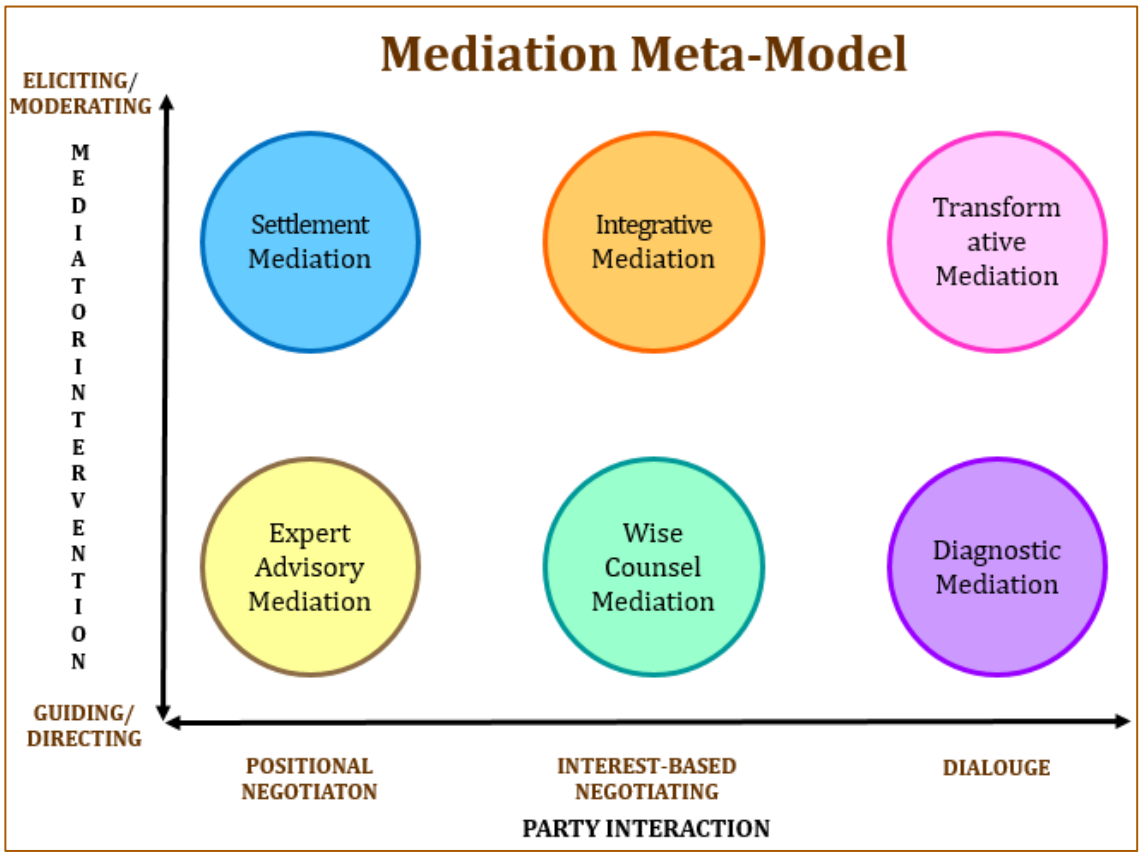
The Mediation Meta Model[1]

The Mediation Meta Model identifies six mediation practice models as set out in the diagram below. They reflect diverse mediation practices around the world. The six models are:

- Expert advisory mediation
- Settlement mediation
- Integrative mediation
- Wise counsel mediation
- Transformative mediation
- Diagnostic mediation.

Diagram 1



Before explaining each of the models in detail, here is an explanation of how the Mediation Meta Model works.

[1] Nadja Alexander's model was first published as a peer-reviewed paper "The Mediation Meta-Model: Understanding Practice," 26 (1) *Conflict Resolution Quarterly*, 2008, 97-123.

As you can see from diagram 1, the Mediation Meta Model is based on two dimensions:

1. the basis of the interaction among the parties within the framework of the mediation (parties' interaction dimension); and

2. the type of mediator intervention (mediator intervention dimension).

The horizontal dimension of parties' interaction moves from a positional negotiation interaction between the parties on the left side of the diagram, towards an interest-based negotiation interaction in the center, and then extends to a dialogue-based interaction on the right side of the diagram. Mediators should be familiar with these terms; explained briefly in the next section.

In terms of the vertical dimension of mediator intervention, the highest point represents a dominant style of mediator intervention described as eliciting and/or facilitating. This intervention style (eliciting–facilitating) reflects the mediator's mindset and informs the mediator's understanding of his or her role. This dimension slides in a downward direction towards the lowest point, which represents a primarily guiding and/or directing style of mediator intervention. Again this intervention style (guiding–directing) reflects the mediator's mindset and informs the mediator's understanding of his or her role.

The combination of the vertical and horizontal dimensions allows different mediation models to be identified. However, mediations and mediators rarely fit within one category and an international survey (International Mediation Institute, 2013) has shown that users of mediation services do not want mediators who only engage with one model or style. It is therefore important to recognize the flexibility and overlap that occurs among the individual models (McDermott and Obar, 2012; Kressel and Gadlin, 2009).

To this end, both the horizontal and vertical dimensions of the Meta Model operate as sliding scales that allows mediators to recognize not only the dominant frame in a given mediation, but also the influence of other frames that contribute to their mediation practice.

Let's now look at each of these dimensions in more details.

Parties' Interaction

The parties' interaction dimension refers to the type of discourse that occurs in the mediation. It comprises three categories, namely:

- positional negotiation discourse,
- interest-based negotiation discourse, and
- a dialogue discourse.

In each case, the objective of the discourse and therefore the nature of the aspired outcome differs. This, in turn, has an impact on how the mediation process unfolds. The parties' interaction dimension is a sliding scale. This means the scale slides from the extreme left positional focus of the parties and becomes increasingly interest-based and then moves eventually into dialogue on the right side of the horizontal scale.

Moreover, parties may find themselves interacting at different points on the scale within each of the three categories. For example, in situations in which parties' interaction is primarily described as positional negotiation, parties may focus solely on what they want in terms of claims and positions with minimal sharing about why it is important for them, that is their priorities and interests. This type of interaction is represented on the far left of the parties' interaction dimension. At the other end of positional negotiation, parties will still adopt primarily a positional mindset, however they may also incorporate some discussion of priorities and interests, at least in relation to certain issues. Similarly, in interest-based negotiation, parties can engage in a discussion of interests at a number of levels; the deeper the discussion and the more it reveals about parties' needs, the further along the sliding scale of interest-based negotiation towards the right, the parties find themselves until they slip into the realm of dialogue, where the sliding scale continues.

Of course, parties' interaction is not static and may shift along the entire sliding scale. For example, parties may begin mediation interacting somewhere along the positional negotiation scale and as a result of specific mediator interventions, may subsequently engage in interest-based negotiation behavior, and/or deep dialogue.

Positional Negotiation

Positional negotiation is based on a distributive approach to negotiation. A distributive approach to negotiation is characterized by the assumption that the parties are negotiating over a finite resource, often referred to in the literature as a *fixed pie*. This approach invokes the notion of a zero-sum game, according to which the parties divide up (or distribute) the contents of a fixed pie among themselves. Both parties assume they have the same objectives in terms of wanting the same item(s) and that the more one gets, the less for the other and vice versa. Where, for example, there is a dispute over the terms of a deceased person's will, the potential beneficiaries—the deceased's children and her partner—all compete for a piece of the estate pie. The more one person gets, the less there is for the others.

Positional negotiation emphasizes linear concession-making in which parties move from opening positions in ever-decreasing increments toward compromise. Negotiators generally aim to reach an agreement that lies between two positions, namely their opening position and their bottom line. The opening positions of the parties set the outside parameters for the negotiation. For example, if you are selling your car and ask for $120 000 and the potential buyer offers $80 000, then these two opening positions set the parameters or points from which concessions are made. A loss for one party in the form of a concession means a win for the other (win–lose paradigm). The aim of

positional negotiation is a settlement of a dispute or difference between the parties. In a dispute settlement context (as opposed to a transactional context), this often involves compromise of a claim such as a legal claim.

Interest-based Negotiation

Interest-based negotiation is based on an integrative approach to negotiation. Here negotiators aim to add value to, and increases the size of, the negotiated pie before dividing it. An integrative approach focuses on parties' abilities to expand the assumptions of finite resources made in distributive bargaining by identifying:

- the different values that parties place on negotiation issues; and
- possible concessions and trade-offs,

that maximize each parties' ability to address their interests.

This is typically done by employing an interest-based negotiation process, which takes negotiators beyond the substantive issues in dispute to additionally embrace parties' interests in terms of:

- issues relating to people, relationships and emotions;
- issues relating to needs and priorities and interests; and
- issues relating to how to address the conflict, that is the way forward or the process.

Interest-based negotiation involves separating the people from the problem, identifying complementary and conflicting interests, generating options for solution and the application of independent standards. It also encourages parties to identify their walk away BATNA (best alternative to a negotiated agreement) in order to ensure that they agree to something better than the outcome they could get if they walked away (Fisher, Ury and Patton, 1991). The objective of interest-based negotiation is conflict resolution. Here *resolution* refers to an outcome that goes beyond simple settlement to address the underlying interests and needs of the parties.

Dialogue

Unlike interest-based and positional negotiation discourses, which are outcome-oriented, the focus of this discourse is relational development and perspective sharing.

The essential idea behind dialogue is that parties come together to sit, think, inquire and explore especially with those with whom they think they have the greatest differences. Dialogue offers participants opportunities for interpersonal and intrapersonal transformation.

Dialogue processes are primarily open-ended and not issue-driven; they move through deep levels of listening, engagement and reflection, which may allow for diagnosis of

latent causes of conflict and may yield greater generative capacities for the participants. At the same time, dialogue can yield practical solution-focused outcomes; however, the discipline keeps people in a questioning state of mind long enough to deepen understandings and develop close bonds before moving into an action planning phase.

Mediator Intervention

The mediator intervention dimension refers to the nature of the mediator's intervention. Is the mediator's primary intervention style eliciting–facilitating or is it rather guiding–directing? Again, this dimension is a sliding scale that that allows mediators to recognize not only their dominant intervention frame in a given mediation, but also the influence of other frames that contribute to their mediation practice. The eliciting–facilitating behavior is associated with intervention in the mediation process, whereas the guiding–directing mediator behavior is generally associated with direct intervention in the problem itself. The process–problem distinction derives from the work of John Haynes (1992), who states that mediators manage the process but not the content of the parties' dispute. However the reality of mediation practice around the world reveals the growth of both "process mediators" and "problem mediators": "process mediators", who intervene in, and manage, the process but refrain from directly intervening in the content of the problem and "problem mediators" who directly intervene in both the process and the problem. The mediator intervention scale of the Meta Model accommodates these differences by describing mediators' behavior as:

- primarily eliciting and/or facilitating for mediators with a strong process-only focus; and
- primarily guiding and/or directing for mediators who intervene in both the process and the problem or the content of the dispute.

Eliciting–facilitating

The top half of the vertical mediator intervention dimension is called eliciting–facilitating. It represents an intervention style that moves around in a space between highly eliciting, curious, questioning, on one hand, and facilitating and managing parties' interaction, on the other. Moving down the sliding scale, the nature of the mediator's intervention shifts into a guiding–directing behavior.

Guiding–directing

The bottom half of the vertical mediator intervention dimension is called guiding–directing. It represents an intervention style according to which mediators can offer guidance or direction in relation to the substantive aspects of the matter being mediated. For example, mediators may offer legal/ procedural information, opinions on the merits of the dispute and proposals for settlement, or they may offer wise counsel and bring long term strategic thinking into the discussion, or they may offer views and guidance on the latent causes of conflict. Here guiding suggests a gentler, slightly less direct but nevertheless assertive mediator behavior, compared to directing behavior by the mediator.

The six models of the Mediation Meta Model

The six models of mediation that emerge from the interaction of the two dimensions described above are now explained.

Expert advisory mediation

In expert advisory mediation, mediators tend to use a guiding–directing style of mediator intervention, while the parties are engaged in a predominantly positional (distributive) bargaining interaction.

The primary objectives of this form of mediation are efficient delivery of settlements (service–delivery) and access to justice. These goals support the pursuance of speedy, legally- or technically-oriented settlements, which in turn encourage positional negotiation and advice-giving by mediators.

Expert advisory mediators are usually senior lawyers or other professionals selected on the basis of their expertise in the subject-matter of the dispute and their seniority. As expert advisors, mediators can provide participants with technical–legal information and benchmarks and provide advice on the merits of the case, suitable settlement terms, and likely outcomes should the matter proceed to a determinative proceeding such as arbitration or adjudication. In terms of the parties' interaction, a distributive negotiation approach keeps parties focused on positions and rights, thereby allowing the problem to be defined in a narrow and legalistic manner, excluding broader issues from being placed on the agenda. It is not uncommon for parties to be accompanied by legal or other professional representatives in expert advisory mediation. Mediated settlements often fall within the range of outcomes that a court could have ordered.

Expert advisory mediation may be useful:

- in complex or technical matters where the parties themselves are not experts;
- where the parties are not motivated to attend mediation, for example where it is mandatory;
- where at least one party has unrealistic expectations in relation to the (legal) merits of the case;
- where the parties require the objective opinion of an experienced and specialized professional;
- where addressing relational aspects of the dispute is not a priority;
- where the parties are seeking a quick resolution of their dispute; and
- for the party who is a plaintiff. Research indicates that, where both parties are represented, monetary settlements are higher for plaintiffs in expert

advisory mediation compared with integrative mediation models (McDermott, 2012; McDermott and Obar, 2004).

Expert advisory mediation has been criticized on the basis that:

- there seems to be no clear distinction between expert advisory mediation, conciliation, case appraisal and neutral evaluation;
- mediators fail to coach the parties in conflict resolution skills to assist them in helping themselves;
- mediators take on too much responsibility on behalf of the parties;
- direct participation by the parties in the process is low which may lead to subsequent dissatisfaction with the result (McDermott, 2012; Sourdin and Balvin, 2009; Bingham, 2000);
- where one party is not represented, expert advisory mediation tends to result in lower monetary settlements for the unrepresented party compared to integrative mediation (McDermott and Obar, 2004);
- by focusing on rights and positions, the interests of the parties may be neglected;
- knowing that mediators will provide an expert opinion may encourage parties to withhold information that they do not think will enhance their case (Brown, 2004);
- expert advisory mediation does not encourage parties to acknowledge the perspective of the other side. Instead, it encourages the parties to focus on their case only (Linden, 2004);
- settlement proposals by mediators often ignore the parties' long-term interests and how to deal with relationship issues (Carnevale, Lim and McLaughlin, 1989);
- expert advisory mediators tend to focus on a limited number of solutions they know have worked in the past, rather than paying attention to the multi-dimensional and unique facts of each case. As a result, opportunities for a unique suitable outcome may be lost (Neilson, 1994);
- where mediators provide opinions, it can be difficult to maintain the perception of impartiality. Parties who find the expert opinion unacceptable may subsequently consider the mediator biased (Honeyman, 2006; Lind and Tyler, 1988); and
- mediators who intervene in the legal or technical aspects of the dispute expose themselves to a higher risk of legal claims being made against them

in relation to the advice-giving aspect of their role. See, for example, the Australian case of *Tapoohi v Lewenberg (No 2)* [2003] VSC 410 (21 October 2003)

Settlement mediation

Settlement mediators tend to display a predominantly facilitating style of intervention, although as a matter of practice, some will also slip into a more guiding style, positioning them in the center of the vertical sliding scale for mediator intervention. Parties' interaction can be described as predominantly positional negotiation.

Settlement mediation supports the mediation goals of efficient delivery of dispute settlement, efficient access to justice and party autonomy.

Mediators are responsible for establishing a suitable environment for settlement negotiations to occur between parties (Moore, 2014). As a matter of common, but by no means exclusive, practice, settlement mediators move parties into separate sessions fairly early in the mediation process and may not reconvene in a joint session for the duration of the mediation. In these situations, the settlement mediator shuttles back and forth between the parties facilitating the negotiations by carrying back-and-forth offers, counter-offers, concessions, agreements and draft documents. This technique is known as shuttle mediation. It highlights the back-and-forth facilitating intervention of the mediator. Note that the shuttle technique can be used to varying degrees in other mediation models, however is most strongly present in settlement mediation.

Despite their facilitating mindset, settlement mediators are frequently selected for their technical or legal knowledge and parties feel comfortable that their mediator will understand, and may have views on, the technical aspects of the dispute. As a result, many settlement mediators offer a mix of facilitating and guiding interventions. As indicated previously, much settlement practice seems to be located towards the center of the vertical dimension of mediator intervention, where facilitating and guiding behavior meet.

Parties frequently have legal or other professional representatives in attendance at settlement mediations.

Settlement mediation may be useful:

- in situations in which positional bargaining is preferred over interest-based bargaining;
- when the outcome is more important than the relationship or where the parties desire no future relationship;
- when only the parties' legal or other professional representatives attend parts or all of the mediation. While lawyers may be informed as to the legal and commercial aspects of the dispute, they are less likely to be able

to participate in integrative bargaining without further input from their clients;

- when parties are negotiating over a 'fixed pie'; and
- in single issue disputes.

Settlement mediation has been criticized on the basis that:

- settlement mediation styles tend to overlook the needs and interests of the parties and their relationship. They may therefore miss the opportunity to identify suitable options for all parties, whether short, medium or long-term;
- the stronger, more experienced positional bargainer will be at an advantage;
- where legal representatives are present, a focus on legal positions may encourage (and in certain circumstances, require) them to dominate negotiations for their clients (Hardy and Rundle, 2010; Welsh, 2001);
- parties are unlikely to gain insights as to how to negotiate constructively with each other in the future;
- settlement mediators add little, if anything, to the positional settlement techniques, including threats, tricks and bluffs traditionally conducted by lawyers; and
- deadlocks may be more difficult to break in the absence of creative problem-solving techniques and lateral options (Brown, 2006).

Integrative mediation

Integrative mediation combines an eliciting–facilitating style of mediator intervention with an integrative approach to negotiating by the parties. Integrative mediators are responsible for creating an optimal environment for interest-based negotiation between the parties. This form of mediation is also referred to as facilitative mediation and interest-based mediation.

Integrative mediation values center on parties' self-determination and client satisfaction and the process aims to offer parties access to a participatory justice forum. Empirical research indicates that overall parties report greater satisfaction with integrative mediation processes compared to expert advisory processes (McDermott, 2012; Kressel, Henderson, Reich and Cohen, 2012; Lind and Tyler, 1988).

Integrative mediators primarily use eliciting and facilitating interventions such as active listening, asking a range of questions, structuring the negotiation agenda and signposting the progress of discussions and negotiations. Parties are encouraged to

reveal their needs and interests in relation to the conflict and to acknowledge the situation from the other party's perspective. Integrative mediators neither advise the parties on the merits of the dispute nor provide them with legal information. They tend to be selected for their process and communication skills rather than their subject-matter expertise. Where lawyers or other professional advisers are present, they play a consultative rather than an advocacy role. In other words, the parties speak for themselves with the support of their advisers.

Integrative mediation may be useful:

- when the parties want to continue their relationship, whether it be business, social or family-related, beyond the resolution of the dispute;
- in situations where the parties have the capacity to negotiate on a level playing field but have experienced difficulty starting the negotiation process or have reached an impasse in the negotiations;
- in situations where there are opportunities for creative and future-focused solutions to address the needs and interests of the parties; and
- in multi-issue disputes, especially where the issues comprise legal and non-legal elements (Whiting, 1992; for a different view, Mack, 2003).

Integrative mediation has been criticized on the basis that:

- in the absence of a mediated settlement, there is a risk that information and opinions shared at the mediation table may subsequently be used to the disadvantage of the party who revealed them. Although mediation is a confidential process, once the other party is aware of new information, the balance of power between the parties may change and new information may be independently sourced and subsequently used in arbitration or adjudication proceedings;
- integrative mediation may not be suitable in situations where one or more parties have inadequate negotiation ability, for example where one of the parties has language or literacy difficulties (Cumming, 2000; Sourdin, 2007);
- integrative mediation generally requires greater investment of time than positional bargaining approaches; and
- from a plaintiff's perspective, where both parties are represented, plaintiffs obtain less in terms of the monetary aspect of settlement in integrative mediation compared to expert advisory mediation (McDermott and Obar, 2004).

Wise counsel mediation

Wise counsel mediation combines a guiding–directing style of mediator intervention with a predominantly interest-based negotiation between the parties. In other words, mediators intervene in the substantive aspects of the conflict by focusing on the broader interests and concerns of parties, rather than their rights and positions.

The primary objective of this mediation model is access to justice in the sense of a fair forum, efficient conflict management and solutions that address the long-term interests of the parties.

Although wise counsel mediators guide and/or direct, as do expert advisory mediators, wise counsel mediation typically requires a greater time investment than expert advisory mediation as mediators must probe beyond the surface to the level of underlying interests. However, rather than coaching the parties through an interest-based negotiation as in integrative mediation, wise counsel mediators intervene to provide input in terms of identifying interests, priorities, strategies, options, walk-away alternatives and solutions. While the final decision remains with the parties, the mediator assumes a certain level of responsibility for the issues discussed, the options generated and the shape of the final mediated outcome.

Wise counsel mediators are typically selected for their high standing in the community, experience in the relevant industry, in addition to their communication ability, wisdom, sense of fairness, and ability to understand the dispute and the disputants. The role of lawyers in wise counsel mediation varies. The more interventionist wise counsel mediators are, the more likely that lawyers will play a consultative role with respect to the legal aspects of the dispute only. Wise counsel mediation is said to be a widely-used and culturally appropriate model throughout Asia (Singh, 2011; Billings-Yun, 2009; Lee and Teh, 2009) and has been cleverly referred to as 'MediAsian' (McDuff, 2015; Lim, 2014).

There is also variant of wise counsel mediation referred to as tradition-based mediation, which places the interests of the community, industry or group rather than individual party interests in the foreground. It is outlined below.

Wise counsel mediation may be useful:

- in multiple issue disputes in which parties require substantive advice on how to resolve their differences with the other party and manage the future;
- when parties are reluctant to initiate direct constructive suggestions for resolution due to feelings of pride, the need to save face, cultural considerations, or sheer stubbornness;
- when parties seek wise or moral guidance;
- when parties seek to allocate moral responsibility for the outcome to a 'legitimate' third party;

- when parties have unrealistic expectations and are seeking a practical long-term solution; and
- when there is a power imbalance between the parties. Typical examples include where only one party is legally represented, where the parties have unequal negotiating ability in terms of literacy and language or where they are otherwise unable to negotiate equally (Bush and Folger, 2004; Astor and Chinkin, 2002).

Wise counsel mediation has been criticized on the basis that:

- while this form of mediation may provide the parties with an integrative solution, it does not educate the parties in terms of how to manage the agreement beyond the mediation;
- it can be difficult to maintain the perception of impartiality where mediators express views and opinions, even if they are pitched at the level of the parties' interests and concerns;
- mediators take on considerable "substantive" responsibility on behalf of the parties; and
- depending on the level of input by the parties, the mediator makes assumptions about the interests of the parties and the dynamics of their relationship. If unchecked, these assumptions may be incorrect and have serious consequences for the parties.

Tradition-based mediation is a variant of wise counsel mediation and has been referred to previously. It is a form of mediation, which focuses on the interests of the community, industry or group rather than individual party interests. In other words tradition-based mediation has a collective orientation rather than an individual one. Community/group members are considered stakeholders in the conflict and mediations may be conducted in front of, and with the participation of, members of the group. Confidentiality can play a less significant role here compared with other models of mediation. Mediators are usually leaders or elders who are known by all and carry authority not only in the eyes of the disputants but also in the eyes of the community/group. Typically, these mediators enjoy an insider status vis-à-vis the parties and the conflict so that they know the parties and may well know about the conflict prior to being engaged as mediator. Their position and life experience are thought to imbue them with the wisdom and insight to lead the disputants to an outcome consistent with community/group norms (Currie, 2004). This collective-oriented variant of wise counsel mediation can be useful in communities with strong social, cultural, religious and political norms that wish to deal with their conflict internally and consistently. It is also used in industries and professional and business communities where group norms are more influential than legal norms, for example in interpersonal dispute between office-holders in workplaces or professional associations with a strong organizational culture. Tradition-based

mediation has received critique because of its lack of focus on parties' individual interests and rights.

Transformative mediation

Transformative mediation combines an elicitive–facilitative intervention style by the mediator with a dialogue-based interaction style between the parties.

The primary goals of transformative mediation include party autonomy, relational transformation and/or healing and reconciliation, and restorative justice.

In transformative mediation, the mediator's role is to create an environment in which the parties can engage in dialogue, through which they are empowered to articulate their own feelings, needs and values and to recognize and acknowledge those of the other party. Mediators are selected on the basis of their process and relationship skills and their knowledge of causes of conflict, psychology and related therapies, and behavioral science.

Research indicates that user satisfaction with the mediation experience tends to be high in transformative models (Nabatchi, Bingham and Moon, 2010). In 1994, the United States Postal Services with more than 900 000 employees had a serious problem with grievances and workplace disputes. An initially integrative and subsequently transformative mediation programme was introduced nationally. Evaluations of the programme indicated that:

"The transformative style—by emphasizing the goals of disputant empowerment as well as recognition and by preventing mediator evaluation—may heighten disputants' perceptions of interpersonal justice (i.e. between the disputants) and reduce perceptions of structural bias." (Bingham, 2012: 354).

A particular form of transformative mediation is narrative mediation developed by Winslade, Monk and Cotter (1998). Narrative mediation is drawn from theories and techniques found in narrative therapy (White, 1989; White and Epston, 1990; White and Epston, 1991). Narrative mediation focuses on the stories people tell that construct their worldview and accordingly their reality. Stories about conflict typically involve a protagonist/victim (the storyteller), on one hand, and an antagonist/victimizer (the other party), on the other. Storylines also typically involve blame and responsibility and are about what happened in the past. Different stories create different realities, and, in some cases, conflict. Narrative mediation assists participants to deconstruct their conflicting stories. It creates a safe storytelling space and opens up opportunities for shared stories; this, in turn, gives participants power to create new dialogues and identify relationships and futures by writing a new narrative (Kure, 2010). When writing their scripts for the future, it is not unusual for parties in narrative mediation to engage in the option generation and problem-solving techniques emphasized in the integrative model of mediation thus highlighting the fluid nature of the Mediation Meta Model.

Transformative forms of mediation may be useful:

- when the dispute is a (recurring) symptom of an underlying conflict and the parties are prepared to address it before making decisions about the dispute itself;
- in conflicts about the parties' relationships, whether of a personal, professional or business nature;
- when significant emotional and/or behavioral issues are at stake;
- when parties are arguing on the basis of values and principles; and
- when parties may benefit from opportunities for personal development.

Transformative mediation has been criticized on the basis that:

- transformative forms of mediation demand a greater time investment than other mediation models;
- there are few protective mechanisms in transformative models of mediation for less empowered and weaker parties (Bush and Folger, 2004);
- if not conducted well, transformative forms of mediation can waste a lot of time and potentially take parties into areas where neither they nor the mediator are sufficiently skilled to deal with the underlying psychological issues and anxieties that may arise; and
- the use of transformative forms of mediation can make the specific dispute (as distinct from the underlying conflict) more difficult to settle because extraneous issues are put on the mediation table.

Diagnostic mediation

Diagnostic mediation is characterized by a guiding–directing style of mediator intervention, on one hand, and dialogue interaction between the parties, on the other.

Diagnostic mediation prioritizes the goals of party autonomy and relationship transformation. This model shares a relational focus with transformative mediation. In both models, parties are encouraged to engage in dialogue with each other and to extend their discussion beyond interests and priorities in the immediate dispute to include reflections on fundamental human needs, values, identity and other underlying causes of conflict. However in diagnostic mediation, mediators guide parties through a diagnostic inquiry and "search for relevant but unrecognized sources of the conflict as a means for increasing mutual relational understanding and fostering agreement making." (Kressel, Henderson, Reich and Cohen, 2012: 157-158). In Germany Klärungshilfe (Thomann) is a form of diagnostic mediation.

Mediators are generally selected for their expertise in therapy, psychology, counselling or a related field. This reflects the fact that much diagnostic mediation is drawn from therapeutic models (Haynes, 1992).

Diagnostic forms of mediation are used in situations where transformative mediation might also be helpful but where parties require greater diagnostic input from the mediator. Diagnostic mediation may be useful:

- in situations where parties are unable to identify and/or address underlying issues without diagnostic input from the mediator; for example:
    - when the dispute is a (recurring) symptom of an underlying conflict;
    - in relational conflicts, whether of a personal, professional or business nature;
    - when significant emotional and/or behavioral issues are at stake;
    - when parties are arguing on the basis of values and principles;
    - when the parties may benefit from opportunities for personal development; and
- in situations where diagnostic mediator input can offer protective mechanisms to support less empowered and weaker parties.

Diagnostic mediation has been criticized on the basis that:

- if not conducted by a mediator suitably qualified in the appropriate diagnostic/therapeutic fields, diagnostic mediation can potentially take parties into areas where neither they nor the mediator are sufficiently skilled to deal with the underlying issues and anxieties that may arise;
- the use of diagnostic mediation can make the dispute (as distinct from the underlying conflict) more difficult to settle because extraneous issues are put on the mediation table;
- it can be hard to draw the line between diagnostic mediation and relationship therapy.

The Mediation Meta Model as a Tool for Practitioners and Policy Makers

The mediation models outlined in the Mediation Meta Model provide useful theoretical constructs that both reflect and inform practice. In reality, the models are fluid in their application and, according to Picard, a significant number of mediators describe their mediation style as eclectic (Picard, 2004; Kressel and Gadlin, 2009; McDermott and Obar, 2004). For example, a mediator may start with a facilitative approach and then,

upon realizing that the parties are seeking more guidance and that one party has relatively poor negotiating skills, move to a wise counsel approach. In another situation, the facilitative mediator, after probing for further interests and concerns of the parties and engaging in issue fragmentation, may determine that a settlement model is more appropriate for what has shown itself to be a single issue dispute between parties who have no interest in maintaining any sort of the relationship into the future.

Moreover, it is important to recognize the variety of styles within each of the six boxes. Wise counsel mediation, for example, can involve varying levels of party input. At one extreme, the mediator will assume a great deal about the parties' needs and interests and what an outcome in their best interests would be like. At the other extreme, the mediator, while still maintaining a dominant guiding–directing style, would also use a range of eliciting–facilitating interventions to elicit input from the parties about what is important for them in terms of reaching a resolution of the dispute. Similarly, the nature of the interaction among participants in wise counsel mediation may stray from pure integrative negotiation in the direction of distributive bargaining for some issues and towards dialogue for others. Here is another example in relation to settlement mediation. At one extreme, a settlement mediator may place the legal representatives in a room by themselves to sort out a settlement, making him or herself available as and when necessary. In this scenario, the mediator provides the negotiation environment and process support with a minimum of intervention. Another settlement mediator will move the parties and their lawyers between joint and private sessions, gradually breaking down their global positions into smaller, more manageable chunks and accepting input from the parties in relation to issues broader than their legal positions. When this occurs, the dominant paradigm remains positional bargaining but integrative elements are present. Yet another settlement mediator will shuttle between parties motivating, encouraging and suggesting possible zones of agreement: a shuttle process approach with some guiding–directing interventions by the mediator. Thus in practice, many mediations are hybrids of negotiation and dialogue-based models accompanied by variations in the style of mediator intervention.

The Mediation Meta Model provides a framework. Anything more would be antithetical to the flexibility and creativity that mediation is said to offer. The Mediation Meta Model provides signposting and orientation in the mediation world not only for mediators, parties and their lawyers, but also for regulators, referring bodies, researchers and students of mediation.

Regulatory bodies need to be clear about the definitional scope of their regulation. As we move to professionalize the field, we must ask ourselves who is shaping the meaning of mediation. Where mediation is defined, it is important to be aware not only of the practices that fall within the definition of mediation but also of those which fall outside it. What are the consequences for those mediation models, which lie beyond the mediation definition? Does the regulation effectively prohibit other practices called mediation or does it merely fail to extend its provisions—including rights and obligations attached to diverse participants in the mediation process—to those involved

in them? Moreover, how do regulatory definitions affect the issue of unauthorized practice of law?

The Australian National Mediation Standards (2012) highlights one way in which these issues can be addressed. A voluntary set of standards, it does not and cannot prohibit the mediation practices that fall outside its facilitative definition. The self-regulatory provisions specifically provide for circumstances in which mediators provide expert information or advice to disputing parties. This practice in mediation is referred to as a blended process, and is also referred to as conciliation, advisory mediation or evaluative mediation. Mediators engaging in 'blended processes' are required to have appropriate expertise and obtain clear consent from the participants before moving into such an expert advice-giving role (Mediator Standards Board, 2012). The Mediation Meta Model can provide a guide not only for regulators, but also for mediators and other process participants seeking clarity on their various rights and obligations. In another example, the Papua New Guinean Court Rules on Mediation (2010) provide for a system of accreditation of mediators based on the integrative model. However, the Rules also provide for customary tradition-based mediators to be recognized by the court. In granting tradition-based mediators accredited status, the court may choose to restrict the practice of these mediators to particular types of disputes or particular geographical areas. Finally the International Mediation Institute ('IMI'), a mediation public-interest initiative, recognizes the reality of different mediation models and does not restrict itself to one model (International Mediation Institute, 2016).

For mediators themselves, the Mediation Meta Model is a tool of self-reflection. Mediators are encouraged to explore the entire space within each of the six boxes and to reflect on where they find themselves from time to time in each of the models. As such, the Meta Model can form a useful basis for monitoring self-development and for mentoring and coaching. For trainee mediators, the Mediation Meta Model is a useful learning tool that assists in the identification of one's own intuitive style. Freshly accredited mediators frequently struggle with the gap between the reality of mediation practice and the model of mediation presented to them in training. The Mediation Meta Model can assist with students' understanding of where they and other mediators are situated on the mediation map and in which direction they would like to develop their skills.

Parties and lawyers looking for a mediator may also find the Mediation Meta Model to be a useful starting point for mediator selection. Articulate parties with a weak legal case but a strong moral and business case may seek an integrative mediator who encourages parties to focus on interests rather than legal positions and who maximizes the parties' opportunities to negotiate the outcome themselves. In contrast, lawyers who consider their clients to have a strong legal case and no real interest in continuing a relationship with the other side may prefer a settlement mediator. Where, however, parties and/or their legal advisers have unrealistic expectations, an expert advisory mediator, who is more akin to a conciliator or neutral evaluation practitioner, may be more appropriate. Wise counsel mediators are suitable for cases with parties, who, for various reasons,

may be seeking wise, moral or simply common sense advice in their search for a practical, long-term outcome to their dispute.

From a consumer perspective, the Mediation Meta Model provides a guide to better understand the range of mediation and ADR products available and the nature of the mediation process selected.

In addition, the Mediation Meta Model supports the development of systematic client feedback and data collection in relation to mediation and mediators. A 'bad' mediation, for example, may have multiple contributing factors including a poor fit between the mediation model on one hand, and the characteristics of the dispute and the disputants, on the other. Repeat users of mediation such as major law firms and insurance companies may find the Mediation Meta Model a useful tool to debrief, analyses and share their mediation experiences.

For researchers, the Mediation Meta Model offers a structure for research design and analysis. In addition to systemizing data collection, the Mediation Meta Model offers a conceptual map for identifying the relationship, if any, between specific mediation models on one hand, and settlement rates and longevity of settlements on the other (Charkoudian, 2012).

Referrers of mediation services such as courts, ADR organizations and professional advisers provide a crucial link between consumers and mediation service providers. As sources of information about mediation, referral bodies have a responsibility to inform clients about the features of the mediation process to which they are being referred (Astor and Chinkin, 2002).

Finally, the Mediation Meta Model adds a new level of complexity to the issue of whether or not disputes are suitable for mediation. It is no longer a question of 'to mediate or not to mediate'. Rather, as this discussion has shown, fitting the appropriate mediation forum to the dispute is a sophisticated undertaking in its own right. Here the Mediation Meta Model provides a useful selection, planning and strategy tool for referral bodies, professional advisers, intake officers, parties and others involved in making conflict resolution choices.

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