

Meditating in the Margins

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In this paper the concept of mediation as an institutional tool to render organizational conflict invisible is discussed. In an organization's human activity system there is a marginal space between the dominant controlled organizational system and its environment in which mediation takes place. These concepts are illustrated with a hypothetical case that demonstrates the complexity of this marginal system.

Introduction

Alternate dispute resolution(ADR) within organisations has become common practice in meeting employment relations legislation(Report, No date) and providing a healthy work environment. It appears that ADR has been relegated to the margins of organisational activities as institutional issues become individual problems(Herr,2005). In a hypothetical case informal mediation as an ADR is hidden from the official organisational system and confined to a border system(Figure 2). All stakeholders in the informal mediation process are considered. This case demonstrates: how a border system is linked to an official system; and the implications of hiding ADR.

Mediation defined

"The process by which the participants together with the assistance of neutral person/s, systematically isolate disputed issues in order to develop options, consider alternatives and reach agreement that will accommodate their needs." (Leadr,2002)

In the Leadr (2000) model (Figure 1), the mediator maintains a detached, neutral and unbiased position. Initially, a joint meeting of parties occurs. Subsequently, separate sessions are held. The mediator helps parties to move towards own solutions. Both parties are interviewed separately and then brought together to negotiate a solution. Characteristics of a mediator include: listening, empathy and neutrality. Informal mediation in this hypothetical case does not necessarily involve bringing both parties together. Both parties must agree for this to happen.

Mediation and organizational structures

Organisational mediation tends to be bargaining rather than therapeutic (Warters, 2000). Both parties are encouraged to reach a mediator-facilitated solution.

It is helpful in considering organisational ADR to consider a border system in which complex activities may occur(Figure 2). The inner border-edge provides a boundary with the organisational system(OS) whilst the outer edge separates the OS from its environment. The outer edge is defined by the external view provided by public websites, advertising, annual reports and media statements. The inner

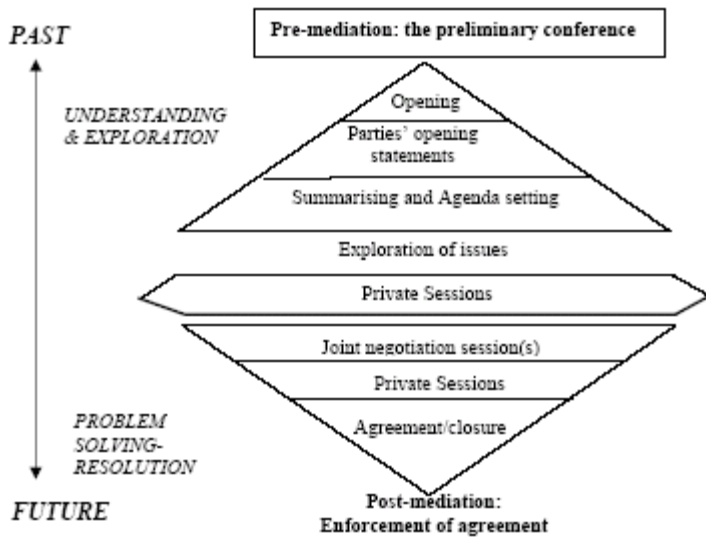


Figure 1 Mediation Model (Leadr, 2002)



Figure 2 Border system defined

edge lies within the OS and provides a buffer between private and public information and processes. Confidential meetings, hidden structures and roles within an organisation inevitably reside within a border. In a healthy organisation the inner border-edge becomes porous allowing the free flow of information as well as protecting required confidentiality. Unofficial transformational processes either within formal personnel structures or as formal institutional procedure exists within the border. Informal mediations are transformational processes that occur within the border. In this case, control mechanisms within border systems may become an organisational issue. Communication within the border may also pose organisational issues as hidden activities may not have clearly defined communication lines. It seems that conflict that arises within the official OS is mandated as requiring some form of ADR which is then conducted within the border system.

A hypothetical case

The ADR within institution X is conducted by voluntary internal service positions. 15 contact harassment people(CHPs) and an informal mediator(IM) perform these roles voluntarily as well as their normal employment contract.

The contact harassment list

The organisational conflict resolution procedures (Figure 3) require a list of CHPs as a first contact point.

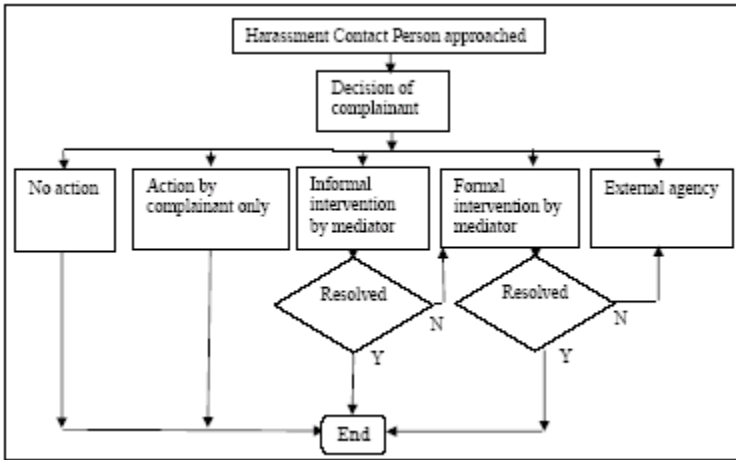


Figure 3 Alternate dispute resolution procedure

These people are organisational volunteers from a range of positions. Logistically, CHPs are required to cover academic discipline, student support, allied staff, onsite contractors and student residences. Volunteers are requested at the end of each year to undergo selection and training.

The informal mediator (IM)

Informal mediation is required as the third step in problem resolution (Figure 3) in which the IM is a neutral facilitator (Figure 1). Mediation skills and knowledge include: organisational knowledge, classroom practice, teaching and learning skills, interpersonal understanding and an ability to empathise. Erickson (2000) suggests that a “designated insider” is often better placed to facilitate ADR.

The conciliator

The conciliator has an official salaried position within Institution X and acts as the final internal arbiter before outside resolution is sought.

The human resource manager (HRM)

One HRM is responsible for the selection, training and operational management of any internal ADR. Both the HRM and conciliator report independently to the regis-

trar who is a member of senior management team (Figure 4).

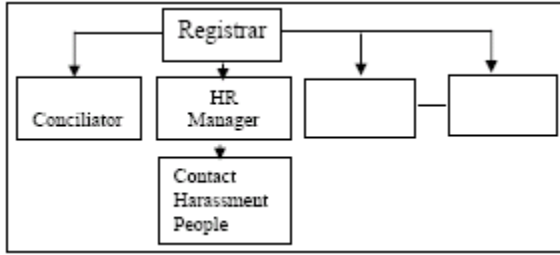


Figure 4 Organisational structure for dispute resolution

The IM has no official position within the organisational structure (Figure 4) and therefore is invisible within the institution. Erickson (2000) suggests that the most effective ‘designated insider’ in ADR is one that is visible, and that credibility for such a mediator needs to be reinforced from within the organisational structure. Also, in the official ADR brochure the only referral to informal mediation is in the procedural flowchart (Figure 3) in which the IM is not named. Invisibility therefore is reinforced across the institution as well as within the official organisational reporting lines.

The case

After a student complaint was raised with a CHP the IM was briefed by the HRM and separate appointments were made with both complainant and respondent. The respondent fulfilled her meeting obligations promptly. The complainant did not. It was only after intervention of another family member that the complainant returned the IM’s call. When the respondent met with the IM she was angry at having a complaint laid against her. In her employment as a debt collector she was familiar with legal ADR. The reason for the complaint made against her was stated as two occasions when the respondent had spoken inappropriately to the complainant. (Any incident must be of a repeated nature. Do two occasions constitute repetition?) The respondent was well-prepared for the informal mediation meeting with a written statement and a letter to the complainant withdrawing her remarks (No apology was made either to the IM or in her written statement).

In the complainant’s telephone conversation the IM was informed that the complainant was unable to meet because she worked. The IM was also told that the complainant did not want to carry the matter any further and that this had been conveyed to the person with whom she had previously spoken. (There is some confusion here about which the ‘other woman’ was – the CHP or the HRM. The IM’s assumption was that it was the CHP, because explanations about rights and process originate with the CHP. This particular CHP was very sensitive to what constitutes sexual harassment.)

The complainant and respondent agreed about what was said on two occasions in which offence had been taken. However, there was not agreement about the intent behind these two utterances. The respondent believed she was being friendly with the group of younger students. The complainant, on the other hand reacted to

the words as if they were a demeaning. (The complainant did not label the two occasions as harassment – just that she and her friends did not like what was said.) It was only after the complainant met with the CHP that the harassment label was placed on the situation.

Agreement was reached that the complainant would stay away from the respondent on campus. The complainant also stated that she would complain again if anything else was said against her. The respondent's main wish was to finish the semester and pass the paper.

This should have completed the informal mediation, with one more phone conversation to the respondent to relay the agreed terms. However, it seemed to the IM that there were a number of issues that needed attention. Questions posed about this mediation were: the role of the CHP; the direction the mediation process took; the lines of communication in the established ADR procedures; the HRM's role; what constituted a complaint; and the invisibility of the IM in the ADR process.

Organisational border systems

Figure 2 shows an OS that is highly structured, controlled by vision, statutory requirements, policy, operational procedures that operate with a formal hierarchical structure in which there was limited communication flows. Surrounding the formal OS is not just a boundary, but a border system that encompasses a complex organisational 'shadow space' in which multiple dimensions of being are possible. This border system provides a buffer from the outside environment, particularly when conflicts arise. It is within the border system that ADR occurs as the organisation relegates disputes from public to confidential spaces. Mediated processes are confidential – public disputes are therefore rendered private and often individualised (Herr, 2005). These mediated processes happen within the border system, away from the formal OS and hence become invisible. All stakeholders involved in any dispute will view the border system and its links within the formal system differently.

The registrar's view

The registrar has ultimate responsibility for ADR and as a senior manager holds the institutional view that: conflicts should be resolved within the organisation; formalised procedures and policies protect the institution; and these should operate in the most cost-effective way possible (hence the voluntary services of CHPs and IM). The unspoken view of the registrar was that ADR should happen away from the public and media attention is to be avoided. In placing ADR within the border system (Figure 2) any mediated solution is rendered invisible both within the formal OS and the outside environment. The confidential nature of mediation also isolates particular disputes from one another within the border system, particularly if these disputes are facilitated by different organisational volunteers.

The conciliator's view

The conciliator only becomes involved when ADR goes beyond informal mediation. The last internal resource for ADR is offered by the conciliator. Because the

conciliator's position is officially recognised with a direct link to the registrar (Figure 4), this provides an important link between formal and border systems. The close contact between the IM and conciliator: provides a supervisory service once a dispute has been resolved; and more importantly sets up a two-way link between formal and border systems. However, this link is weakened by invisibility and lack of acknowledgement of informal mediation. Further weakening the link is the different nature of energetic spaces that exist between formal and border systems. The border system is one in which discussions are often emotional - trust needs to be established for ADR to move forward. A mediated solution is just as likely to be found with emotional rather than rational agreements. Within the formal system discussions normally take place in a rational framework.

The informal mediator's view

The IM operates completely within the border system. The role is invisible to the formal hierarchy (Figure 4), the IM is not named (the ADR process only refers to 'informal mediation' (Figure 3) as a step in the ADR process. The IM's indirect links to the formal system are: with the conciliator who reports to the registrar on a regular basis; and outcome reporting to the HRM.

The HRM

The HRM's role is to ensure that organisational policies and procedures are followed for ADR in a timely fashion and that outcomes are reported back to her from the IM. Experienced HRMs in ADR bring to the role considerable tacit knowledge that help to ameliorate decisions, and to monitor and expedite mediated solutions.

The CHP

The CHP's role is to listen to: the complainant only; advise on individual rights; assess whether there is a complaint to uphold; make sure that the complainant is familiar with organisational policies and procedures; and advise the complainant on subsequent ADR steps. The CHP does not have direct contact with the IM or the conciliator. The CHP's reporting line is to the HRM. CHP's may call on each other for debriefing and support, as extra voluntary activities.

The complainant

Often a complaint arises from a sense of unease about a situation – "something not being quite right", a lack of understanding about organisational policies and procedures, and no knowledge about who he/she should be discussing the complaint with in the first instant. The complainant is reliant on the CHP's interpretation of the situation to dictate what ADR steps need to be followed.

The respondent

The respondent is often unaware that her/his behaviour lies outside of organisational and/or individual norms. As in the case described, the respondent's reaction to being notified of a complaint laid against her was one of anger and defensiveness.

Discussion

This case highlights some important issues for organisational ADR. In line with a major tenet of complexity systems (Stacey, 1996), it is evident in the case described that the role of the CHP is vital in setting initial conditions. Indeed, it appears that selection and training of CHPs is an important precursor for setting an appropriate direction for ADR. Because CHPs are voluntary, this poses a dilemma for the institution which is: how can performance be monitored, evaluated and improved when the service provided is voluntary. If a CHP holds an extreme view about harassment, and ADR, this is likely to affect the direction taken. In the case described, a radical view appears to have escalated a general complaint about in-class behaviour to mandated ADR.

Expanding this organisational boundary to a border system provides a space in which ADR activities may be hidden. ADR policies and procedures are set and initiated within the OS, and conducted within the border system after communication from the HRM to the IM. This communication provides the link across the internal edge of the border system from the OS.

Findings

When we consider what might happen if ADR is moved from invisibility within the border system into the official OS we need to ask what would be the fallout. Whilst CHPs are recognised and named within the OS, the IM is not. CHPs operate within the OS within a voluntary capacity. The IM operates within the border system. By not naming or paying for ADR services, the organisation relegates this important activity to the border where there is no quality control, performance management, monitoring or evaluation. It seems logical and necessary that the mediator be formally recognised so that a feedback loop can be established back into the formal system and policy and procedures reviewed.

A result from this hypothetical case should be a debriefing session with the HRM and the registrar to review existing policies and procedures to ensure that the official system is providing appropriate support for ADR. If indeed, the border system is the appropriate place for mediation to occur then perhaps a more porous inner edge is required from the border system.

The CHP's role in ADR is pivotal in setting the direction for ADR to take. Whilst the CHP's role remains voluntary the organisation is left with a major dilemma on quality control for ADR.

Conclusion

An ADR hypothetical case has been the vehicle to explore the presence of an organisational border system. Multiple dilemmas have emerged in this organisation. Financial pressure, voluntary service and a culture that renders ADR invisible all contribute to challenges in maintaining a healthy organisational culture.

Exploring the links across the inner edge of the border system and transformational processes that occur within the border shed new light on ADR in organisational settings.

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