

Cross Cultural Mediation & Conflict Management: A Bridge Between

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This paper is my personal reflection on my work as a cross-cultural mediator. The content of this paper is based on my own experiences and does not represent views from Aboriginal communities and Elders unless specific permission has been given. I have attempted to compose this paper modelled on the way that I practice in a cross-cultural environment – in hope that it gives you a taste of the richness of Aboriginal culture and the importance which is placed on relationships. In using the term cross-cultural I refer to a mutually respectful process which recognises that which both cultures bring into the dialogue space. As a Cross-cultural Mediator I have much to learn however I feel very privileged to have had the experiences that I have. I hope that in sharing these experiences, we are all able to learn more about what it means to be a mediator.

Who is this Mediator?

I am a proud Australian who is a second generation mediator – and it is my family who inspired me to work in this field. Over many generations they have been strongly committed to social justice, community and a respect for people and land. I think in their own way, many of them displayed the attributes of a mediator – connecting their communities. I was trained in mediation in 1997 before completing academic qualifications at Bachelor and Masters Levels. Over this time I developed a particular interest in cultures and specifically Aboriginal culture. Since moving to the Northern Territory, I have had the opportunity to make this awareness meaningful. I have learnt and continue to learn so much from my Aboriginal friends and family. As a mediator I have worked in both urban and remote communities on issues such as land, community, organisation, workplace, restorative justice, victim offender and community education cases. The work has been about conflict management, mediation, process design and capacity development and has included anywhere between 2 – 50 parties.

In sharing some of my experiences and lessons learnt when working within remote Aboriginal communities, I'd like to explore three key points – Foundations: the mediator's tool kit, Preparation and Application. I will draw on a number of case examples and will share a few stories – but in respect for communities and people involved, I won't identify communities unless in specific cases where I have permission.

Aboriginal Australia:

Australia is a long way from the UK – so here is my snap shot into Aboriginal Australia. Prior to the arrival of the British Australia was made up of over 200 nation states¹ – different Aboriginal communities with different laws, culture and land. Today – many of these clans (nations) have disappeared but in Northern Australia some of the clans including their law, customs and language are still strong.

Most of my work has been conducted within the north of Northern Territory. Here culture and traditions are still relatively strong – however they are under extreme pressure and face ongoing struggles for survival. Often living conditions are similar to that faced by third world countries. Accessibility to basic services such as health care, education and work are limited – conflict both internally and externally is high and there seems to be limited ways forward. Whilst there is acknowledgement by Australians of the awful situation and need for changes, I see that there is also an ongoing lack of mutual respect for the dignity, strength and law of Aboriginal society.²

Despite all this, the richness and generosity of the people I work with continues to humble me. Their culture and law provide a strength from which they are able to manage conflict in a way that can create peace, healing and harmony. The processes reflect recognition of the importance of action, healing and restoration of peace/harmony. As non-Indigenous mediators there is much we could learn from Aboriginal Australians who have been practicing far longer than we have.

¹ AIATSIS – Map of Indigenous Australia: see www.aiatsis.gov.au for details

² More information on these issues can be accessed on-line in particular see www.aiatsis.gov.au and www.hreoc.org.au

Foundations - A Mediator's tool kit: Skills, Knowledge & Principles

As a mediator, I consider myself to be a bridge between spaces of negotiation. This metaphor captures the essence of what I attempt to do. Without the proper foundations, construction and maintenance of this bridge – dialogue and negotiations will fail. But with care and effort the process (or bridge between) will remain strong and able to guide the negotiation between parties.

Skills:

In order to achieve dialogue outcomes – particularly in a cross-cultural context, a comprehensive tool kit is essential. I have to be able to draw on more than just the basic skills and knowledge acquired during initial mediation training. The challenges and needs of parties are varied and never black and white – acknowledging this 'grey-space' allows me to draw upon a range of resources including process, models and people. My keystone is my initial mediation training (LEADR interest based model). This training enabled me to learn and grow confident in the process; I became familiar with mediation and the basic skills required. Once I had confidence in the basics, I was able to begin the process of discovering my own style – broadening my skill base.

Knowledge:

Though I draw on a range of models depending on each situation, essentially it is my ability to listen and ask the right questions that allows me to work across cultures (this also includes my ability to recover when I say the wrong thing). My knowledge base allows me to make the linkages between what I hear and the questions that I ask. But I won't always have the right knowledge so it is important that I am able to seek the knowledge when required. When working cross-culturally I try and utilise support people whom I think may enhance the mediation process and outcome. For example I will often take a lawyer along to act as my support. Often parties want to know the potential alternative legal process - reality checking. The role of the lawyer is to help explain processes and help them decide if they need legal advice or want to continue with mediation – this enables parties to make informed decisions.

Foundations:

As a cross-cultural Mediator I have learnt that having the skills and knowledge is not enough to equip you to do meaningful work in Indigenous communities. You must also build or discover strong foundations. Within Galiwin'ku, we call this your backbone. For me this means that I need to know who I am and what is important to me within the context of peacemaking. Essentially, what is it that gives me the strength when all seems hopeless, fearful or desolate? We will all have our own answers for this question – but recognising this is critical because cross-cultural work requires a deep, calm strength – your core strength. From experience, my capacity to acknowledge, articulate and explore these foundations helps me to facilitate meaningful outcomes.

My skills, knowledge and foundations form the basics of my tool kit and help me to engage across cultures. But my tool kit must be flexible, informed and responsive to the needs of the parties. I continue to build upon my knowledge of cultural issues such as traditional law, customs and language and face a continual challenge to apply this knowledge in practical ways. My experience continues provide a rich learning ground – but by getting the foundations right, I am better able to meet the complex demands of working within the complex conflict situations that arise when working cross-culturally.

Preparation

This is the most critical aspect of my work. During this phase I critically assess and learn. Not only am I making an assessment as to whether mediation is appropriate or not (it may not be – and in which case I would perhaps explore alternatives), I am also designing process and developing capacity for negotiation and decision making. This phase can take hours, days, weeks and sometime seasons (the wet and dry seasons of the tropics).

My base level knowledge is pretty significant now – which enables me to discover the right information sooner. Some of information which I think is important to be aware of when working within the Aboriginal communities includes:

1 – Community concepts of peace may vary from western concepts. Other community conflict resolution priorities focus on community harmony first rather than individual justice.

2 – Traditional (cultural) law can play a fundamental role in conflict and any potential resolution. Many traditional communities live under a number of legal frameworks – western, traditional and individual clan laws. Often the issue of western v traditional law is a source of conflict itself. These traditional laws govern society, provide for the administration/management of laws and address the spiritual, physical, emotional and environmental needs of land, people and animals – their community.

3 – I have to create the space within the process to recognise these traditional laws and needs. Whilst also balancing the needs of other parties.

I always explore with parties the fundamentals such as the story (or conflict), what it is they want (outcomes), reality testing and do they really want to resolve the dispute (good faith). Some of the other issues I address during this phase include:

Co-mediator – Where ever possible I work with a co-mediator. Sometimes a local Aboriginal community member is appointed by community as my cultural counter point and sometime I work with an Aboriginal person from outside the community. I always explore with parties about who is or isn't an appropriate and legitimate mediator (including myself).

Gender Issues – Male/female division are strong within most communities. However, you can not assume to know what is appropriate for each community. On a number of occasions Elders have allowed me to mediate (with and without a co-mediator) and on other occasions male/female issues have been addressed separately.

Language – Interpreters are essential, especially in the translation of concepts. It is often a hard job for interpreters and it helps if they also understand the mediation process. Many Aboriginal people speak English only as a 3rd or 4th language (some speak up to 15 languages).

Mutuality – the process itself including preparation must be done in a mutually respectful manner. Whilst I spend a lot of time with Aboriginal parties – it is equally important to work with and prepare non- Aboriginal parties. Often they are less flexible and more difficult to elicit good faith during negotiations.

During this preparation phase I also spend a significant amount of time exploring and negotiating a process which is cross-culturally.

Process – the western models of mediation are just that and are not always legitimate, meaningful or appropriate for cross-cultural conflict resolution. It is during this time that I explore the potential process design options. The final option needs to engineer confidence and legitimacy with both parties. An example is a blended western/traditional process where ceremony is included.

This preparation process is about building trust, legitimacy and capacity. It is about asking and exploring the critical issues so that a strategy can be developed for conflict management or resolution. The more you invest in this phase – the more likely the process is to achieve sustainable and successful outcomes

Application

I have a couple of particular cases that I thought would demonstrate the importance of strong foundations and preparation. Each one required a different application of process but due in part to the value placed on foundations and preparation – the successful results achieved by parties has been sustained resolution (peace).

Case One: Mediation regarding Burial

Following the tragic death of a young man who had close family in two nearby communities, conflict had arisen regarding the imminent return of his body and related burial issues. The death had occurred over 2 months ago and tensions were escalating to violent conflict between the family and the communities themselves. Having been approached by the local health service regarding potential for mediation, it was decided that although I didn't have any connections with the community, it would be appropriate for me to come down and talk with the families. A male Aboriginal colleague, who had an understanding of mediation and had the skills and relationships to bridge potential cultural issues, came with me to act as co-mediator. I drove for 4 ½ hours to the main community and upon arrival sought assistance from the health service. In terms of preparation, they were able to share their interpretation/perception of the conflict, advised of relevant cultural and medical issues (including dates for return of body) and provided information on people involved - including where to find people, who best to talk to and who had authority.

The initial meeting with the first family (party A) was a very sad meeting though one during which we really just introduced ourselves and our potential roles. Some of the key family members weren't in town – we had arrange to stay for a number of nights so Party A relaxed knowing that they were able to do things in their own time. Providing community with time is something that is somewhat unusual for non-Aboriginal people coming to remote towns – usually they fly in and fly out forcing community to negotiate on their terms. The next day when we returned we were able to talk to all the key people. We were able to explore the situation – and the fact that they were able to express this to someone who valued what they said was clearly important. We also explored potential ways to resolve the dispute and how this might occur. It became very clear that whilst Party A were not willing to meet with Party B – they were happy for us to convey messages. This is where foundations become important – because of my skills and knowledge of mediation, my understanding of key cultural issues and my confidence, I felt comfortable in letting the parties determine the process. In this case, it was to be shuttle mediation (though the community would not use this language).

It was now time to take the rough road out to the other community (Party B), which was a dusty 2 hour drive. Again – we approached the local health service, who were very much aware of the situation but not very supportive of 'mediators' and the potential to resolve the conflict. Despite this, they were able to help us find the right family to talk to. We sat down on the concrete and dirt and chatted with Party B. It was important to give them the space to talk about the issue their way without launching straight into any sort of potential mediation. But they also wanted the conflict resolved – wanted peace and parties were united in their grief! We were able to leave the community, not just with the expression of a willingness to resolve the conflict but also with information they wished to pass onto various government departments regarding the prevention of future conflicts. (This dual role as a mediation is something that I only do within communities and is linked to my commitment to capacity develop and support to people who need help).

On the final day of discussions there emerged a potential way forward. Once both families had heard from the other and expressed their fears – a potential solution was put forward. It was a solution that families were willing to live with – it wasn't perfect but allowed them to resolve the conflict. It potentially meant calm between families and communities. So with a spark of hope – we made the drive to the other community with the proposal – which was accepted! It required us to help facilitate the result but in doing so the families were able to mourn the loss of the young man in a way that did not result in ongoing violence. There was peace.

The key things that made this mediation successful include:

1 – **Respect:** We were willing to make the time to allow the process to progress on their time frame and terms – we were willing to travel and created the space to mutually value what parties could bring to shaping the mediation process itself.

2 – **Preparation:** We invested in people – talking and gathering as many resources as we could. This preparation time enabled us to create trust and gave the process legitimate authority to enable negotiations to occur.

3 – **Foundations:** The confidence and trust that I had in the principles of mediation and the process itself enabled me to empower parties. Letting go of any need to 'control' the process allowed it to become something meaningful.

Case Two: Community Harmony Mediation

A significant case about child abuse was being heard in court and was causing huge conflict with that community – not just for the parties involved but for the community as a whole. The situation had got so bad that the Judge had instructed the community to do something about it (this is an unusual request). I was approached by one of the defence lawyers to see if it would be possible to mediate – not the case but the issue of community harmony. This was an incredibly sensitive case – it was also political and becoming racial too. A significant amount of time was spent researching the situation, talking to people and conducting a risk assessment. People were nervous and I was very conscious about not letting the process be used for ulterior motives (to influence the case itself).

A preliminary meeting within the community was agreed to and legal representatives of all parties would also attend. This meeting was to be about assessment only, but upon arrival in the community it became clear that the community was going to go ahead with the meeting with or without our participation. My quick risk assessment was that it was better to participate and try to support the process rather than risk it getting out of hand. A co-mediator was appointed by the community and we spent time getting to know each other and exploring what was going on, how the meeting should occur and what the parties needed. The meeting itself was to be a negotiation managed in a traditional way by very senior elders. It was an incredible significant cultural event – and this was the first time ever that non-Aboriginal people would be invited to see and participate. My role really was to act as a cultural bridge between the community and the lawyers (representing the judicial system).

Because of my experience and knowledge (though limited) of both western and traditional judicial systems, I was able to articulate unspoken questions and fears of the non-Aboriginal parties. By asking seemingly naive questions (of which I already knew the answers) the legal representatives were able to learn (increasing their own understanding, awareness and perhaps appreciation of Aboriginal Australia). During this preparation phase I was also able to communicate to Elders some of the concepts, principles and needs of the western legal system. For example the Elders (and community members) didn't really understand that it is the judge and not the lawyers or parties that make the decision during a court process. For the lawyers they got a glimpse of the difficulties associated with language and priorities. The community concept of victim and offender was completely at odds with the western interpretation – the priority is community harmony rather than individual punishment (or individual ownership of guilt).

My role as the bridge enabled all the parties to prepare for and understand their role in this process of community peace-making. It was through asking the right questions – including articulation of fears of all the parties (lawyers, police, community members and those involved in the case itself) – people were able to make informed decisions, provide the information needed and support a process of community empowerment (conflict resolution).

As a direct result of this meeting, traditional cultural in the form of authority within this clan alliance (tribe) was reaffirmed. Space was created for an old man to take ownership of and be recognised as the head authority figure. This was both a privilege and a burden and you could see all of that in his face. Through this process the community regained a degree of unity and calm. The non-Aboriginal legal teams learnt more about working across cultures – and I hope gained an increased respect for these people. I also learnt so much through this process – and was humbled and touched. In writing my report (which all parties gave permission to write) I provided a transparent, fair assessment of what occurred – ensuring that the integrity of my role as a mediation was maintained and not manipulated for either sides' case.

The preparation for this case – although not perfect enable a good result to occur. Whilst my confidence in my skills and knowledge kept me calm, I also had great trust the capacity of the community. Critically, it was my capacity to ask the right questions that allowed non-Aboriginal parties to develop that same trust in the communities' capacity and in doing so the community was empowered to resolve and restore harmony themselves.

Summary

The two mentioned cases are just a couple of examples that highlight for me the importance of foundations and preparation. While there are many other things to consider when engaging in cross-cultural conflict management remember that people are not so different – even if they are from different cultures; they need to feel valued, they need to feel safe and they need people with the strength to be mediators.

Without a comprehensive understanding and confidence in the mediation process and my own abilities, I would not have had the capacity to deal with the high levels of ambiguity and requirements for flexibility. People are complex – not black and white; and by appreciating these complexities in a framework of principles, ethics, standards and rights I am better able to fulfil the role of a mediator. These things are the foundations for my tool kit – and allow me to create the bridge between cultures.

However, creating the bridge is not enough if the parties themselves are not capable of negotiating their way through their needs and fears toward resolution. Preparation is crucial. We as mediators have a responsibility to provide a service to our clients which creates the best possible environment for a successful outcome. The preparation is as much about critical assessment as it is about bureaucratic formalities, but investment in this time increases the likelihood of successfully negotiated outcomes.

Cross-cultural mediation can be a difficult and lonely path. In cross-cultural conflict management, this preparation is particularly important in order to engineer ownership of process and outcomes.

“Without local participation and ownership of the process, the crucial goal of sustainability and prevention of conflict remains fragile”
‘Governance out of a box: Priorities & Sequencing in Rebuilding Civil Administration in Post-Conflict Countries’, Workshop report 2007, New York, Crisis Management Initiative

The trust, legitimacy and capacity development that I look to foster through these processes would not be possible without respect. Spend the time to establish, learn and gain respect (it is something to earn not assumed). This allows you to meet the needs of the clients and invest in the creation of a mutually respectful process. It also allows you to start seeing the world through different eyes.

As young mediators, conflict resolution and management is a difficult profession to break into. Sometimes it seems impossible – but I encourage you all to find the areas in which you are passionate. Working within the cross-cultural domain is my passion – it is hard work, requires great discipline and is sometimes a lonely path. Despite this – or perhaps in spite of this it is also richly rewarding in the relationships that I develop and the learning opportunities that I am given. For me the delivery of a mutually respectful process is made easier knowing that I can draw on the strength of my foundations and my commitment to preparation – these have enabled me to help facilitate successful solutions and resolution within remote Aboriginal communities.

Thank you.

Some Useful Resources:

Governance out of a box: Priorities & Sequencing in Rebuilding Civil Administration in Post-Conflict Countries', Workshop report 2007, New York, Crisis Management Initiative

www.aiatsis.gov.au - see Indigenous Language Map and 'The Little Red, Yellow, Black Book: An introduction to Indigenous Australia' Aboriginal Studies Press.

www.hreoc.gov.au

'Why Warriors Lie Down and Die' – Richard Trudgen, Aboriginal Resource & Development Services Inc, 2000.

www.mawul.com