

A Narrative Approach to Employment mediation

By Alison Cotter



Alison Cotter has a background in tertiary education and mediation. She developed an interest in narrative approaches to mediation and has written and co-authored a number of publications with this focus. She worked as an employment mediator for the Department of Labour in New Zealand from 2000-2011, taking a special interest in mediating problems arising in ongoing employment relationships and in supporting mediators to achieve best practice. She continues to practise part-time as a mediator. Alison can be contacted c/o alison.cotter@xtra.co.nz or 131 Lake Crescent, Hamilton 3204, New Zealand

Narrative mediation principles are applied here to the context of employment mediation. In particular they are applied to the work of a mediator working for the Department of Labour in New Zealand under the provisions of the Employment Relations Act (2000). A story of the mediation of a conflict between two employees of a community service organisation is used to illustrate these ideas in practice.

Key words: mediation, narrative, narrative mediation, employment mediation, personal grievance, double listening, externalising, discursive positioning.

In the years since the Employment Relations Act (2000) was introduced in New Zealand, mediation has become the primary method through which employment disputes are resolved in New Zealand. In this paper I shall apply principles of a narrative approach to the context of workplace and employment mediation by telling a mediation story from my practice as an employment mediator with the Department of Labour in New Zealand.

Mediation offered by the Department of Labour is a government-funded service set up by an act of parliament to deal with workplace disputes. The expressed intention of the New Zealand Parliament in the Act is that problems in employment relationships be 'resolved promptly by the parties themselves' (Franks, 2003, p. 5) and that mediation services be 'free, fast and fair' (Franks, p. 6). Signed settlements emerging from mediations are to be legally final and binding.

A range of matters are brought to mediation through this service. The majority of cases involve personal grievances, many for unjustified dismissal. Both personal and legal issues are considered during the mediation. All kinds of remedies are negotiated, including financial compensation, making apologies, providing work references, acknowledging what could have been handled differently, and a whole range of creative proposals to ameliorate the hurt caused and to allow the parties to move on from the problem.

A second category of mediations relates to problems in ongoing employment relationships (relationships that have not been terminated). Early intervention by mediation can help to get such relationships back on track, and these mediations thus fit with one of the expressed goals of the Employment Relations Act, which is 'to build productive employment relationships' (Winslade & Monk, 2008, p. 186). The mediation between Clare and Harriet¹ described in the story below fits into this category of an ongoing employment relationship. Clare and Harriet are pseudonym names to protect confidentiality.

Using a narrative approach

A narrative approach and questioning style invites participants to step outside of their positions within the conflict story. Through the mediator's use of such tools as narrative questioning and externalising conversations, participants are encouraged to comment on the conflict itself, rather than focusing on a more blame-oriented construction of events. In this process, the power that the conflict has had over people's perceptions begins to shift. Participants begin to work together against the problem as collaborators, rather than contestants.

The story below describes the mediation of a problem in an employment relationship between a chief executive and a senior community worker in a community sector organisation. Personal details have been changed to maintain the confidentiality of the participants. The paper focuses on the hallmarks or principles of narrative mediation (Winslade & Monk, 2008, p. 3) as they might be applied in an employment mediation. The mediator uses carefully-framed narrative questions to address the personal, relational and community effects of the problem story. From the beginning, the mediator endeavours to de-stabilise the conflict story and to create space for the participants to consider how to reclaim dignity and respect and be able to move on in their lives.

Story of Clare & Harriet

Clare is chief executive of a large community organisation. Harriet was appointed to the position of senior community worker one year ago. Harriet is good at her job. She relates well to others, is energetic and willing to take initiatives and make things happen. She is not so good at administration. Harriet organised a very successful youth project in the first week of February, 2008, and was expected to write a report for the board meeting at the end of the month. Other things got in the way for Harriet, so Clare extended the commitment to the March board meeting. Ten days before that meeting, Clare finds out

that the report is not done and that Harriet is going on leave for a week the following day. In a frustrated outburst, Clare tells Harriet that she's absolutely hopeless at administration and will be held responsible if the organisation does not get funding for its youth projects the following year. Harriet accuses Clare of neither understanding the demands of community work nor how much Harriet has achieved, and of just wanting to 'tick the boxes' for the board. Clare says that the late reports have become a performance matter, which will be followed up when Harriet returns from leave.

This is the beginning of a downslide in the relationship. Harriet is offended that her performance is being challenged and becomes less open and responsive. Clare discovers that Harriet has also fallen behind with other accountability reports and becomes even more frustrated. Eventually Harriet threatens to resign. This puts Clare into panic mode, as she realises how important Harriet's skills are to the organisation and how difficult and costly it would be to replace her. Clare seeks the advice of an employment lawyer who suggests they go to mediation with an independent Department of Labour mediator. Clare proposes this to Harriet, who, with some reluctance, accepts.

Hallmarks of Narrative Practice

I shall outline what happened in the mediation that took place with Clare and Harriet and demonstrate the principles of narrative mediation that were involved with reference to Winslade & Monk's (2008) 'hallmarks of narrative practice'.

We live our lives through stories

Taking stories seriously means understanding them as 'having the power to shape experiences, influence mindsets and construct relationships' (Winslade & Monk, 2008, p. 1). A narrative approach to mediation (Winslade & Cotter, 1997; Winslade, Monk & Cotter, 1998; Winslade & Monk 2000) means much more than the telling of stories or the analysis of them. The mediator sees stories or narratives as constructing realities, as shaping of lives. People respond to each other with stories all the time, for example, the question 'How was your day?' is usually followed by the telling of a story. 'What have you been doing lately?' produces a different response but still a story. When a lawyer in a courtroom asks, 'What did you see happen?' the witness tells a story from her perspective in response (Winslade & Monk, 2008, p. 4).

The way we talk about our lives in stories helps give us a sense of continuity in life and a sense of coherence about who we are. Some stories are more coherent than others, some are more dominant, some more rehearsed. Employment mediators thus commonly hear accounts of the same events, which, when re-told from each participant's perspective, are utterly different from each other.

The stories within Harriet and Clare's employment context are of a community organisation, which has a CEO, paid workers, and volunteers. There are organisational stories that express high ideals for community relationships, counter-balanced by stories of struggling for funding and of losing staff to the private sector. The organisation also nurtures stories of managing employment relationships well, setting up clear structures of governance and management, and taking successful initiatives.

For Clare and Harriet, the organisational narratives are set against the background of personal and family stories. As well as being a manager and community worker, Harriet is a mother of five-year-old twins. She has, therefore, cultivated a story about how she juggles her family needs with her work commitments. In her first year with the organisation, she has relied on an administration assistant, Maree, to help her keep her administration and report-writing up-to-date. This year, however, the organisation didn't receive funding for that role, which has left a big gap for Harriet.

Clare's story includes being deeply committed to the community sector and active on the committee of a national organisation, which represents and supports community organisations and is striving for equality of wages and opportunities for workers in that sector.

These are the central background narratives, which Clare and Harriet bring to the mediation. However, no story (or account given in mediation) can encompass all events, therefore stories told to mediators are always selective. This gives the mediator licence to move between and around stories, to draw on a wider range than the initially-presented problem story. Hence the mediator elicits and unravels stories beyond those presented originally by Clare and Harriet.

Avoid essentialist understandings

Essentialist, or inside-out approaches to conflict, ascribe people's behaviour to their nature, for example: 'He's a workplace bully'; 'They have a personality clash'. By contrast, narrative approaches build on an outside-in approach that emphasises how people's interests, emotions, behaviours and interpretations are produced within a cultural or discursive world of relations and then internalised. These interests and behaviours are therefore constructed rather than natural and fixed, so people are potentially able to shift track and be part of more than one narrative at the same time (Winslade & Monk, 2008, p. 6).

In conflict, parties' descriptions of each other tend to narrow. Under the influence of the dispute, the experiences that fit with the story of the dispute often get selected for remembering. Since the late-report problem, for example, Clare is seeing Harriet as 'hopeless at administration'. She 'doesn't know how to prioritise', she's 'difficult to deal with', and 'doesn't care about the organisation', all essentialist understandings which downplay, and may render invisible, Harriet's real abilities and past successes in the organisation.

Likewise Harriet is seeing Clare as just wanting to 'tick the boxes' and 'being unreasonable and nit-picking'. Currently, Harriet's account fosters an overlooking of Clare's qualities of strong leadership and demonstrated commitment to the community sector.

A mediator communicating with respect will resist essentialist or totalising descriptions and hold the door open to exceptions and contradictions to these and to the other existing stories likely to lie behind them.

Engage in 'double listening'

People are always situated within multiple story lines. They are used to shifting seamlessly from one narrative to another as they go from home to school, from home to work, from the peer group to the family, from one relationship to another. (Winslade & Monk, 2008, p. 8)

A mediator engaged in double listening hears not only the pain of the conflict story but also the individual's hopes for something different. For example, by expressing what she does not like (Harriet's late reports and the way they reflect badly on her as CEO), Clare is also implicitly expressing what she likes or wants, for example, that Harriet prepare careful, timely reports for the board and funders while maintaining her energy and drive for the community projects she does so well. Likewise, Harriet's resistance to Clare's criticism of her report work underlies Harriet's desire for more recognition by her CEO of her successful community projects.

Michael White described a particular version of the idea of double listening as listening for 'an absent but implicit' story (White, 2000, p. 153). This is the story that lies hidden or masked in the background of a conflict story. It is often found by turning over the coin of what a person objects to or

is angry about. It can indicate what the speaker values and holds important. Mediators can use double listening to draw out the differences between these contrasting stories and to invite people to make choices about which story they want to embrace.

Build an externalising conversation

'The person is not the problem, the problem is the problem' (White, 1989, p. 6).

Externalising is a way of naming the conflict and speaking about it as an entity in its own right. This approach helps parties separate from the conflict itself and can serve to distance blame and guilt.

The mediator asks Harriet and Clare, 'So what would you call this whole cycle of events that has gone back and forth between you both? What's a name for the problem that you could agree on?'

They tentatively try some answers, including: 'Late reports' (Clare), 'Loss of trust' (Harriet), and, 'A downslide in our working relationship'. This gives the mediator the chance to question more about these initial descriptions of the problem.

She asks, 'What factors do you think have contributed to the problem of the downslide in your working relationship?'

In answer, Clare talks about the deadlines she faces as CEO, the pressures of keeping ahead of them, the decline in funding available for community organisations and the challenge of her national committee work commitments.

Harriet adds, 'Lack of admin support'; 'Juggling work and home demands'; and 'Too much admin'.

They agree that all these issues are contributing to stress in their working relationship. The tensions ease a little as Harriet and Clare begin to use externalising language such as 'the downslide' and 'juggling work and home' as they talk about the stresses affecting their working relationship.

The mediator continues an externalising conversation with Harriet and Clare by asking questions which help map the effects of the problem on each of them.

She asks such questions as the following:

'How have late reports and increasing tensions invited you to act, to feel, to respond?'

'In what ways has the problem affected your working relationship?'

'What is it costing you?'

'Are there ways in which this conflict has got you acting out of character?'

'Are these effects acceptable to you?'

As they speak about the effects of the problem, some effects common to both of them begin to emerge, such as stress, distraction from their core work, a sense of unfair criticism, and loss of the joy of work.

The mediator asks, 'Do you want things to change, or is this how you want things to continue?'

The atmosphere softens as both acknowledge that the effects are not acceptable and that things need to change.

View the problem story as a restraint (to a story of hope)

This hallmark is built on the idea that what people talk about and the way they talk about it help construct their lives and their relationships, whether personal or employment relationships. The mediator draws the participants back to the story of hope by asking:

'What would be some components of a story of hope about your working relationship?'

Clare responds, *'That we stop the downslide'*.

Harriet says, *'That we can get on with our jobs'*.

Clare adds, *'That we respect each other – and our different roles'*.

Harriet proposes, *'That we get some more admin support'*.

The mediator asks with curiosity, *'So what's stopping you? How would you name the restraints to the story of hope which you've just described?'*

Again picking up the use of externalising conversation, Harriet and Clare answer that the restraints include all the challenges they are facing – about performance, about late reports, queries from the board, loss of trust and co-operation between them, and time and energy going into the conflict, rather than into the organisation's projects and goals.

The mediator follows this up by asking, *'If you think about this conflict as restraining you from getting on with your respective jobs, can you give me some specific examples about just what the conflict is interfering with?'*

Harriet and Clare offer a range of answers about aspects of their work which are being restrained, such as: celebrating the success of the youth project in February, the ability to enjoy their different roles and their mutual dependence, and to gain satisfaction from work.

'All these pressures are a restraint to sleeping well too', adds Harriet, and Clare nods in agreement.

Having been guided by the narrative hallmarks the mediator believes that the stage is now set to develop an alternative story.

Listen for discursive positioning

An alternative to an essentialist position is to think in terms of discourse. Discourses refer to the larger cultural backdrop in which people participate, such as the body of beliefs, practices and assumptions about the law, or human rights, or work. In employment mediation, the dominant discourses may include a 'rights' or legal discourse as well as family, work, psychology, and gender or age discourses. The central ideas from these discourses and the assumptions within them are produced from within each cultural world. People select their opinions and ideas from these larger fields of play, then internalise and further personalise their views. The broader fields of influence give people the flexibility of moving between discourses.

The discourses influencing Harriet and Clare's employment relationship include the employment or work discourse. There is the difference in the not-for-profit community sector as a place to work, with its strong ethic of working for change in society, compared to the profit motive of the public sector. Clare calls on a rights discourse when she suggests that Harriet's late reports have become a performance issue and will need to be addressed more formally as such. Harriet experiences some clash between the discourses of family and work, as she strives to balance her work and the demands of a young family. People can and do change their positions in relation to a discourse and they change the way they call each other into position.

When Clare unexpectedly recounts a difficult experience she had when her children were young, she thereby calls Harriet into a different position, a shared one, in relation to the family discourse. Mediation can be seen as a process of negotiation of discursive positions (Winslade & Monk, 2008, p. 23).

When Clare says that Harriet is 'absolutely hopeless at administration' and 'difficult to deal with', her statement invites or calls Harriet into a position of agreement or disagreement with this allegation of personal deficit in a psychology discourse. Part of the mediator role is to invite the mediation participants into different positions within the dominant discourse.

In order to promote this shift, the mediator asks Harriet and Clare, *'Tell me about one of the successful projects on which you worked together. What roles did you take? How did you manage that? What particular strengths did you see the other bring to this project? What parts of the outcome were you most proud of?'* The mediator works with positioning and position calls to open up alternative stories and alternative relational positions in which conflict need not dominate.

Identify openings to an alternative story

The story of a conflict is always only one possible story out of a range of stories that may be told about a relationship. The mediator can develop an alternative story by paying attention to the plot elements that exist but are being left out of the conflict story. A conflict story is likely to omit elements that illustrate co-operation or mutual understanding in favour of elements that spotlight the conflict.

Winslade and Monk (2008) explain this idea:

In the shadow of a story of angry exchanges there are moments of reflection, and remorse or quiet calmness. In the shadows of a story of despair, there are moments of hope. In the shadows of a story of obstinacy, there are moments of willingness to negotiate ... In the shadows of a story of denigration there are instances of respect. The skill of the mediator lies in catching these moments and inquiring into them. (p. 27)

Through questioning, the mediator elicits stories which are incompatible with the continuation of the conflict story between Harriet and Clare. For example, she seeks out exceptions, contradictions, events that are glossed over, surprises, best intentions and hopes.

'Do you have any other thoughts or ideas from your experience of the McDonalds' project?'

'You talked about the planning meeting and how you shared the big jobs. What else do you recall about how you worked together on that project or other successful projects?'

'Are there elements of those that you'd like to revive and apply again?'

'How did Maree the administrative assistant, make a difference to each of you?'

'What would be the benefits of getting your relationship back on track? What would it mean to each of you?'

The mediator's task is to assist the participants to weave these exceptions or contradictions into a viable story by connecting them with each other and developing an alternative story of dialogue, co-operation and agreement.

Re-author the relationship story

In order to build a story of co-operation, the mediator invites Harriet and Clare to take time out separately over a cup of coffee to consider their answers to the following questions:

- 'How might you build on the co-operative and successful work you've done in the past?'*
- 'What ideas or strategies might you put in place to defeat this downslide and move forward?'*
- 'What requests do you have of the other?'*
- 'What commitments are each of you prepared to make?'*

When they get together again fifteen minutes later, she invites them to put forward their ideas alternately. Each proposal is captured on the whiteboard. When Clare and Harriet are satisfied that all their key ideas are listed, they begin the process of discussing, refining and accepting or discarding each proposal with the mediator's assistance. When stumbling blocks arise, the mediator brings the participants back to the big picture, asking, for example:

'If you can move on today from the downslide in your relationship to a more productive one, what might be the benefits for you and the organisation?'

At the beginning of the mediation, Clare and Harriet had been tense and angry and taking up fixed positions. Now they were agreeing to work together positively according to the new understandings being developed. The following document is the outcome of their mediation work together.

Document progress

Memo of Understanding

1. Harriet withdraws her threat of resignation and agrees to stay in her position for at least three months, then evaluate how well it's working.
2. Clare agrees to set up a performance plan in order to support Harriet in gaining confidence and skills in report writing. She will:
 - work with Harriet on writing the next report due
 - review the operations budget and try to expand the administration support available
 - investigate appropriate training in business writing and give Harriet the option of attending.
3. Harriet and Clare agree to meet each week to plan and co-ordinate projects and to discuss any issues of concern to either. Harriet agrees to speak up early, if she encounters problems with report writing or administration matters and commits to meeting report deadlines.
4. Harriet requests that Clare notice and comment on the positive aspects of her work as well as giving critical feedback.
5. Clare and Harriet agree to keep details of this meeting confidential and to say to enquirers only, *'We've had a meeting, we've got a positive plan and we're getting on with it'*.

In bringing the mediation to a close, the mediator shares a favourite quote from Sir Tipene O'Regan, a well-known Maori leader in New Zealand, who said, *'We let go of our dreams easily. It's a much harder thing to give up on our grievances'* (O'Regan, 2008).

She commends Harriet and Clare on the goodwill they have shown and their willingness to let go of the story of grievance and to open up new stories of shared understanding and mutual commitment.

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