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## Mediation training for family lawyers – why bother?

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Being a mediator in the Family Court, and being a lawyer for child, are two distinct roles that require separate sets of skills.

It is a difference that many lawyers do not appreciate.

This difference is why robust mediation training, accreditation and professional standards are important to ensure the new early intervention process in the Family Court is a success, and provides a quality experience for New Zealand families.

That's the view of LEADR NZ, and of several family lawyers who are also mediators.

As Palmerston North family lawyer, Rachel Lohrey, put it: "As lawyer for child, it's your job to find solutions. What LEADR teaches you is that in the role of mediator you must take your hands *off* the problem. It's not your problem to solve – it's the parties' problem to solve. It's a critical difference."

LEADR is responding to resistance within the legal profession to the costs involved in becoming an accredited mediator with one or other of the two professional bodies, LEADR and AMINZ.

It is understood that the Family Law section of the Law Society has written to Judge Boshier, Principal Family Court Judge, asking him to revisit the mediation guidelines for family lawyers who wish to be accredited for the new early intervention process.

For the record, LEADR charges \$2,750 earlybird (ie. registered and paid one month before) for its five-day foundation mediation skills course (this includes one year's free membership), and a further \$650 for the live/video assessment of skills required to become an accredited member.

However, LEADR sees this training as the minimum, and expects members to undergo continuing professional development. For example, its three-day advanced skills course in family mediation costs \$1,475 for members and \$1700 for non-members. (All costs are GST inclusive.)

Kevin Casey, a partner in Tauranga firm Cooney Lees Morgan, with 20-plus years experience as a family lawyer, and who recently completed LEADR's three-day advanced skills mediation course (and found it "empowering" and "impressive"), is nevertheless upset and angry that he must still complete LEADR's five-day foundation course to become an accredited court mediator.

"Unless they (Family Court) change the requirement for accreditation, or I commit to a further five-day training course, I will not qualify.

"I think it's tragic that someone with the inherent knowledge and ability to sense the unspoken that I have developed over the past 25 years working with families won't qualify under the new system.

“I accept the need for a solicitor with five years experience having to do the five-day foundation mediation skills course – but not one with 25 years experience!”

Mr Casey said too that it was not only the expense involved but the time out from his busy practice.

LEADR NZ Executive Officer Gabrielle O’Brien said she accepted that the Family Court’s guidelines for counsel-led mediation required an investment from lawyers who were not already accredited but she stood by this requirement.

“LEADR believes that a person working as a mediator should be trained as a mediator, and we consider continuing professional development is part of the cost of doing business today.

“Our accreditation process does allow for related training and experience to be taken into account and we will consider individual applications but this requirement is not waived lightly.

“A person who does mediation training with LEADR gains a framework to support their existing skills as well as the opportunity to learn new skills. They gain a professional asset. We benchmark our training and accreditation against international standards, and we are proud to offer training and accreditation that is recognised not just in Australia and New Zealand but also internationally.”

It was also instructive to look at family mediation overseas, Ms O’Brien said. In Australia, Canada and in the UK, family mediators are trained and certified by professional bodies.

“If New Zealand is to change its Family Court system to better serve families we need to make sure that there is a high quality of mediation being undertaken.”

Jan Avery, an associate with Christchurch law firm Corcoran French, a mediator for the Christchurch Family Court Early Intervention pilot in 2009, and a LEADR NZ Board member, said mediation skills should not be underestimated.

“Mediation should not be regarded as a cheap solution or be left to the unskilled.

“Anyone who has done mediation training appreciates that it is not as easy as it may appear. It is important to learn and understand the process and to be taught skills to achieve [good outcomes],” said Ms Avery.

“Lawyers understand that they need to get a law degree and study the skills needed to be a good lawyer. They need to appreciate that the skills used in mediation are different. They cannot expect to know how to mediate any more than a mediator would know how to approach matters as a lawyer.”

Rachel Lohrey, an associate with Jacobs Florentine Lawyers in Palmerston North who did LEADR’s five-day foundation course in 2007, and is partway through its three-day advanced skills course in family mediation, said what she values most is the LEADR process.

“LEADR teaches you a process. In mediation, you are guiding people through that process to assist them to make their own decisions.

“So the skills you need are quite different from the skills you need as a lawyer for child.” [See box story *‘Mediator and lawyer: the differences’*.]

“Until you do the [mediation] course, you can’t really appreciate that what you are being taught is a process, and a valuable set of skills. You need to learn to trust that process. It’s a process that

gives you protection, by providing for a set of things you should do, and a set of things you should not do.

“It means that when things get a bit sticky, and you’re unsure of where they might be headed, you have a structure to fall back on which is enormously helpful.

“If you don’t feel in control, chances are the parties won’t feel in control either. The process helps you step back from the problem while keeping the parties focused on it.”

Accordingly, Mrs Lohrey believed that mediation training for family lawyers was imperative – despite the preliminary costs involved.

“Yes, doing mediation training is expensive, and I understand lawyers’ resistance to the expense both in terms of upfront costs and time away from the office.

“But I believe that if we are going to do this, let’s do it properly. And to do a proper job, we need to be trained accordingly. If not, let’s just keep doing roundtable meetings like we’ve always done.

“We are being paid taxpayer money for the services we provide. So we have to provide a proper service. We need to add real value.”

Mrs Lohrey said she has believed for many years that family disputes should be privately mediated and she welcomes the new Family Court procedures.

“In family breakdowns, the adversarial nature of the Court is not what the kids want. A hearing will resolve the problem, but it can leave family relationships in tatters.

“There’s nothing more powerful than being able to report back to the kids that mum and dad have solved the problem between them, and this is what they’ve agreed.

“For the families of New Zealand involved in disputes, this is a wonderful thing.”

## **Mediator and lawyer: the differences**

By Jan Avery

*Box story: 304 words*

**Process:** Mediation is a process. This process is most likely to be successful if the various stages are worked through rather than having a rush to reach agreement. The fact that parties have an opportunity to express the matters that concern them and feel as though the other party has heard them is important. Often, they do not feel heard. This may be the first “safe” opportunity to express those concerns. A good mediator needs to learn and follow process.

**Results for the parties:** In litigation, the emphasis is in obtaining a good result through a Court order. A mediator recognises that success can also be measured by improved communication between the parties, and a clearing of the air and of misconceptions. Training in the drawing out of information and the way it is presented to the other party by way of reframing is important. They are different skills from those needed by an advocate for one party. Mediation training helps you to learn to focus on the actual issues rather than those matters voiced by the parties. In other words, you are looking behind what is stated. A skilled mediator can draw out the real issues and get the parties to focus on them in a constructive way.

**Enabling the parties to retain control:** A mediator is facilitating a process that is designed to enable the parties to reach their own agreement. They retain control – not counsel who drives the process in litigation and the Judge who imposes a decision.

**Looking outside the square:** Helping parties to come up with proposals that they have not previously thought of requires some skill and, to do that, the parties need to have bought into the process. This is different from litigation where a particular result or court order is sought.

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