended consequences for themselves and others. They also acted in direct contrast to how they said they would act. In other words, in these challenging situations, what they did was very different to what they suggested they would do.

4. TWO FUNDAMENTAL WAYS OF THINKING

Argyris identified two primary patterns of thinking that informed the behaviour of the Executives, which he likened to a 'Master Programme' or in IT terms an Operating System. The Operating System that people use in these situations is rarely the one they say they use, he called one Espoused Theory and the other Theory of Action. There are critical differences between these two theories and Argyris (1982 a) suggests that our Espoused Theories are invariably at odds with our Theories of Action.

4.1 THEORIES OF ACTION

Argyris (1982 a) suggests that our Theories of Action are based upon a common set of governing values that are universal and in fact most human beings are predisposed to act in accordance to these governing values. They are developed through interactions with others and socialised into us from early childhood. Most striking is that Argyris (1982 a) has observed the very same theory in action across all sectors of society,

‘We have observed the same theory-in-use among rich and poor, white and black, male and female, young and old, powerful and powerless and in several different cultures.’

Mediators are not immune to these thought patterns and as are equally susceptible to them as any other man, woman or child. Schwarz (2002) says,

‘Part of what makes your theory-in-use so powerful is that it operates quickly, skilfully and effortlessly. Most significant, it operates outside of your awareness. You are often acting or reacting using core values and assumptions, yet you are typically unaware of what your theory-in-use is or how you are using it to design your behaviour’

4.1.1. GOVERNING VALUES

The common set of governing values that form the basis of our Theory of Action are; to remain in unilateral control; to maximise winning and minimise losing; to suppress negative feelings and to be as rational as possible. (Argyris 1991)

The ultimate function of these governing values is to protect ourselves from embarrassing or threatening situations and to avoid feelings of vulnerability and incompetence. These values are contained in what is referred to as the Unilateral Control Model (Schwarz 2002). As the name suggests, when operating our Unilateral Control Model our behaviour is designed to unilaterally control a situation in the service of self protection and preservation. Each of these unilaterally controlling values produces corresponding behaviours that are designed to fulfil the value. For example the value of ‘winning not losing’ is likely to produce behaviours that might lead a person to withhold relevant information or to advocate a view without being open to listening to another’s view. These behaviours naturally have consequences and could result in poor decisions

(because not all relevant information is made available), leading to solutions that are ineffective, costly and unsustainable. (Schwarz 2009)

4.1.2. UNILATERAL CONTROL MODEL

The Unilateral Control Model is made up of a series of values, assumptions and corresponding behaviours that create outcomes (Schwarz 2002), they are;

Values

- Win don't lose
- Be right
- Minimise expression of negative feelings
- Act rational

Assumptions

- I understand the situation; those who disagree don't
- I am right; those who disagree are wrong
- I have pure motives; those who disagree have questionable motives
- My feelings and behaviour are justified
- I am not contributing to the problem

Behaviours

- State my views without asking for others' views and vice versa
- Withhold relevant information
- Speak in general terms and don't agree on what important words mean
- Keep my reasoning private; don't ask others about their reasoning
- Act on untested assumptions and inferences as if they were true
- Control the conversation
- Focus on positions, not interests
- Avoid, ease-in to, or save face on difficult issues

- Use an arbitrary decision rule or don't discuss it

Results

- Lower quality decisions – (ineffective solutions, unnecessary costs)
- Decreased commitment – (poor follow through on decisions, solutions that don't stick)
- Longer implementation times
- Strained working relationships – (reduced trust, defensiveness, unproductive conflict, inappropriate dependence on others)
- Less personal satisfaction – (missed opportunities for growth and development, unnecessary stress)
- Decreased learning – (misunderstanding, denial and blaming others for mistakes, rigidity)

4.2. ESPOUSED THEORY

The other primary pattern of thinking Argyris (1991) refers to is our Espoused Theory. These represent the values and assumptions that an individual claims they would use. Argyris suggests that the gap between our Espoused Theory and Theory in Action widens as the challenge or difficulty increases. Most importantly we are blissfully unaware of this gap. Espoused Values often represent the values and ideals that we consider are worth striving for and, as Schwarz (2002) suggests, are often textbook facilitator values, yet they may not necessarily be the ones we use. (Argyris 1991)

5. IMPLICATIONS FOR MEDIATOR EFFECTIVENESS

The implications of these findings on mediator effectiveness are threefold;

1. Conditions of Mediation make mediators highly prone to thinking in a Unilaterally Controlling Way. Most mediators would no doubt agree that

mediation is a rewarding job that is difficult and often comes with many challenges. As Stulberg (1997) suggests,

'Conducting a constructive conversation is challenging under the best of circumstances. Conducting it when people are experiencing stress, apprehension, or tension, as is frequently the case with parties in a dispute is even more challenging'

Given that a Unilaterally Controlling mindset is activated under difficult conditions it is fair to assume that mediators are increasingly vulnerable to this way of thinking and acting.

To make matters even more challenging for the mediator, they often find themselves in situations that provoke their need to impose authority and control, another condition that activates a Unilaterally Controlling mindset. Hay (1993) describes a psychological phenomenon called the Drama Triangle that illustrates how parties in conflict play out certain behaviours through three different archetypal characters. The Drama Triangle represents a psychological game which could be described as a series of unconsciously motivated behavioural interactions that take place between three characters; the persecutor, victim and rescuer. Just like the characters in a theatrical drama, each one has certain qualities and a certain purpose to fulfil. People can 'take up' or play a particular role and 'project' a role onto another party. The mediator is vulnerable to the roles that parties play during a mediation as they may very well be perceived as 'rescuer' as the parties fulfil their roles of victim and persecutor respectively. The mediator gets unwittingly drawn into the game without any conscious awareness. (Cloke, 2001) Once in the game the mediator unwittingly acts out controlling or rescuing behaviours all of which consistent with a Unilaterally Controlling mindset.

2. The significance of mediation values are not really understood by many mediators nor made explicit to parties and rarely do they form the cornerstone of mediator training and development. If our values are the activating agent for all our behaviour and yet are absent from our thoughts and awareness and feature even less in the classroom, it's no surprise that there are inconsistent mediator practices and an ambiguity about what really constitutes mediation. (Riskin 1996) Riskin (1996) even suggests that some mediators,

'... lack a clear grasp of the essence of their expressed orientation and for some reason neglect to act consistent to their espoused dominant orientation'.

He also suggests that,

'... most mediators - whether they know it or not - generally conduct mediations with a presumptive or predominant orientation.'

Kressler's (Cited in Riskin 1996) study into mediator styles suggests that some mediators lack any awareness as to the logic and reasoning behind their actions highlighting how mediator style was something mediators "did" without fully recognising the underlying coherence or "logic" behind it.

Bush and Folger (2005) raise concerns about the assessment of mediator competencies and moreover what are considered to be desirable mediator competencies. They highlight how a high value is placed on the mediator's ability to discourage and limit the expression of negative emotion and that this is seen as positive mediator behaviour. This is staggering when you think that minimising the expression of negative feelings is a core value of the Unilateral Control Model. We all know that expressing emotion during the course of mediation can often shift party perspectives, break deadlocks and be instrumental in negotiating an outcome. (Ury, et al. 1988)

3. The values of the Unilateral Control Model are in direct contrast to the espoused values of mediation. The core principles of mediation should at least be familiar to practitioners; they include self determination, free and informed consent, win-win and omnipartiality. (Cloke, 2009) If we assume that mediators are not infallible it would therefore be logical to conclude that they are indeed equally susceptible to conducting a mediation using their Unilaterally Controlling operating system. In turn this can only mean one thing; they are not mediating but doing something else in the name of mediation which is concerning and problematic for the image of mediation as a profession and the experience of those that use and put their faith in the process.

Our values unequivocally influence our behaviours (Argyris 1982, 1991; Schwarz 2002; Argyris, Putnam and Smith 1985; Egan 2002) and it is incumbent on every mediator to be accountable for their behaviours and therefore the values that inform the way they work. There is a framework that could assist mediators in this endeavour, it is called the Skilled Facilitator Approach.

6. THE SKILLED FACILITATOR APPROACH

The Skilled Facilitator Approach is a values-based systemic approach for facilitating groups, helping them to achieve high quality results and create productive relationships. (Schwarz 2002) In the early 1980's, Schwarz, a leading organisational psychologist and former student of Argyris at Harvard, was influenced by his work and built upon this and the work of others (Schön, Putnam and Smith, cited in Schwarz 2002).

The Skilled Facilitator Approach integrates various theories of group facilitation, organisational and human psychology and brings them together into a practical framework to assist facilitators and groups to radically improve the way they

communicate with each other, make decisions, address difficult and undiscussable issues and deal with conflict.

The Skilled Facilitator Approach is rooted in the idea that behaviour is a consequence of our values and assumptions, how we act and react in situations is entirely the result of our thinking and it just depends on which Operating System is running in our mind at a given moment that determines what we say and do. This is our Theory in Use (Argyris called it Theory of Action), which of course can be very different from our Espoused Theory.

Schwarz believes, as Argyris' research showed, that when in challenging or difficult situations, situations where we feel threatened or embarrassed or situations that provoke our need to exert some influence or control, we activate a Theory in Use designed to unilaterally control the situation, the Unilateral Control Model. The core values, assumptions and corresponding behaviours of the Unilateral Control Model are typically the ones that are most prominent for most people in these circumstances. They are designed to protect us from these perceived threats and vulnerabilities. All of which, of course, happen outside our conscious awareness. A phrase most mediators will be familiar with is 'we are unconscious of our incompetence!'

6.1. THE MUTUAL LEARNING MODEL

The Mutual Learning Model acts as an alternative mental Operating System that helps the facilitator act consistently with Espoused values and assist group members to think and act in ways to increase opportunities for mutual learning, enhance personal and group effectiveness and reduce unintended consequences. (Schwarz 2002) The Mutual Learning Model provides the foundation for the Skilled Facilitator Approach. (Schwarz 2002)

The Skilled Facilitator Approach uses the components of the Mutual Learning Model; core values, assumptions, behaviours and outcomes as a framework to achieve improved results for groups and more productive relationships between group members.

The usefulness of the Mutual Learning Model increases in situations that are emotionally difficult, and require a certain degree of collaboration between group members, these conditions are typical of most mediations. Therefore, it would seem the Mutual Learning Model could be beneficial to mediation.

The idea that mediation is a mutual learning process is not new, Cloke (2001) suggest it is difficult,

‘...for us to grasp that our conflicts are laden with information that is essential for our growth, learning, intimacy and change.’

The potential for mediation to help parties learn, grow and develop is also valued by many mediators. (Riskin 1996)

6.2. ROLE OF FACILITATOR AND MEDIATOR

Schwarz (2002) sees the role of the facilitator as substantively a neutral one whose expertise is in the processes and structure of the conversation in addition to understanding the behaviours that are necessary to make the conversation an effective one.

He divides facilitation into two main types; basic facilitation and developmental facilitation. In basic facilitation, the facilitator assists the group to resolve a ‘content problem’, a problem the group is experiencing that is interfering with their effectiveness or the results they desire. In developmental facilitation, the

group seek the help of the facilitator to help improve their process while at the same time resolving the problems they are experiencing.

There are a number of similarities between the role of facilitator that Schwarz describes and that of the role of mediator. The mediator acts in a substantively neutral capacity and brings expertise in the form of conflict theory, process and structure for the conversation. (Bush and Folger 2005) The parties seek the help of the mediator to help them resolve a problem that they are unable to resolve themselves. In some instances parties in dispute need to improve their relationship in order to continue a commercial collaboration, in which case they no doubt have an interest in improving the way they communicate with each other or, in facilitation terms, improve their group process.

6.3. MUTUAL LEARNING MODEL - CORE VALUES, ASSUMPTIONS, BEHAVIOURS AND OUTCOMES

The core values, assumptions, behaviours and outcomes of the Skilled Facilitator Approach and Mutual Learning Model are the same (Schwarz 2009);

Core Values

1. Transparency – Sharing all relevant information, including thoughts, feelings and intentions
2. Curiosity – Being genuinely interested in learning others' views
3. Accountability – Accepting responsibility for your actions and the short and long term consequences of your actions
4. Informed Choice – Making decisions and maximising others' abilities to make decisions based on relevant information
5. Compassion – Being willing to temporarily suspend judgement to appreciate your own and others situation

Assumptions

In conjunction with the core values are 5 core assumptions that together make up the Mutual Learning mindset (Schwarz 2009);

1. I have some information; so do other people
2. Each of us may see things others don't
3. I may be contributing to the problem
4. Differences are opportunities for learning
5. People may disagree with me and have pure motives

Together, the core values and assumptions of the Skilled Facilitator Approach produce a series of behaviours or strategies that help bring the values and assumptions to life, making them transparent and explicit. In another sense, the behaviours are a manifestation of the core values and assumptions. There are nine in total;

1. State views and ask genuine questions
2. Share all relevant information
3. Use specific examples and agree on what important words mean
4. Explain reasoning and intent
5. Test assumptions and inferences
6. Jointly design next steps
7. Focus on interests not positions
8. Discuss undiscussable issues
9. Use a decision-making rule that generates the level of commitment needed.

These 9 behaviours or as Schwarz (2002) calls them 'Ground Rules' help the facilitator improve their communication with individuals and the group. They also help others to improve their communication. They are not procedural ground rules such as 'turn mobile phones off' and 'limit your opening statement to 10

minutes' rather they are behavioural ground rules to enhance the quality of the conversations that takes place and ensure the conversations are to a greater degree in harmony with Mutual Learning values and assumptions.

It can be argued that the Skilled Facilitator Approach provides a blueprint to audit everything you say and do, and allows you to, with a reasonable degree of accuracy, trace your behaviour back to its source, namely the assumption or value. Schwarz (2002) suggests that his approach answers two fundamental questions “What do I say and do in this situation” and “What are the concepts and principles that lead me to say and do this”, making your thinking and reasoning transparent to yourself and to others.

6.4. OUTCOMES USING THE SKILLED FACILITATOR APPROACH

The Skilled Facilitator ground rules promote the core values and as a result achieve contrasting results to those experienced when using the Unilateral Control Model. Using this approach will not guarantee these results but they are likely to maximise the chances of experiencing them (Schwarz 2009);

- Higher quality decisions - (cost savings, innovative solutions)
- Increased commitment - (solutions that stick, follow through on decisions)
- Shorter implementation times
- Improved working relationships - (more trust, less defensiveness, productive conflict, and appropriate dependence on others)
- Greater personal satisfaction - (increased growth and development, less stress)
- Increased learning - (greater understanding, embracing and learning from mistakes, greater adaptability)

7. THE PRACTICAL APPLICATION OF THE SKILLED FACILITATOR APPROACH

The Skilled Facilitator Approach embodies the values it espouses and as a result every process, tool and technique used is wholly consistent with the core values. One of the techniques used is called Diagnosis and Intervention, which helps the facilitator identify behaviours and interactions occurring between group members that might be inconsistent with the core values and potentially be problematic for the group. It also helps the facilitator make an intervention in such a way that reduces defensiveness and increases mutual learning. (Schwarz 2002)

7.1. DIAGNOSING AND INTERVENING

The technique has 6 steps, the first three help the facilitator identify and make sense of the behaviour and decide whether or not to intervene. Steps 4-6 help the facilitator intervene.

Observe (step 1) - The facilitator in observing group members communicate will make a behavioural observation. e.g. "I think I saw / heard..."

Make Meaning (step 2) – The facilitator Infer meaning from the behaviour. e.g. "This is what I think that means..."

Choose (step 3) – The Facilitator now decides whether, how and why to intervene. e.g. "I think it's important I say something for these reasons..."

Test Observation (step 4) - Having now decided that the facilitator's inference merits intervening s/he now shares his/her observation then checks with the party to see if they see it the same way or different. This step validates the observable behaviour. e.g. "This is what I think I saw / heard, how did you see it – the same or different?"

Test Meaning (step 5) – The facilitator then shares the inference they made and checks to see whether the inference was accurate or not. This step validates the inference and at the same holds open the possibility there may be a different interpretation. e.g. “This is what I think it means ..., this is why I think it means this...what do you think?”

Jointly Design Next Steps (step 6) - If the facilitator’s observations and inferences are accurate, s/he then helps the individual or group decide whether they want to change and if so how they might go about it. e.g. “I think it would be helpful to do...because...what do you think?”

The technique incorporates key elements of the Mutual Learning Model, for example when Testing Meaning (step5) the facilitator says “This is what I think it means ..., this is why I think it means this...what do you think?” and in doing so is stating his/her views and asking a genuine question (Ground Rule 1), explaining his/her reasoning and intent (Ground Rule 4) and testing his/her inference out (Ground Rule 5). Implicit in this question is the assumption that the other person may have seen things differently thus creating an opportunity for both to learn about the difference in their observations (Assumptions 1 & 2). Valuing curiosity (Core Value 2) and transparency (Core Value 1) are pre requisites for making this intervention effective.

This technique appears easier than it looks to practically implement, many practitioners learning the Skilled Facilitator Approach have often commented how challenging they find observing and intervening at the speed of real-life conversation. (Schwarz et al, 2005) This is the nature of learning a new skill, as we climb the ladder of learning from the depths of unconscious incompetence to reach the dizzy heights of unconscious competence. Learning the Skilled Facilitator requires more than just learning a new skill, practitioners need to internalise the Mutual learning values and assumptions which for most requires a complete Operating System re-installation!

7.2. CONTRACTING

Another unique aspect of the Skilled Facilitator Approach is the methodology behind engaging with a client during the initial stages of the assignment. In Skilled Facilitator Terminology this is called Contracting (Schwarz 2002). This is where the facilitator decides whether they can help the client and where the client decides whether they want to be helped in this way. The idea being that a client can only really make a free and informed choice as to whether or not to engage the services of the facilitator once they have all the relevant information.

Consistent with the value of transparency, accountability and informed choice, the facilitator describes their approach to facilitation, explaining the concept of the Mutual Learning Model and reasons for working this way. They invite the reaction of the client to this approach, addressing any questions or concerns in the process and asking if they are willing to work this way. Unless the client is willing to commit to working this way, the Skilled Facilitator will decline the assignment on the basis that s/he can only really help the group achieve their goals by working in a way that is consistent with the Mutual Learning Model. Schwarz (2002) strongly advocates this approach and argues doing it any other way is only counter productive because it will inevitably lead to problems further down the line.

Mediator appointments are either made directly between legal representatives or more commonly through a mediation panel or similar body. In the latter, the client, often in fact the lawyer representing the client, will receive a short biography of the mediator, known as a Mediator Profile and use this document as the basis of their decision to hire or not. Most Mediator Profiles list the industry specialism of the mediator along with a chronology of their achievements and qualifications. There will inevitably be a paragraph describing the mediator's style and personal attributes however it is unlikely to include the values and principles that inform the mediators practice and what this means for the client. In some

cases party advisors choose what Richbell (2009) terms an 'FN' or Famous Name to mediate their case in the hope that their prestigious status will keep the parties in check.

8. WHAT DIFFERENCE WOULD A VALUES–BASED APPROACH TO MEDIATION MAKE?

To what extent the issues raised in this paper are problematic for mediation or mediator effectiveness is unknown. Nor is it known whether these issues impede settlement in any way. The general assumption is that success is merely a reflection of settlement rates and as we all know 8 out of 10 mediations settle! The mediation profession, as some consider it to be, continues to grapple with the ambiguity of the process and goals of mediation. The debate between evaluative and facilitative orientations is ongoing. (Kovach & Love 1998; Lande 2000; Love 1997) To what extent either of these orientations is aligned to mediation ideology is questionable. Even if they were aligned, the profession would still end up with a set of espoused values but no methodology for helping mediators act consistently with those core values, even under duress. It is concerning to think that clients and their advisors may participate and appoint mediators without really knowing what to expect let alone being able to distinguish between a facilitative or evaluative approach. There is also a danger that the commercial mediator factory will churn out mediators with Unilaterally Controlling Operating Systems. Unilaterally Controlling mediators will lead to inconsistent practices and provide more fuel for the dilemmas of accreditation and regulation.

9. CONCLUSION

The Skilled Facilitator Approach achieves a number of goals;

- It provides a practical framework to improve facilitator effectiveness

- It enables facilitators to hold the values and assumptions of the Mutual Learning Model in their conscious awareness, turning it into their Theory of Action.
- It makes explicit the core values and therefore helps clients make informed choices about the approach they choose.
- It is the personification of a non-adversarial process where a win-win approach can truly be achieved
- It improves communication, creates better outcomes and enhances relationships

Argyris (1982 a) said;

‘Luckily, people judge the credibility of human skills by evaluating what values they serve. This means that those who learn the new skills as gimmicks or tricks will be discovered. It means further that those who wish to gain credibility not only must learn the new skills, but also must internalize a new set of values.’

A values-based approach to mediation stands to gain more than just improving effectiveness and outcomes but could define mediation as a highly credible Alternative Dispute Resolution process.

Sander and Goldberg (Cited in Riskin, 1996) identified specific criteria that would help parties choose an appropriate dispute resolution process, the criteria were partly influenced by the factors considered to be impediments to settlement, they included; poor communication; the need to express emotion; parties holding differing views of the facts and of the law; and important principles. The Mutual Learning core values and assumptions exist to enhance communication, support the expression of emotion, promote the idea that opposing views or facts are opportunities for learning, and encourage mutual appreciation of each other’s concerns and interests with an infusion of compassion and generosity of spirit.

The Skilled Facilitator Approach provides the framework to bring these values to life. Maybe what the profession needs is a Skilled Mediator Approach.

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