

Speediation: The challenges of resolving a dispute in an hour.

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1. Introduction

I know what you are thinking – mediation is not about resolving someone's dispute within an hour. Perhaps a more accurate description of mediation would be a catalyst for something that parties may not be able to achieve by themselves. In chemistry, a catalyst provides an alternate and easier reaction pathway rather than impelling particles to react. In order to find this alternate pathway under time restrictions, this essay proposes that a mediator should strive to discover what parties actually want from the process and ensure that the limited time is spent effectively assisting them to attain this.

As Alternative Dispute Resolution becomes more widely utilised in resolving various disputes, some practitioners and organisations are facing the challenges of high-volume workloads and limited resources, the most crucial resource being time. Organisations have experimented with various strategies like shuttle telephone negotiation² and abbreviated mediation.³ The main task is to meet the aforementioned challenges without cutting corners, rushing or pressuring parties into settlement. High party satisfaction levels⁴ indicate that Speediation can be successful. This paper includes a Dispute First Aid Kit, which is a collection of strategies and suggestions to assist in Speediation. The paper's appendix is not vestigial and contains the Kit, cross-referenced throughout the paper.

As far as I am aware, the term Speediation was introduced by Professor Tania Sourdin when discussing the resolution of disputes before Tribunals.⁵ Five years later, Professor Sourdin mentioned the term again in a general critique of poor quality mediation. Her main criticism of Speediation was that it could fail to meet parties' interests and leave them unsatisfied.⁶ So what interests can parties have apart from resolving their dispute?

2. Parties first

In order to promote the principle of self-determination, this paper will put the parties first. The first challenge for Speediation should be to determine as quickly as possible what the parties hope to achieve. This, of course, is not necessarily going to be the initial positions or

¹ The views expressed in this paper are my own and do not officially represent the views of the QLD Residential Tenancies Authority (RTA).

² Doumany, Nicola (2005) *Residential Tenancy Authority's dispute resolution service: a shuttle telephone negotiation success story*, 7(6) ADR Bulletin. Note: telephone conferencing has been deemed much more effective than telephone shuttle negotiation and is now the primary form of conciliation at the RTA.

³ <http://www.justice.qld.gov.au/justice-services/dispute-resolution/mediation/abbreviated-mediation> and Eastall, Ashley and Condliffe, Peter (1999) *Abbreviated Mediation: trial of a new process*, ADR Bulletin 1(9) Article 3.

⁴ RTA Dispute Resolution Service received 7.2 out of 10 client satisfaction rating in 2011-2012. See also Irvine, Charlie (2011) *Hanging on the telephone: the future of mediation?* Kluwer Mediation Blog: <http://kluwermediationblog.com/2011/11/12/hanging-on-the-telephone-the-future-of-mediation> Note that a thorough analysis of Speediation satisfaction levels is beyond the scope of this paper but would be very useful.

⁵ Sourdin, Tania (2005) *Facilitating the Resolution of Disputes before Tribunals*, Australasian Institute of Judicial Administration conference presentation: <http://www.aija.org.au/Tribs05/tribprog05.htm>

⁶ Sourdin, Tania (2010) *Poor quality mediation – a system failure?* ADR Bulletin 11(8) Article 2.

demands. When time is scarce and a WATNA⁷ is looming, parties can be quite frank about their underlying interests. It may also be possible to discern needs or interests of which parties themselves are not aware, for example the need for venting, vindication or closure. These could be elucidated by way of mediator techniques like reframing or Socratic questioning.⁸ However, a mediator should be careful assuming what is the obvious solution or what is best for parties because there can be a lot more to a dispute than what is revealed.

Shifting the focus away from trying to successfully resolve the dispute to promoting party engagement, self-determination and informed decision-making⁹ can make Speediation much more effective. For example, a tenancy dispute involving numerous repairs / maintenance grievances from a tenant and arrears / counter-grievances from a lessor could involve hours of exploration of each repair issue along with repayment plan discussions. However, if the mediator is able to discover early on that both parties just want the tenancy to end, he/she could instead use the limited time to assist them in developing a mutual lease termination agreement. This shift could be achieved by effective acknowledgement of what has happened in the past, a shift to the present (limited time) and a solution-based focus on the future (what kind of agreement could everyone live with?).

Settlement is not the only measure of success. Indicators of effective mediation include interrelated factors such as parties' satisfaction with the process, cost/time efficiency, empowerment, durability of agreement, relationship improvement and achievement of parties' goals.¹⁰ It may turn out that parties all end up wanting to proceed to Court, yet be very satisfied with the mediation for clarifying issues, minimising legal arguments and reducing further costs. Alternatively, one party may refuse to come to an agreement to save face but then let the dispute go having satisfied the need to be heard or to have a moral victory. Having determined what the parties want from mediation, the mediator then needs to determine whether these aims are achievable within the given time.

3. Quality, not quantity

Disputes come in a mind-boggling variety of sizes, colours and packages. Some parties can resolve their differences in fifteen minutes simply because you have been the catalyst for their previously non-existent communication. Some conflicts¹¹ are so deep, complex and entrenched that working through them could take a hundred hours. This is especially the case when the causes of conflicts include fundamental personality / value differences or the parties themselves are not in a state conducive to resolution.

Mediation can achieve inspiring transformations – 'mediation moments' - in conflict relationships. However, it is important to keep grounded in the fact that mediators are not judges or counsellors and that not all parties will leave as best friends. Boulle & Alexander recognise that "high aspirations can ... be burdensome for ... hard-pressed conciliators in statutory schemes with daily piles of new files".¹² An important question arises: is conciliation more effective and more appropriate than mediation when time is scarce? There are different views on the distinction between the two (if there even is one). Moore sees conciliation as the

⁷ Worst alternative to a negotiated agreement.

⁸ See the X-ray tool in the 'Dispute First Aid Kit' appendix.

⁹ See NADRAC National Mediator Practice Standards (2007). Standard 2(5) states that "The principle of self-determination requires that mediation processes be non-directive as to content." Standard 9 outlines requirements of procedural fairness.

¹⁰ Boulle, Laurence and Alexander, Nadja (2012) *Mediation: Skills and Techniques*, (2nd) LexisNexis Butterworths, p12.

¹¹ I prefer to use the term 'conflict' when describing a fundamental break-down of a continuing relationship between people, which can be compared to a disease. I use the term 'dispute' to refer to a potential symptom of a conflict. Hence, an unresolved conflict could result in different disputes flaring up over time. Disputes are generally less complex and may be at the end of a relationship between the parties. For discussions of this distinction, see Boulle, Laurence (2011) *Mediation: principles, process and practice*, (3rd edition) LexisNexis Butterworths, p108 and Condliffe, Peter (2008) *Conflict Management: a practical guide*, (3rd edition) LexisNexis Butterworths, pp4-5.

¹² Boulle & Alexander, see note 10 above, p9.

“psychological component of mediation.”¹³ I see conciliation more as evaluative mediation and prefer the NADRAC definition of conciliators as being more active in evaluation or encouragement of settlement.¹⁴ However, it is a very fine line between conciliating and impacting on party self-determination. It is not possible to compare the efficiency of mediation and conciliation in this paper but such a study may assist in further exploring Speediation.

Whether conciliating or mediating, it is still important to focus on quality and to use the time effectively. Speaking of time, I would like to now suggest that you jump to the last section of this paper ‘6. Time & chronemics’ and then come back to the next section ‘4. Speediation pitfalls’.

4. Speediation pitfalls

Even if mediators have the parties’ self-determination, interests and needs in mind, it is still possible to fall into mediation traps¹⁵. These are not unique to Speediation but the pressures of high-volume workloads and limited time can significantly increase the likelihood of encountering Speediation pitfalls. It is vital to deal with each new dispute in isolation¹⁶ from all previous ones and from everything else that is going on at work or in life. The reality is that stress from outside of work and from other disputes tends to accumulate and can push a mediator into Speediation pitfalls and ultimately a state of burn-out.¹⁷

Patience,¹⁸ self-awareness and reflective practice¹⁹ are all qualities of a mindful mediator and will make it much easier to stay in control of the process and to imbue the parties with calmness and confidence. Finally, before discussing specific Speediation pitfalls, I propose that building rapport²⁰ with parties is the most important task to achieve as early as possible. If a mediator has established a connection and trust with the parties, the dynamics and interventions will be much more effective and pitfalls will be much less likely.

4.1 Ignoring emotions

It is not uncommon for mediators to favour avoidance of strong emotions. These can cause a range of detriment from arguments to physical violence via personal attacks and rash decisions. However, suppressing emotion could make the mediation awkward and unnatural, possibly resulting in an inexplicable impasse or an agreement that fails for lack of sincerity.²¹

Instead, emotion can be seen as pent-up energy that can be normalised and channelled constructively.²² This is essential in Speediation when parties exhibit strong emotions from the start. If these are ignored or suppressed, the mediator is likely to waste precious time trying to control the parties and risks getting caught up in the conflict personally.

One fairly radical suggestion might be that after some controlled venting or very heated exchanges, parties may benefit from a brief, guided meditation.²³ The sceptics can be reassured that emotions have strong and physiological effects, which can be minimised with closed eyes and a few moments of calm, controlled breathing.

4.2 Losing impartiality

¹³ Moore, Christopher W. (2003) *The mediation process: practical strategies for resolving conflict*, (3rd edition) Jossey-Bass, p136.

¹⁴ See definition of conciliation in NADRAC (2003) *Dispute Resolution Terms*, p5

<http://www.nadrac.gov.au/PublicationsByDate/Documents/Dispute%20Resolution%20Terms.pdf>

¹⁵ For an analysis of mediation traps and avoidance strategies, see Boulle & Alexander, note 10 above, Chapter 11.

¹⁶ The mantra ‘Each time’s the only time’ may assist.

¹⁷ See the Roses tool in the ‘Dispute First Aid Kit’ appendix.

¹⁸ See the Inhaler tool in the ‘Dispute First Aid Kit’ appendix.

¹⁹ See the Mirror tool in the ‘Dispute First Aid Kit’ appendix.

²⁰ See the Super-glue tool in the ‘Dispute First Aid Kit’ appendix.

²¹ Boulle & Alexander, see note 10 above, p58.

²² See the Enema tool in the ‘Dispute First Aid Kit’ appendix.

²³ See the Buddha tool in the ‘Dispute First Aid Kit’ appendix.

If a party questions a mediator's impartiality, that could be because of a specific behaviour or even just a party's perception.²⁴ One of the worst examples would be when a mediator gets caught up in an argument with one party, seemingly siding with the other. In Speediation, this is often a result of impatience. In order to avoid perceptions of partiality, it is crucial to make your role crystal clear from the start²⁵ and to be deliberate and transparent with every intervention.²⁶ In order to avoid partial behaviours, it is important to constantly question how an intervention or behaviour would be perceived and to backtrack transparently if necessary.

4.3 Pressuring parties to agree

This pitfall is a typical Speediation challenge. With the benefit of ample time, parties may explore a myriad of interests and options as well as working through impasses. The challenge of Speediation is a delicate balance between giving up on settlement too easily (after all, many settled mediations begin with the famous first words "We will never reach an agreement") and encouraging parties too much. Over-encouragement is a common pitfall for conciliators, who controversially encourage settlement as part of their role.²⁷

'Encouraging settlement' is a controversial theme and is subject to subjective perceptions. In fact, it may be impossible to tell whether mediators are conducting very honest reality testing or whether they just want to convince you to reach an agreement. If a party riles up when settlement is being discussed, it is very likely that the mediator has failed to convince the party of his or her good intentions. So instead of encouraging settlement, mediators could focus on encouraging trust. If a mediator has established rapport²⁸ and respects party self-determination,²⁹ then it is more likely that a determined party will politely decline to settle and give reasons instead of blowing up.

4.4 Rushing or moving to solutions too quickly

This is a common pitfall in Speediation because simple solutions might seem obvious and very tempting. There are many reasons not to cut corners and most mediators have to learn the hard way.³⁰ It should be explained to parties that proper discussion can uncover unexpected issues and generate unexpected options.

If parties yield suddenly, a mediator may want to check in and re-assess with them in private. On the other hand, when parties reach an agreement surprisingly quickly, a mediator should be careful of unnecessarily prolonging the process.

4.5 Dominating the process

This is an intuitive pitfall of Speediation because when time is short, it is easy to envisage a plan of action and forsake party participation. The solution I suggest is counter-intuitive: when you give up more control to the parties, they can do more of the work and may be more satisfied by the outcome.

One way to ensure control of a mediation is to do all the talking. However, this may lead to party dissatisfaction, disempowerment or perceptions of bias. Whether you are talking too much because you are a control freak or you tend to talk more when you are nervous, one solution is to pause³¹ and switch to other senses.³² By listening, focusing on non-verbal communication and using visual aids, a mediator can get the parties talking more and avoid dominating the process.

²⁴ Boulle & Alexander, see note 10 above, p339.

²⁵ See the Map tool in the 'Dispute First Aid Kit' appendix.

²⁶ See the Transparency tool in the 'Dispute First Aid Kit' appendix.

²⁷ See note 14 above.

²⁸ See the Super-glue tool in the 'Dispute First Aid Kit' appendix.

²⁹ See NADRAC National Mediator Practice Standards (2007) Standard 2(5) and Standard 9.

³⁰ See the Scissors tool in the 'Dispute First Aid Kit' appendix.

³¹ See the Inhaler tool in the 'Dispute First Aid Kit' appendix.

³² See the Stethoscope, Earmuffs and Glasses tools in the 'Dispute First Aid Kit' appendix.

4.6 Vanting (post-mediation)

The term 'vanting' refers to a combination of venting and ranting. This pitfall does not affect parties but rather fellow mediators. In a Speediation environment, venting can be much more important because of the number and regularity of mediations. Venting is simply getting something off your chest. It is necessary, just like it may be for the parties, but needs to occur in a place, time and way that does not negatively impact on colleagues, friends or family. Mediators should find out what works for them and incorporate it into effective debriefing³³ and reflective practice.

5. Conclusion

There are legitimate criticisms of Speediation. This paper has attempted to address those criticisms by bringing the focus back onto the parties, the principle of self-determination and mindful mediation practice. The Dispute First Aid Kit offers some practical suggestions for avoiding Speediation pitfalls and ensuring that parties get quality service measured by the yardstick of lasting agreements and party satisfaction.

This paper will conclude with a respectful question to mediators in general: if Speediation is currently delivering fairly high rates of satisfaction and lasting agreements, are longer mediations always necessary?³⁴

6. Time & Chronemics³⁵

Chronemics is the study of how people perceive and manage time. The Western approach is monochronic and relies heavily on linear sequencing and dealing with one thing at a time. A mediation example may be going through an agenda one item at a time and ticking them off. An alternative approach popular in other cultures is polychronic and focuses on experiences and how they interrelate without as much concern for sequence, deadlines or finality.³⁶ This could involve constantly moving amongst agenda items instead.

A challenge for Speediation is to question our cultural perceptions and management of time. Do the parties have to make a decision at the end of the allotted time? Does the agenda have to be numbered? Does the exploration have to deal with one issue before proceeding to the next? Could mediation start with private sessions or early option generation? Could the mediator just follow the conversation on a tangent or is it important to stick to the structured process, or park issues for later? Each dispute may present different answers to these questions but if exploring the concept of time and sequence is important for mediation, it is crucially important for Speediation.³⁷

Now, the adventurous amongst you can go back to section 4: Speediation pitfalls. The less adventurous will have reached the perhaps confusing end of this paper.

³³ See the Notepad tool in the 'Dispute First Aid Kit' appendix.

³⁴ See Irvine, note 4 above.

³⁵ For a thorough exploration of this topic see Macduff, Ian (2006) *Your pace or mine? Culture, time and negotiation*, Negotiation Journal pp31-45.

³⁶ See Moore, note 13 above, pp323-332 for a discussion of deadlines and differing cultural perceptions of time.

³⁷ See the Stopwatch tool in the 'Dispute First Aid Kit' appendix.

+ Appendix: Dispute First Aid Kit³⁸ **+**

Superglue: rapport

Establishing rapport requires good social skills and comes naturally to some people. Parties will usually be satisfied with the process if the mediator understood them and respected them. This requires sincerity and transparency. Once a mediator has gained the parties' trust, he/she can be firm but fair. There are many different ways and styles for a mediator to gain the parties' trust.³⁹ In Speediation, the challenge is when to do it. The best opportunity is perhaps during intake or even, if that is not possible, before transferring a party into a teleconference. Matching language and a "How are you going?" could make an enormous difference to the mediation dynamics. As long as the same friendliness and respect is shown to all parties, it should not affect mediator impartiality.



X-ray: discovering underlying needs / interests

Mediation 101 is to explore parties' positions, discover what underlies them and then facilitate option generation that addresses underlying needs / interests. In Speediation, it may be important to promptly analyse the reasons for a party's behaviour and question his/her perception of the dispute.⁴⁰ The way to help parties discover needs and interests quickly can be through effective questions. The Socratic technique⁴¹ uses questions in a dialogue instead of statements to help someone arrive at some conclusion. These should be curious and inquisitive rather than a cross-examination.

Parties in dispute often exaggerate too. Asking suitable questions to clarify statements is a very good way to test a party's reality and help them discover new perspectives and options. Using Socratic questioning could be very effective in this way but it may become disempowering if used to logically direct a party to an outcome preferred by the mediator.

Map: mapping the process / managing expectations

A lot of things can go wrong in mediation if the parties have inaccurate or unreasonable expectations from the start.⁴² However, in Speediation the intake and/or opening statement may have to be very brief. Hence, it is vital to focus on key points and even explain the points instead of just listing them. This can anchor ideas and attitudes in parties' minds. Remember: quality, not quantity. In a teleconference, I would also suggest asking a question in the middle of the opening statement to engage the parties and ensure they have not switched off. E.g. "To ensure confidentiality, is there anyone unidentified listening in?"



A sample of an opening statement may be: "The purpose of this process is for me to give you a chance to constructively discuss any issues in dispute and perhaps reach an agreement. Your alternative may be to have a decision made for you. I am not here to decide who is right or wrong, advise you or resolve your dispute for you. There is no pressure to reach an agreement or to continue if things aren't working but you always have the option to speak to me in private, which I will then do with the other party to be fair. I ask that you respect confidentiality and do not interrupt when someone is speaking. I will make sure that everyone has a chance to respond and have their say." Note that this is not a complete opening statement and may not suit all types of Speediation. It should, however, demonstrate a brevity and flow that are crucial when time is short.

³⁸ All images in this appendix are freely usable from Wikimedia Commons:

http://commons.wikimedia.org/wiki/Main_Page

³⁹ Boulle & Alexander, see note 10 above, p49. See also Moore, note 33 above, Chapter 7 and specifically pp193-194.

⁴⁰ Moore, see note 33 above, pp183-184. Moore has introduced a mask-mirage analogy. Mask: how parties want to be perceived, mirage: an image of the dispute based on a party's psychic needs.

⁴¹ See Neenan, Michael (2009) *Using Socratic questioning in coaching*, Journal of Rational – Emotive & Cognitive – Behaviour Therapy, Vol 27, pp249-264.

⁴² Sourdin, see note 6 above, p2.



Overhead projector sheet: being transparent

Being honest and explaining risky interventions can help to maintain impartiality and party engagement. If you ask a party to do or say something, they may hesitate or refuse. If you do this and explain why it is important, they are much more likely to cooperate. In Speediation, rapport requires trust and trust requires transparency.

Scissors: don't cut corners / don't run with scissors / don't rush

In Speediation, Murphy's law⁴³ dictates that if you cut corners hoping nothing would go wrong, it usually will go wrong. Forget to ask parties not to interrupt and you will have a ruckus on your hands. Forget to ask if anyone else is listening in during a teleconference and a mysterious fourth party will speak up towards the end. This trap is especially likely when one or more parties rush you. The lesson is – put the scissors down, acknowledge the very limited time and explain calmly that unless you do things properly, this could be a big waste of time and a missed opportunity. Remember that an hour is still a reasonably long time to run a proper process. Also, if you speak quickly and rush, the parties can automatically start matching your tone and pace of voice. You may wish to slow down to slow them down.



Enema: venting emotions

This tool may make some people uncomfortable. Emotions also make some people uncomfortable. Emotions are probably one of the most challenging aspects of Speediation because they are seen as anathema to rational and efficient problem solving. Channelling emotion can include a spectrum of interventions like reframing and encouraging direct communication of the emotion, directing the communication to you in the hope of the listening party's recognition shifts, allowing a party to vent to you in private, taking a break, adjourning mediation until the emotion has subsided, referring a party to seek other assistance and so on.⁴⁴

It should also be noted that emotional contagion may have a physiological basis.⁴⁵ It is not uncommon for people to begin to feel emotions that they are observing in someone else so a mediator needs to be acutely aware of how parties' emotions are affecting other parties and themselves.

When time is short, it is especially important not to attempt "amateur counselling".⁴⁶ A mediator could acknowledge the emotion and discuss with the party or parties transparently whether it is possible to keep it in check and continue or try other options. It is also important to differentiate between brief flares of emotion, more lasting bad moods, more permanent temperaments and serious mental illness. Unqualified psychoanalysis aside, it is vital to discern and deal with emotions as soon as possible and in the most appropriate way. Parties can be reminded that words and decisions are much more permanent than emotions.

Notepad: venting + debriefing

We all love to share our war stories. However, this can be done in many ways. Saying bad things about parties may feel good but is rarely constructive and could imprint a negative attitude on you and others. Used constructively, venting can be a precursor to debriefing. Apart from getting things off your chest, venting should also answer common debriefing questions like "What went wrong?" and "Why did that happen?"



Writing things down will not only give you material for reflective practice but will also shift your brain from right-hemisphere emotion to left-hemisphere rationality. Even during mediation,

⁴³ See Spark, Nick T. (2006) *A history of Murphy's law*, AIR.

⁴⁴ Moore, see note 33 above, Chapter 7.

⁴⁵ For further reading on 'mirror neurons', see: Allen, Stephanie West (2008) *Mirror neurons: some resources* at: <http://www.mediate.com/articles/WestAllenSbl20080602.cfm>

⁴⁶ Boule & Alexander, see note 10 above, p47.

asking parties to write down a list of issues can effectively manage an emotional flood by activating their left hemisphere.⁴⁷



Buddha: guided meditation

Rituals play an important role in many cultures and can be very powerful in mediation⁴⁸. A ritual does not have to involve a healing circle, holding hands and smoking a peace pipe. If the purpose and benefit of a ritual is explained to the parties (and if the mediator has established good rapport) then they are likely to cooperate. I am yet to try a guided meditation during mediation but I know that it has worked very well in training sessions and in my own life. In

Speediation it can even be used instead of a break after parties have vented. Explain that you want everyone to trust you, close their eyes, take a few slow, deep breaths and think only about breathing in.. and breathing out. Meditation may be a waste of time right at the start if parties haven't had a chance to vent. On the other hand, it may actually dissipate a lot of strong emotion and put parties in a much better frame of mind.⁴⁹

Inhaler: patience, taking a few breaths, taking a break

It is impossible to breathe in and talk at the same time. Hence, consciously taking a deep breath every now and then can give you an important pause to think before speaking again. Deep breaths can also slow down your heart rate and give your overloaded brain more vital oxygen. In Speediation it is easy to get caught up in parties' emotions or the ticking of the clock. Taking a deep breath can let you reassess the situation and decide how to continue using the scarce time in the most effective way. It can also save you from saying something you will instantly regret.



Stethoscope: active listening

This is a fundamental tool of all mediators. There is a reason why you never see a doctor without one around his or her neck. In Speediation, it may be tempting to think ahead while parties are talking. However, being comfortable in the moment and giving 100% attention to a party through active listening can actually make the mediation flow much more smoothly.

Earmuffs: non-verbal communication

Literally blocking your ears will make you instantly much more aware of body language. It may be possible to somehow get away with this in face-to-face co-mediation or multi party facilitation. The alternative is to rest your elbow on the table, your head in the palm of your hand and block one ear with the tips of your fingers. You should look like you're pondering but really, you will be fine-tuning to the parties' non-verbal communication.



Glasses: visual aids like whiteboards, diagrams etc.

It is surprising that a lot of mediators do not use whiteboards or other visual aids.⁵⁰ It may seem like a waste of valuable time to write up an agenda or a diagram but lots of people, including myself, process information better visually. Something simplified on a whiteboard could avoid lengthy and confusing arguments, while also anchoring ideas and issues in the parties' minds throughout the mediation. A visual agenda can also be used as a focal point

⁴⁷ For further discussion of neurological research, see: Widener, Michael N (2012) *The five-tool mediator: game theory, baseball practices and southpaw scouting*, Pepperdine Dispute Resolution Law Journal, Vol 12, p97 and Eddy, Bill (2008) *It's all your fault!: 12 tips for managing people who blame others for everything*, Janis Publications.

⁴⁸ Boule & Alexander, see note 10 above, pp51-52.

⁴⁹ For a more in-depth discussion, see Nobel, Barry (2005) *Meditation and Mediation*, Family Court Review, Vol 43, p2.

⁵⁰ Sourdin – Poor Quality Mediation p5.

when a mediator needs to restore order. I dislike numbering and prioritising agenda items because that can be a source of arguments itself. One alternative is to use a Venn diagram of overlapping circles that focuses parties on common ground.⁵¹ Be very careful about what you put up, however, because it can have a lasting effect.

Stopwatch: time pressure

It is well known that deals are usually made and agreements reached at the last minute. Time pressure can make parties trade the less essential needs or interests in favour of finality. In Speediation, the effect of time pressure is even more acute. Parties can be politely reminded about the limited time and asked to “park” issues in order that they can have a chance to explore all other issues. I would suggest against saying “We don’t have time to go into this” because it may belittle something that could be very important to a party. An option is to acknowledge and subtly change the subject. If the party still comes back to the issue, you may actually have to make time for it. It is, in fact, possible to make time. E.g. by reframing a list of agenda items into one interest (e.g. a fair outcome), a mediator can shift from past to future and turn 30 minutes of protracted arguments into 10 minutes of productive option generation.



Mirror: reflective practice

Reflective practice is probably the most important tool for a mediator because it can have a global impact on his/her practice. A lot of us probably had some type of diary or journal in childhood. So why did we stop? Writing down what happened is only the first step but is usually the most difficult. It is briefly discussed in the Notepad tool. The first reflective challenge for a Speediator is to actually make time to note down mediation experiences and develop the habit. The high-volume workload has a tendency to desensitise mediators so that only the more extreme emotional experiences are remembered. The key is to ask “What could have I tried differently?” then trying it next time and reflecting further on the experience.

The danger in Speediation is becoming a mindless mediator⁵² and blaming things that go wrong on the parties. Another danger is normalising negative aspects of mediations. For example, saying that some people will always be unreasonable or will never reach an agreement. This may be true in some cases but if you never try doing something differently, you are unlikely to get a different and surprising result. A structured and regular debriefing program in a Speediation workplace can be very effective in establishing and supporting a mediator’s reflective practice.

Roses: wake up, stop and smell the roses

Sometimes you have to remind yourself why you mediate. Whenever I experience mediation moments, for example when parties experience recognition of the other or sincerely apologise, I get instant job satisfaction and feel pretty damn good. It’s quite special to change someone’s life just with your presence and words yet burn-out may make you jaded and cynical. Recognising this is very important and so is doing something about it before your negativity starts to affect your parties and others around you. If not for anything else but your health and sanity, it is paramount to make sure you are still enjoying your profession.⁵³ Oh and placing a fresh bouquet on your desk or mediation table can add some much needed colour, fragrance and life to the mediation experience.



⁵¹ I thank my colleague Heather Corkhill for this idea.

⁵² For more on this topic, see Boule & Alexander, note 10 above, pp68-69.

⁵³ For an inspiring book on mediation artistry, see Lang, Michael D and Taylor, Alison (2000) *The making of a mediator: developing artistry in practice*, Jossey-Bass.