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A strategy model for workplace mediation success

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A Strategy Model for Workplace Mediation Success

Abstract

The article proposes a three-step model to help workplace mediators decide on the optimum strategy for mediating workplace disputes. The model uses a grid – the Workplace Mediation Strategy Grid – which is based on a modified version of a grid Professor Leonard Riskin developed for categorising mediation orientations (Riskin 1994; Riskin 1996).

The model asks the mediator to first consider the nature of the workplace dispute based on three facets of the dispute. This guides the mediator to plot a position on the Grid which represents two fundamental aspects of strategy for mediating that dispute: (1) how broadly the problem should be defined by the mediator and (2) the style of mediation that the mediator should use. The mediator implements this strategy improving the likelihood of a fair and positive outcome for the disputing parties.

I. Introduction

Workplace mediation is an increasingly popular process for resolving workplace disputes. More and more, organisations rely on mediation as a means of managing and resolving workplace disputes internally (Teague et al. 2015). Mediation has also become an integral offering of many state-run workplace dispute resolution bodies in many jurisdictions.

Workplace mediators – public and private alike – are tasked with resolving disputes of hugely varying natures, and possessed of different characteristics. Disputes can concern interpersonal issues (from low-level conflict to more serious complaints of bullying or harassment); organisational conflicts between workers and management on workplace processes and performance; quantifiable rights-based issues (for example, the provision of minimum wage payment or leave entitlements); termination of employment issues; or broad, industry-wide issues over general terms and conditions in employment (such as an impasse in collective bargaining negotiations between unions and employers).

Given this complexity and breadth, and the growth of mediation in this field, this article proposes a three-step model to help workplace mediators develop a consistent, effective means of identifying and implementing an optimum mediation strategy for each workplace dispute they are tasked with. The model is based on repurposing a grid that Professor Leonard Riskin, an expert in dispute resolution theory and practice, developed in the 1990's to categorise different approaches to mediation (Riskin 1994; Riskin 1996). Riskin's Grid, more fully explored below, consists of two intersecting spectrums (labelled the 'role of the mediator' on the vertical axis and the 'problem definition' on the horizontal axis). Notably, Riskin suggested that his Grid could help 'envision an ideal mediator for any individual case' (Riskin 1996: 13, 40). The model proposed here builds on this suggestion. Specifically, a workplace mediator can use a modified version of Riskin's Grid, described in detail below, to position each workplace dispute on it, thereby identifying an appropriate mediation strategy.

Some context is necessary before explaining the model. First, researchers debate the true effectiveness and appropriateness of mediating different types of workplace disputes. Some

argue that *all* disputes can be mediated, and that it is difficult to positively damage a dispute through mediation (Berger 2015). However, this is not a universally held view (McLay 2009: 2). Researchers identify advantages to mediating workplace disputes: mediation can seek to rebuild damaged relationships (Bennett 2013: 190; Tallodi 2019); it can address ‘power imbalance’ between disputants (Bennett 2013: 204); it allows parties to address issues beyond the immediate matter of dispute (Ridley-Duff and Bennett 2011: 118) and it can help to improve employee relationships (Banks and Saundry 2010: 7; Latreille 2011: 592). It can allow for a more nuanced approach to resolving a dispute than other dispute resolution methodologies can, taking account of particularly complex inter-relational dynamics (Jameson, Bodtker & Linker, 2010: 29; Sargent, Picard and Jull 2011: 362-363).

While mediation experts have grappled with thorny questions of identifying, describing, categorising and surveying mediation styles there is ambiguity as to what mediators actually do in practice (Curran et al. 2016: 31, Riskin 1996: 8; Charkoudian et al. 2009: 294) and whether, and to what extent, the mediators’ behaviour varies with context (Curran et al, 2016: 31). Kressel and Wall rightly acknowledge that ‘mediators depart significantly from the ‘one size fits all’ approach to mediation’ (Kressel and Wall 2012: 335) while Pou describes how mediators are asked to play ‘complicated, diverse roles’ that may involve ‘efforts to “transform,” to “facilitate,” to “evaluate,” or to perform a combination of these (and perhaps other) activities’ (Pou 2004: 306).

Literature on effective mediation *strategies* and mediators’ self-reflections on mediation style is less common (Coleman et al. 2016; Charkoudian et al. 2009). This article contributes by proposing a theoretical model that helps workplace mediators improve their strategic approach to their work. It is hoped that mediators will consider trialling the model in their day-to-day practice.

The model is built on the following premise: a mediator ought to think deeply about how they should approach each dispute. Bullen notes, for example, that a mediator should be armed with an understanding of what the dispute is about and how any relevant law might apply (Bullen 2003: 17) while Riskin argues that ‘thoughtful mediators’ engage in an ‘interactive and dynamic process ... to decide what to do in a mediation’ (Riskin 2003: 17). Yet some mediators tend to identify themselves with a specific mediation style, habitually performing their function in accordance with it (Picard 2004: 302–304; Kressel et al. 1994: 68). A one-size-fits-all ethic may do a disservice to users at mediation. As Riskin argues, an ideal mediator should ‘be sufficiently flexible to employ the most appropriate orientation, strategies and techniques as the participants’ needs present themselves’ (Riskin 1996: 40 - 41). This is particularly so for workplace contexts, given the broad spectrum of workplace disputes. Each dispute has its own unique nature and characteristics.

A mediator should reflect on the nature and characteristics of each dispute in a *systematic* way and consequently this may lead to more rational, calculated and ultimately better decisions on how best to approach mediations rather than decisions made on a more intuitive basis. Behavioural science theory and practice points to the benefits of more deliberative, systematic decision-making. In *Thinking, Fast and Slow* Daniel Kahneman, building on earlier work by Keith Stanovich and Richard West, popularised categorising systems of thinking into two types: system 1 thinking and system 2 thinking, System 1 is thinking that is fast, stereotypic, automatic, unconscious, based on reaction and gut instinct. System 2 thinking is slower, more deliberative, effortful, controlled and conscious (Kahneman: 2011; Stanovich and West: 2000). While system 1 thinking can sometimes

be helpful, but over-reliance on it can lead to systematic cognitive errors. The model proposed in this article helps workplace mediators to make more measured and deliberative strategic decisions, to engage in system 2 thinking more than system 1 thinking when deciding how best to approach workplace disputes they are asked to mediate. This may help to mitigate cognitive errors such as the status quo bias – the tendency to preserve the current state of affairs when making decisions. Applied to this context, workplace mediators who passively default to the style of mediation they have always applied may negatively affect the quality of the mediation they provide.

As such, the model proposed here can perhaps be viewed as a toolkit to help workplace mediators make more deliberative, and therefore better, decisions in how to approach each and every mediation. Three hypothetical disputes are offered later to demonstrate how the model would work in practice.

To briefly introduce the three steps of the proposed model:

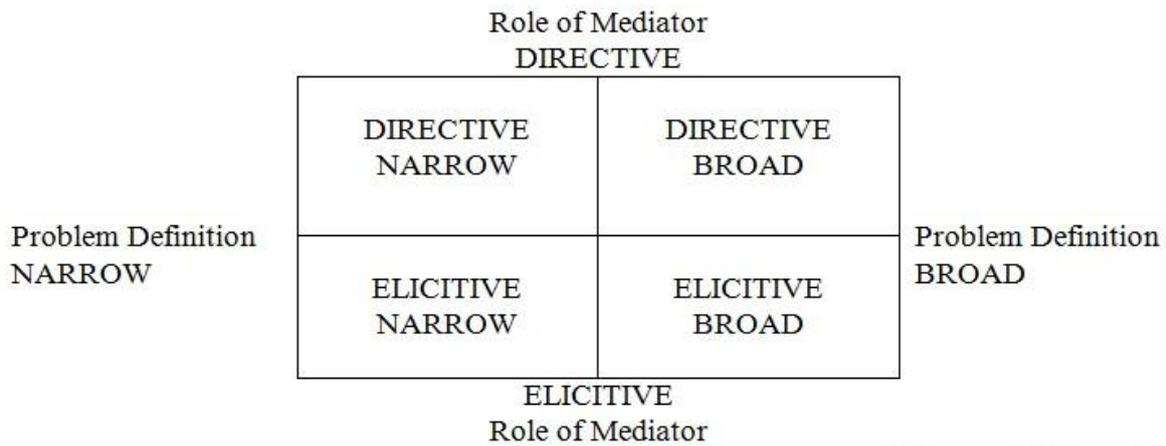
- 1) The mediator considers three facets of the workplace dispute they have been tasked with mediating. These three facets are the *type of dispute*, the *outcome agenda* of the parties and the *status of the relationship* between the parties. The three facets combine to make up what will be called the *nature of the workplace dispute*.
- 2) The mediator, having identified the three facets, uses them to map a position on a modified version of Riskin’s Grid. This modified grid (which will be referred to here as the Workplace Mediation Strategy Grid – or simply, the Grid) is explained below. The Grid serves as a visual tool for representing different mediation strategies, with each quadrant on it suggesting a particular strategic approach to the mediation. By plotting a position on the Grid the mediator can identify the optimum mediation strategy to mediate the upcoming workplace dispute.
- 3) The mediator applies the strategy identified on the Grid during mediation. As the mediation progresses, the mediator may repeat steps 1 and 2 to adapt and react flexibly to the needs of the disputing parties.

First, Riskin’s Grid must be examined in some detail before explaining how it can be modified and repurposed for resolving workplace disputes.

II. Repurposing Riskin’s Grid for Workplace Mediations

Riskin’s Grid emerged through two influential articles in the mid 1990’s (Riskin 1994; Riskin 1996). Noting that ‘a bewildering variety of activities fall within the broad, generally-accepted definition of mediation,’ he sought to ‘communicate with some clarity about what can, does, and should happen in a mediation’ (Riskin 1996: 48, 38). It consisted of two intersecting spectrums. The vertical spectrum represented the mediator’s role or style; which originally ranged from ‘facilitative’ to ‘evaluative’ (Riskin 1994; Riskin 1996), although this terminology was later refined as we will see shortly (Riskin 2003: 30 - 33).

The horizontal spectrum defined the breadth of the problem of the dispute, and it ran from ‘narrow’ to ‘broad’. These spectrums intersected to represent mediators’ ‘orientations’ toward mediation.



© Leonard Riskin, 1996
Fig. 1

Riskin's Grid's Vertical Spectrum

At the lower end of the vertical spectrum, as Riskin originally envisaged it, the mediator adopts a *facilitative* style, allowing parties to have a high degree of autonomy over the mediation process, with the mediator acting as a conduit through which the parties arrive at a resolution themselves. At the higher end of the spectrum the mediator adopts an *evaluative* style, more proactively taking control over the main aspects and dialogue of the mediation and the drive towards settlement.

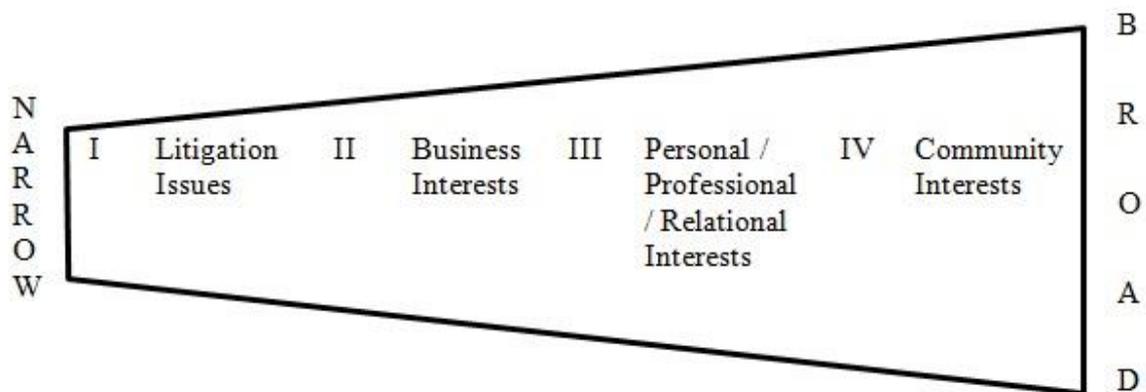
Later, Riskin proposed new terminology to this vertical spectrum: from 'elicitive' to 'directive' (Riskin 2003, 6–8). At the higher end of the spectrum the mediator *directs* the mediation process or the participants toward a particular procedure or perspective or outcome, while at the lower end a mediator *elicits* the parties' perspectives and preferences and tries to honour or accommodate them. The term 'elicitive' has been used by others to describe mediation style elsewhere (Coleman et al. 2006: 552; Lederach 1995: 55). Essentially, the mediator's level of intervention and influence over the mediation process and outcome grows towards the higher end of the spectrum (Riskin 2003: 37). The spectrum of elicitive to directive behaviours might look like this, as described by Fifer (Fifer 2010).



Fig. 2

Riskin's Grid's Horizontal Spectrum – A Suggested Modification

The horizontal spectrum of Riskin’s Grid maps how broadly the dispute ought to be defined. Riskin explained the risk of a mediator framing a dispute too narrowly, how it may deprive parties of the opportunity to explore their underlying interests or the roots and relational aspects of their conflict (Riskin 2003: 22). The horizontal spectrum runs from a ‘narrow’ definition of the dispute to a ‘broad’ definition. Riskin illustrated this by describing different levels on this spectrum as follows:



© Leonard Riskin. 1996
Fig. 3

Riskin’s four levels are based on a hypothetical contract dispute concerning a business contract between two companies (Riskin 1996: 17). Although mediating the contractual dispute could be reduced down to the narrow consideration of how much money is owed (level I, Litigation Issues), the mediation could expand to attend to the companies’ business interests (level II, Business Interests). The focus could broaden further to deal with each companies’ executives’ personal / professional relationships with each other (level III, Personal / Professional / Relational Interests). Or, broader again still, the mediation could cater to a wide array of interests, including those of communities or entities not party to the immediate dispute; for example ambiguity in the relevant legal principles that may cause problems for other companies (level IV, Community Interests).

Workplace disputes share parallels with this continuum. While a workplace dispute may ostensibly relate to a discrete quantifiable matter (payment for overtime work, for instance) that matter may be symptomatic of broader underlying issues. Workplace procedures, relationships, career progression opportunities and a workplace’s culture can all have a bearing on a dispute’s origins. Therefore, Riskin’s horizontal problem definition spectrum can be modified to identify the breadth of workplace disputes. If mediation can foster open and consensual dialogue (Banks and Saundry 2010: 7), allow parties to explore underlying concerns and emotions (Bollen and Euwema 2013: 331), lead to an expectation of transformative change at a relational level (Gaynier 2005: 404 – 405) and improve workplace processes, relationships and cultures (Banks and Saundry 2010: 7; Latreille 2011: 592; CIPD survey cited in ACAS 2013: 15) then those benefits ought to be reaped where possible through mediation.

Combining the attributes of mediation and characteristics of workplace disputes, a modified horizontal problem definition spectrum is proposed, through re-labelling the four levels as follows:

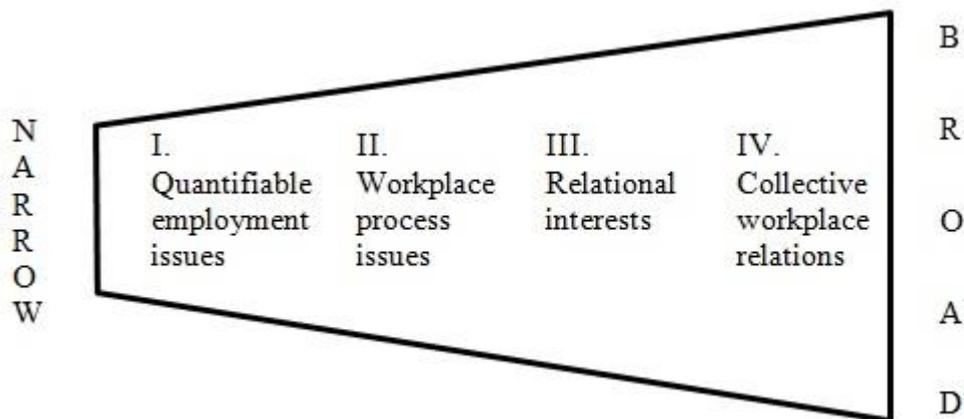


Fig. 4

These four levels align to those on Riskin’s Grid, except that they reflect the breadth of issues and interests that can specifically arise in workplace disputes.

At level I of the spectrum, the narrowest level, is ‘Quantifiable Employment Issues’. Here, the problem definition is confined to grievances with finite, quantifiable outcomes: a change in pay, better terms and conditions, or the enforcement of a minimum standard prescribed by law. This mirrors level I in Riskin’s Grid, described as ‘Litigation Issues’, which confined the mediator’s primary goal to simply resolving how much money should be paid to resolve the contractual dispute.

Moving to the right, to level II of the horizontal spectrum is ‘Workplace Process Issues’. Here, the problem definition expands to cover the workplace policies, practices and procedures and their impact on a worker or workers. Such policies, practices and procedures can affect how narrower quantifiable issues are determined. By broadening the scope *beyond* narrow quantitative issues to deal with the processes which give rise to them, the mediator can help the parties (particularly the employer) to recognise factors contributing to the dispute. This can enable the parties to consider organisational or operational changes to avoid future disputes (Tallodi 2015: 382). An example: if a worker complains that they have not been paid adequately for working anti-social hours, mediation could direct the parties not just towards redressing the individual worker’s grievance but also to consider how rostering arrangements could be improved in future. Again, this level II mirrors level II on Riskin’s Grid, described as ‘Business Interests’, whereby the mediation would attend to matters of mutual interest that adjudication ‘would probably not reach’ (Riskin 1996: 19).

Further to the right again at level III, ‘Relational Interests’, the problem definition expands to attend to *relational* issues and interests in the workplace. This aligns to level III in Riskin’s Grid, ‘Personal / Professional / Relational Interests’. Here, parties’ perceptions and interpretations of their respective behaviour and actions come into play. Relational issues might be at the heart of the dispute: for instance, most claims of bullying or harassment. Or, relational issues might be more indirectly at play: for instance, a worker who has not been selected for a promotion may claim that their manager’s indirect discrimination is to blame. Or a worker who has been investigated for a disciplinary issue may feel they are being victimised for whatever reason. Determining when mediation is appropriate for disputes where relationships are particularly strained is a complex issue. But mediation may, where appropriate, be an opportunity to consider relational issues in tandem with quantitative issues or work process

issues that may arise. For instance, to take the example mentioned above, an employer who thinks they have legitimate reasons to roster an employee consistently on anti-social hours may be perceived by that employee as deliberately attempting to undermine or oust them on the basis of a personal grudge. Such a dispute, albeit one that ostensibly concerns a rostering issue, may benefit from a deeper, broader exploration of the relational context in which the dispute germinated and escalated (Acas 2016: 25). Addressing relational and emotional aspects of the parties' interactions can, where appropriate, pave the way to resolving not only narrower quantifiable, or work process issues, but also bring the added and proven benefit of improving workplace relationships (Banks and Saundry 2010: 27; Chartered Institute for Personnel and Development 2008: 6).

Finally, at level IV of the proposed modified horizontal spectrum, 'Collective Workplace Issues', consideration would be given to broader interests within the organisation such as workplace culture and staff morale, in an effort to transform the workplace community and its operations. Again, this aligns to level IV in Riskin's Grid, 'Community Interests'. Certain disputes might benefit from a broader exploration of relations within the workplace *more generally* as a community, to consider how a workplace's overall culture affects personnel, their relationships and the employer's operations. This goes beyond attending to quantifiable issues, qualitative process issues and discrete relational issues. As experts observe, mediation can create a problem-solving culture and enhance the emotional health of an organisation (Tallodi 2015: 361), allowing parties to address issues beyond the immediate issue in dispute – for instance, to explore the role of past injustices in the present situation, and to promote forgiveness (Ridley-Duff and Bennett 2011: 118). It can be a vehicle for moral transformation and social change, improve morale and enhance performance, and reduce occupational stress (Dolder 2004: 339; Tallodi 2015: 361). A skilled mediator will be able to recognise where it is appropriate to broadly define the problem to encompass such issues.

This modified horizontal spectrum is designed to reflect the unique facets of workplace disputes and the range of issues that can be mediated depending on the context, while preserving the essential qualities of Riskin's horizontal spectrum (Riskin 2003: 22).

The four quadrants of Riskin's Grid

Combining the vertical 'role of the mediator' axis and the horizontal 'breadth of the problem' spectrum, four quadrants emerge. These describe particular mediation orientations. They are '*directive narrow*', '*directive broad*', '*elicitive narrow*' and '*elicitive broad*'. The three-step model proposed here, based on a modified version of Riskin's Grid, allows workplace mediators to identify which orientation is appropriate for a particular dispute. A brief explanation of these four orientations is appropriate.

The goal of a *directive narrow* mediation orientation is to help the parties understand the strengths and weaknesses of their case and the consequences of failing to resolve the matter by directing them towards a resolution. Upon both parties arguing their case at a joint session, the mediator may engage in directive techniques at private caucus, including:

- directing each party towards a particular viewpoint;
- directing each party to a particular way of arriving at a resolution;
- telling each side of her assessment of the strengths and weaknesses of each side's case;

- predicting outcomes of court or other processes;
- proposing position-based compromise agreements; and
- in certain instances, urging parties to accept a particular proposal or range of settlement (Riskin 1996: 26–28).

The *elicitive narrow* mediation orientation similarly looks to inform parties about the strengths and weaknesses of their case and possible consequences of failing to resolve the matter. However, the mediator takes a more passive role. Rather than assessing the dispute, the mediator at private caucus asks the parties about what *they* think are the strengths and weaknesses of each side’s case and about what the consequences may be if the matter was not resolved. The mediator might help the parties to develop their own proposals and ask questions that would help them to evaluate certain proposals themselves (Riskin 1996: 28–29).

The *directive broad* mediation orientation is based on a preliminary, broader understanding of the parties’ underlying interests and the reasons for and circumstances behind the dispute. The mediator directs parties towards an outcome that responds directly to these factors, with more emphasis on the parties’ underlying interests, rather than on their positions on a potential settlement. To understand these interests, the mediator, as Riskin puts it, “must dig” and may need to draw heightened levels of participation from the parties *themselves* (as distinct from their legal representatives) (Riskin 1996: 30). Often, *directive broad* mediators speculate aloud in private caucuses about what the real underlying issues and interests of the parties are. The mediator might predict the impact of not settling on the parties’ overall interests. The mediator may suggest, or even forcefully propose broad interest-based proposals and urge the parties to accept them (Riskin 1996: 29–32).

Finally, an *elicitive broad* orientation helps participants define the subject matter of the mediation in terms of underlying interests. The mediator helps the parties to find opportunities to change their future behaviours and actions. Some of the techniques are similar to those of *directive broad* mediation – the mediator may encourage higher levels of participation from the parties (as distinct from their legal representatives). But, unlike directive mediation, mediators may tend to use joint sessions more than private caucuses, attempting to empower the parties, to help them to recognise each other’s positions for the future. The mediator helps the parties to develop broad, interest-based options for settlement (Riskin 1996: 32–34).

Armed with an understanding of how Riskin’s Grid can be modified to workplace dispute contexts, and of what the four mediation orientation quadrants represent, we now turn to the three-step model itself.

III. The Three-Step Model

This section will describe the proposed three-step model which centres on using the Workplace Mediation Strategy Grid (the modified version of Riskin’s Grid with a relabelled horizontal spectrum) to determine mediation strategies. Three hypothetical workplace disputes are set out afterwards to show how the model would work in practice.

A diagram outlining the three-step process is set out below:

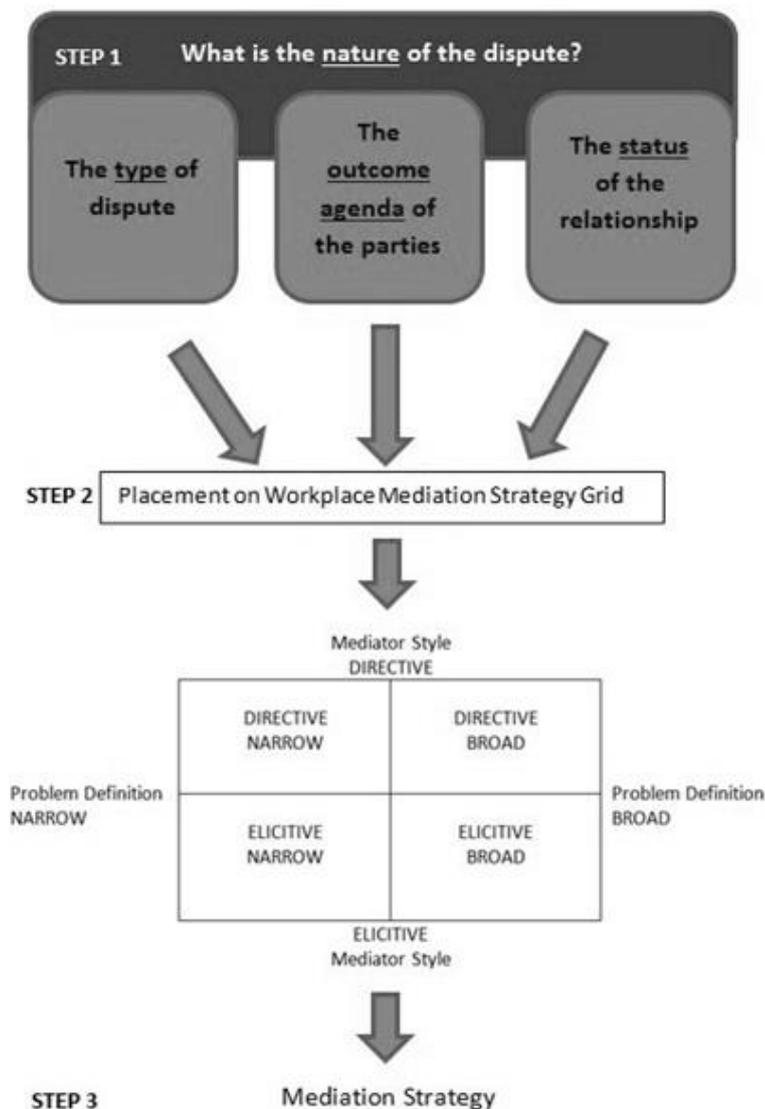


Fig. 5

Step 1: The mediator considers the *nature of the workplace dispute* to be mediated. This has three facets: the *type of dispute*, the *outcome agenda* of the parties and the *status of the relationship* between the parties. Correspondingly, the mediator must initially ask:

- What type of dispute is it?
- What are the parties' outcome agendas for the dispute (or, to put it another way, what does each party want to 'get out' of the dispute resolution process)?
- How healthy is the relationship between the parties – good, bad or indifferent – and what are its prospects?

This frames the mediator's initial reflections on the dispute at hand.

Step 2: Each of the three facets that make up the *nature of the workplace dispute* guide the mediator to plot the dispute's position on the Workplace Mediation Strategy Grid. Plotting the dispute on the Grid serves as a visual aid for the mediator to determine what strategy to use for the mediation.

Step 3: The mediator applies the mediation strategy identified on the Grid. The mediator may alter their strategic approach as appropriate as the mediation progresses and the *nature of the dispute* evolves.

This model facilitates a consistent method for a mediator to approach each mediation, thereby – it is anticipated – improving chances of a successful outcome for the disputing parties.

Of course, the second and third steps flow from the mediator's initial efforts at the first step to answer questions that go to establishing the *nature of the workplace dispute*. Why ask these questions specifically? And how do the answers to them affect placing the dispute on the Grid?

First, the *type of dispute* is an important consideration because different mediation strategies work better for different types of dispute. For instance, Martinez-Pecino identified that more directive-style mediation may be more appropriate for rights conflicts (conflicts pertaining to the application and interpretation of law) than for conflicts of interest (conflicts concerning the establishment of terms and conditions of employment) (Martinez-Pecino 2008: 491). The *type of dispute* will have a bearing on where the dispute positions on the modified horizontal problem definition spectrum. On the one hand, quantifiable workplace disputes about issues such as pay or terms and conditions generally do not, at face value, concern relationship issues and so they will generally tend towards the narrow end of the horizontal spectrum. On the other hand, disputes about workplace policies and procedures and their impact on workers are that bit broader by their nature and are less quantifiable than, say, pay disputes. Workplace policies and procedures themselves, and how they apply to individual workers, ought to be considered. As such, disputes of this nature incline further to the right of the horizontal spectrum to level II. Disputes that hinge on inter-personal relationships between colleagues or between workers and management are broader still, positioning further right on the horizontal spectrum to level III. Types of dispute here may include discrimination, harassment, or bullying where the worker remains in employment. Finally, disputes where widespread relational or cultural issues within the workplace affect the workforce generally are placed at the far right of the horizontal spectrum at level IV.

The *type of dispute* may also have a bearing on positioning on the vertical problem definition spectrum. If the dispute concerns issues that are quantifiable, and parties are intransigent on the matter, then this type of dispute may be amenable to a more directive mediation style (Martinez-Pecino 2008: 491). Positioning such a dispute at the directive end of the vertical spectrum lends itself to a more evaluative analysis of the claim. This may be particularly appropriate where the dispute concerns a quantifiable issue. On the other hand, if the type of dispute does *not* hinge on a quantifiable issue, then the two other facets that make up the *nature of the workplace dispute* – the *outcome agenda* and the *status of the relationship* – will have a greater bearing on placement on the vertical spectrum.

Turning next to the *outcome agenda* of parties to the dispute and how it affects positioning the dispute on the Grid: of course, disputing parties will generally have goals for what they want to get out of mediation. Sometimes, their goals may overlap. It may be that the parties just differ on quantitative aspects of certain mutual goals; for example, the amount of a redundancy payment. A mediator can focus the minds of both parties in defining their goals.

How does the *outcome agenda* of the parties affect placement on the vertical spectrum of the Grid? If, for example, both parties simply seek a financial settlement or a settlement on terms and conditions the mediator should play the role of early neutral evaluator if appropriate, and engage in a directive mediation style towards the upper end of the vertical spectrum. If, on the other hand, one or both parties' *outcome agenda* is to change workplace policies or to improve the workplace relationship, then the mediator could engage in more elicitive techniques – techniques that allow parties to mutually work towards improving relations.

How does the *outcome agenda* of the parties affect the mediator's decision on where to place the dispute on the horizontal problem definition spectrum? The mediator should consider whether the parties are motivated to resolve a narrow, discrete issue, or whether their objectives are broader. Do both parties want to develop policies and procedures to prevent similar disputes arising again? Do they want to improve relationships at work? Is there an appetite for broader, creative solutions to a narrow problem? If so, the mediator may consider placing the dispute on the broader right-hand side of the horizontal problem definition spectrum. However, where such motivations and good will are not apparent it may be best for the mediator to narrow the problem definition to focus on more achievable, clearly demarcated objectives. As Ridley-Duff and Bennett note, there are 'limits to what mediation can achieve. While a focus on relationship issues can promote understanding and reconciliation ... it can only do so if both parties are open to the possibility of resolving their differences' (Ridley-Duff and Bennett 2011: 118). A skilled mediator should therefore consider the parties' objectives, and increase or decrease the breadth of the problem definition as appropriate.

Finally, to turn to *the status of the relationship*. Mediation, as a collaborative process, allows for the exploration of underlying issues to a dispute (Curran et al. 2016: 11) and, as noted earlier, can lead to improved workplace relationships (Banks and Saundry 2010: 7; Latreille 2011: 592; CIPD survey cited in ACAS 2013: 15). Bearing these potential benefits in mind, the mediator ought to consider the current status of, and projected outlook for, the relationship between the parties. The mediator should do a 'health check' on the parties' relationship, and factor it in when positioning on both the vertical and horizontal spectrums of the Grid.

To take the vertical spectrum first, if the parties' relationship is relatively functional, then the mediator should perhaps engage in a more elicitive mediation style, lower on the vertical spectrum. Where the mediator observes that although the parties currently have a relatively dysfunctional relationship, but there is a willingness to try to improve matters, then the mediator could consider starting off the mediation with a relatively directive style and then slowly move down the vertical spectrum, becoming more elicitive if the parties become less intransigent as the mediation progresses. If, however, the relationship is very poor and the mediator observes that the parties are completely intransigent, then the mediator may take a pragmatic view, adopting a directive mediation style towards the upper end of the vertical spectrum.

The *status of the relationship* may also have a bearing on the horizontal problem definition spectrum. If the complainant has little or no relationship difficulties with any of their colleagues and the dispute pertains to a relatively narrow, quantifiable issue, then the dispute will fit at the narrow left-hand end of the horizontal spectrum. However, the mediator may sense during pre-mediation processes or early on in mediation that the parties' relationships are strained but repairable – the parties may benefit more if the mediator decides to broaden the problem definition. For instance, the parties may envisage a narrow problem definition at the outset (say, a pay dispute) but the skilled mediator may suggest that a broader discussion of relationships, policies, and workplace culture may offer ways towards a more constructive, broader resolution. Disputes that germinate solely from relational issues with other workers will also logically be placed further to the right of the horizontal spectrum at level III to allow, where appropriate, for a broader analysis of the relationship concerns between colleagues.

A final note on evaluating the status of the relationship: the *type of dispute* may, in and of itself, be a baseline indicator of the quality of the relationship. For instance, it may be reasonable for a mediator to expect that there is a poor relationship where a worker alleges constructive dismissal by their employer.

Summarising the Workplace Mediation Strategy Grid, the four quadrants look like this:

		Style of Mediator DIRECTIVE			
Problem Definition NARROW	DIRECTIVE NARROW	<ul style="list-style-type: none"> - Propose a particular way to resolve the dispute. - Assess parties' strengths and weaknesses. - Predict impact of not resolving. - Propose / urge settlement ranges. 	DIRECTIVE BROAD	<ul style="list-style-type: none"> - Extrapolate parties' broader interests. - Direct parties to a way to resolve the dispute that responds to parties' broader interests. - Predict impact of not resolving. - Propose broad, interest-based settlements. 	Problem Definition BROAD
	ELICITIVE NARROW	<ul style="list-style-type: none"> - Facilitate dialogue on how to resolve narrow issue(s). - Elicit party-driven dialogue on the strengths and weaknesses of their case. 	ELICITIVE BROAD	<ul style="list-style-type: none"> - Assist the parties to define the subject matter of the dispute and their underlying interests themselves. - Use joint sessions to empower the parties towards a resolution. 	
		ELICITIVE Style of Mediator			

Fig.6

Having considered how the three facets of the *nature of the workplace dispute* affect placement on the Grid, the mediator moves to step 3: selecting, and applying an appropriate mediation strategy. The next section offers three hypothetical examples to show how the three-step model can be applied in practice.

IV. Applying the three-step model: some hypothetical examples

The following are three examples of workplace disputes. The three-step model is applied to each to demonstrate how the process would operate in practice.

Bert, the Forklift Driver

Bert is a forklift driver at a factory. He is paid a fixed annual salary which, on the basis of the 40-hour-week he is contracted for, works out at marginally above the national hourly minimum wage. His true working hours fluctuate depending on the demands of the factory. Recently, production demands have gone up and Bert has consistently been working over 55 hours a week for a few months. Bert figures his effective hourly pay rate is now a good deal below the national minimum wage. The *nature* of Bert's dispute is as follows:

Type of Dispute: The dispute concerns an allegation of a breach of the national minimum wage.

Outcome Agenda: Bert simply wants remedies to which he is legally entitled to: back-pay for his wage entitlements and a prospective working arrangement which shortens his working week to a level that brings his hourly rate to the level it was before. His outcome agenda is limited.

Status of Relationship: Bert likes his job and generally gets on well with his superiors, but he has become increasingly frustrated.

The mediator should consider the three facets. It is a quantifiable type of dispute. Bert's outcome agenda of back pay and measures to ensure future adherence to statutorily-prescribed minimum wage thresholds is relatively limited. The relationship between Bert and his employer is relatively healthy, although it could improve. These elements guide the mediator to determine that the matter falls at the narrow left-hand-side of the horizontal problem definition spectrum as a preliminary starting point (i.e. level I).

Placement on the vertical mediation style spectrum is more nuanced. If the employer rigidly contests Bert's claim the mediator should engage in a directive style of mediation at the upper end of the vertical spectrum, perhaps playing the role of early neutral evaluator. Indeed, both parties may want the mediator to play this directive, evaluative role (point A, fig.7 below). However, if the employer acknowledges it is keen to improve relations with Bert, the mediator could adopt a more elicitive style at the lower end of the vertical spectrum to facilitate efforts towards a more bespoke outcome (point B, fig.7 below).

As the matter progresses, and both parties seem willing to engage in problem prevention in the future, the mediator might decide to broaden the problem definition – perhaps to level III – to try to improve the relationship between the parties and to facilitate dialogue between the parties towards creative solutions for Bert's prospective working arrangements. The mediator could further engage in an elicitive mediation style at the lower end of the vertical spectrum for this purpose. Combining these factors, the mediator can plot the dispute at point C (fig.7 below).

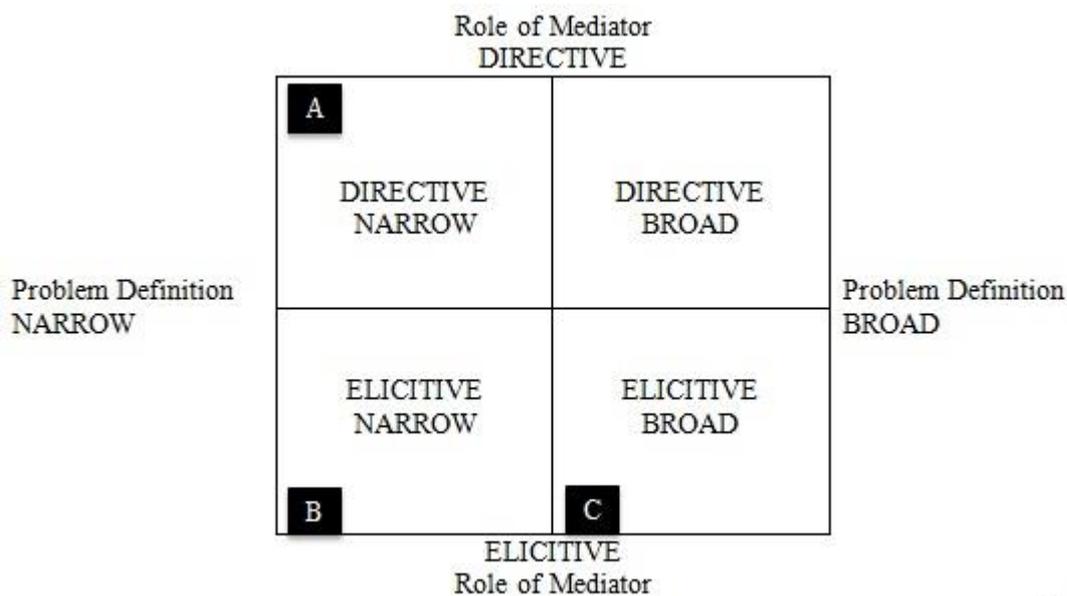


Fig.7

Daniella, the Sales Executive

Daniella, originally from Mexico, is a sales executive at a medium-sized software company. Until recently she had a good working relationship with her immediate supervisor, John. Disappointingly, John engages in occasional baseless stereotyping against Mexicans, which Daniella has passed off as workplace banter. However, recently, John has required Daniella to run every piece of work by him including emails to clients. John remarks flippantly, ‘I’ve noticed a bit of laziness in your work lately, a typical Hispanic attitude really’. Matters have become worse in recent weeks, with Daniella being overlooked for a promotion (she felt unfairly and possibly discriminatorily). The *nature* of Daniella’s dispute is as follows:

Type of Dispute: This is a mixed dispute. Although Daniella may seek to resolve her complaint at an internal organisational level, she could decide to take a claim under anti-discrimination or workplace bullying law.

Outcome Agenda: Daniella can contemplate a variety of outcomes. She may decide to leave her employment and to seek compensation for the way she has been treated. However, she might be amenable to alternative remedies that facilitate her continued involvement with the company. These might include an apology from John, assurances regarding promotional opportunities in the near-future, or a new working arrangement where her immediate supervisor is someone other than John.

Status of the Relationship: Ideally Daniella would like to continue working for the company. However, she is angry and feels that her relationship with John has entirely broken down. The mediator ought to make relatively searching enquiries of Daniella as to her desire to remain in the company’s employment. This will frame the type of dispute and the outcome agenda of the parties. The mediator should engage in exploratory pre-mediation conversations separately with the employer and Daniella to help to establish the outcome agenda. If Daniella is committed to leaving, the type of dispute and outcome agenda shift towards facilitating her exit on agreeable terms. This will tend mediation strategy towards the narrower level I of the horizontal spectrum. If the parties fundamentally disagree on the allegations of discrimination and her perception of what happened, then a directive mediation style towards the higher end

treatment that they have received. Gerard, the trade union representative, and senior management decide to go to mediation to resolve issues. The nature of Gerard's dispute is as follows:

Type of Dispute: The dispute concerns a combination of quantifiable issues (rostering and redundancy selection), workplace process issues (the processes by which these operational changes are brought into effect) and relational issues (disgruntlement among workers and low staff morale).

Outcome Agenda: Gerard's principal aim is to clarify how the downturn in the grocery store chain's fortunes will affect workers, and on the basis of that information, to negotiate a fair redundancy package for those who may be made redundant or who may volunteer for redundancy. He also would like to negotiate precise measures for consultation with the workforce and to convey to management the staff's general dissatisfaction with the company's communications to date. He seeks an improvement in relations between management and staff.

Status of Relationship: Although Gerard has had a good working relationship with the chain's management, the unfolding situation has had a negative effect.

The type of dispute encompasses a complex matrix of issues. The problem definition encompasses all levels of the horizontal spectrum: individual quantifiable matters such as who gets selected for redundancy and the amount of the redundancy payments (level I), to internal processes such as redundancy selection and rostering (level II) to collective workplace relations and relationship management (level III) and low staff morale – perhaps a by-product of the workplace's culture (level IV). The complexity and breadth of matters suggest that a mediator should define the dispute broadly to encompass this wide range of issues.

Precisely positioning the dispute on the vertical spectrum is somewhat trickier, owing to a couple of competing factors. The key for the mediator here is to separate different aspects of the dispute. Given the currently strained relations, this might tend the mediation style towards the mediator acting in a more directive role. This may be particularly useful for negotiating quantitative issues such as redundancy packages: both parties may have relatively intransigent positions that they are reluctant to depart from. This aspect of the dispute may lend itself to a directive narrow strategy (point A, fig.9).

However, in mediating other issues such as determining consultation processes, the parties' attitudes towards each other may be softer, and their outcome agenda may differ. It may be that a broad elicitive style towards the lower end of the vertical mediation style spectrum may be appropriate. Here, the outcome agenda is to change workplace policies and to improve workplace relationships: the mediator could therefore engage in more elicitive techniques allowing Gerard and management to mutually work towards these goals (point B, fig.9). Then again, on the other hand, if it appears that Gerard and management are intransigent even on these broader issues, then the mediator ought to adopt a broad directive style (point C, fig. 9) – a style whereby the mediator suggests, or even forcefully proposes broad interest-based proposals and urges the parties to accept them.

This hypothetical dispute is multi-faceted. It requires nuanced consideration on the part of the mediator, and a more granular application of the model to determine the best approach. By breaking down the different aspects of the dispute, and considering the three facets that make up the nature of each, this will help the mediator identify a position on the strategy map to employ in the mediation. It may be that different aspects of the dispute demand different mediation strategies.

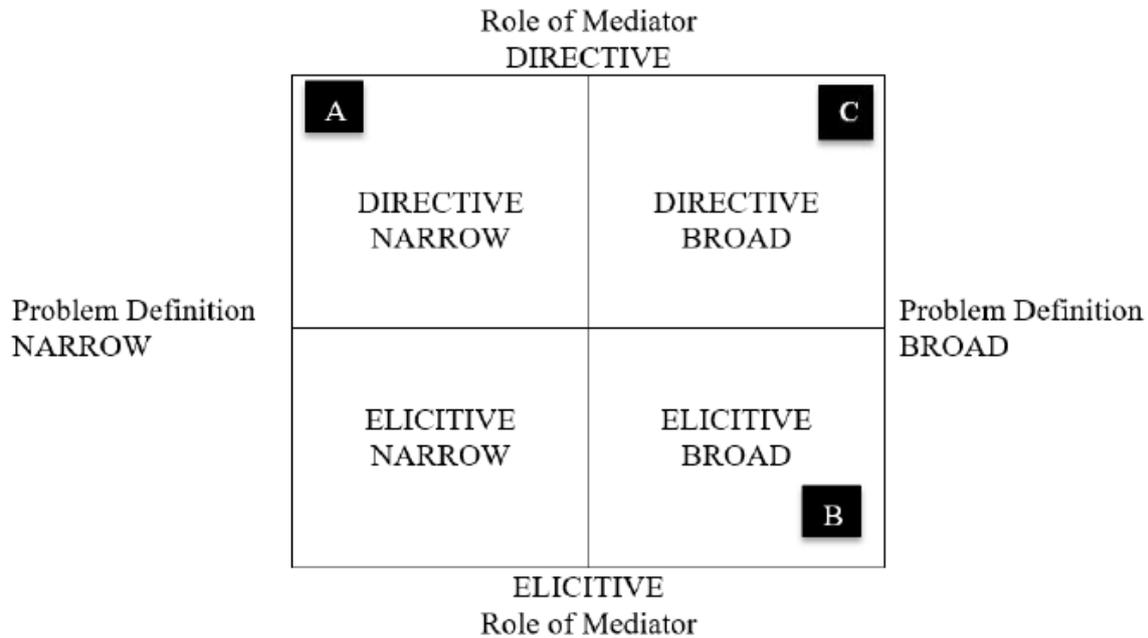


Fig.9

All of the above hypothetical examples show how the three-step model – an exercise in considering each of the three facets that make up the nature of the workplace dispute to arrive at a position on the proposed Grid – may help mediators to frame their approach to the task at hand: to assist parties come to a satisfactory, feasible resolution of their dispute. Rather than relying on intuition and instinct, the model allows the mediator to take a more calculated, consistent approach to determining appropriate mediation strategies.

V. Conclusions

Mediating workplace disputes has become increasingly popular in recent times, evolving through state and private dispute resolution service providers alike. To date, the literature has generally focussed on *describing* mediation orientations, rather than parsing out how different mediation strategies ought to be applied in different workplace dispute contexts. Disputes in the workplace are varied, multi-faceted and often complex, and mediators must grapple with the task of providing a version of mediation that will best serve the parties’ needs. This article proposes a model to make that task easier.

By breaking down the *nature of the workplace dispute* into three distinct facets of the dispute, and using these facets to map out a strategic approach to the mediation on the proposed Grid, the mediator can approach each mediation with more consistency and accuracy in two fundamental respects:

- framing the dispute to a scope that is optimal for the parties’ needs and wishes, and,
- using an appropriate style of mediation.

Mediators can also use the model to pre-empt what may happen as the mediation progresses, or to change mediation style as the relationship dynamics and outcome agendas of the parties shift (Riskin 2003: 52). Mediators can tactically prepare for potential scenarios as the mediation progresses. As such, the model may be useful not just at the outset of the

mediation but also *during* it, allowing mediators to be both proactive and reactive as the dispute evolves.

The model ought not to be rigidly applied – it is designed as a guide rather than as a rulebook. Mapping some disputes on the Grid may prove trickier, particularly where parties seek very different outcomes, or have opposite views on the prospects for continuing or improving the relationship. The hypothetical examples above show that the mediator must make relatively searching enquiries of the parties to gain a full picture of the nature of the workplace dispute. In the example of Daniella’s dispute – the discrimination claim – a wide range of possibilities on both the vertical and horizontal axes emerge: placement depends on the extent and depth of the mediator’s enquiries into the three facets that make up the nature of the workplace dispute.

Of course, and as acknowledged earlier, the model’s strengths and weaknesses will be borne out through its application in practice. That said, the model is centred on a well-developed and influential model for determining mediators’ orientations and its feasibility is demonstrated through the hypothetical examples. Indeed, Riskin recognised that his grid system enables mediators ‘to have a more mindful, moment-to-moment awareness that will lead to better decisionmaking’ (Riskin 2003: 51).

The proposed three-step model ought to be trialled by a group of workplace mediators – undoubtedly this will lead to refinements to it, through experience and practice. Whatever the precise outcomes of such an experiment, trialling the model will afford mediators an opportunity to reflect on their own practices, and encourage self-scrutiny of how adaptive and flexible they are in how they strategically approach each mediation. It is hoped that this will lead to fairer, more effective mediation to better serve workers and employers alike.

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