

Litigation, Mediation and Accreditation

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While studying law, I also undertook the LEADR Mediator training course, which I was able to use for credit towards a skills unit in the Law degree.

My main purpose in studying law as a late career change option was to be in a position to help the not insignificant number of people whom I encountered who had a legal problem and a lack of both legal knowledge and funds.

I know most lay people see lawyers as being greedy bastards but my experience while practising law has been that there are a significant number of lawyers who do not, in fact, see their practice as a short cut to a fortune. The number of lawyers who offer their services pro bono for, for example, the free legal aid sessions offered by DCLS, inter alia, as well as cut price services to less financial clients with a real need for help, is proof of this. This is to be applauded.

As an aside – DCLS could use more lawyers to give up two or three hours on a Monday (Palmerston) or Thursday (City) evening or a Saturday (Casuarina) morning, so if you could regularly or occasionally help out, please email DCLS_Volunteer_Coordinator@clc.net.au.

In order to continue in practice we are required to undertake a variety of Continuing Practice Development activities (CPDs aka Continuing Legal Education – CLEs) to ensure that our skills in specific areas are continually up-

dated and up-graded.

In other words, to be re-accredited annually as competent to practice law.

As a mediator, I also have to be re-accredited however; this process is biannual rather than annual.

Similarly to a lawyer, I have to show proof that I have undertaken at least the required number of hours in various activities and carried out a minimum number of mediations. The activities may include coaching (or mentoring) would be mediators during their training sessions or attending Continuing Mediation Development (CMD) activities.

My experience has led me to believe that there is an enormous number of conflict situations where the parties might be able to achieve an acceptable outcome through mediation – or some other alternative dispute resolution mechanism – rather than through litigation.

In order to be able to give legal advice it is a legal requirement that the accreditation and re-accreditation processes be strictly followed.

However, there is, unfortunately, as yet no requirement that anyone claiming to be a mediator is actually accredited and up to date. And there are quite a few lawyers who, with no training or accreditation, offer their services as a mediator.

My personal view is that it is long overdue for mandating that the only people who can offer to mediate a situation are accredited.

Yes – it is not necessarily cheap to undertake the mediation training course, although if the lawyer/mediator charges the same service rates for both services, that cost would soon be recovered.

The point often overlooked is that a mediator should **never** give advice, only assist the parties, when possible, to reach an outcome with which they can both be comfortable. For a lawyer used to the adversarial process where only one interpretation can possibly be accepted, this could be a problem!

It would be rare, when two parties are in conflict, that either one of them might be able to achieve exactly what they want, but the mediation process, when successful, is almost certain to be less expensive than litigation.

As a further aside, the CJC offers a mediation service to anyone, free of charge as well as being briefed to arrange mediation for the parties involved as part of the process for applicants for a Personal Violence Restraining Order. And lawyers who give advice at an early stage of a PVRO application ought, morally, to make it clear that the Courts are only really going to grant an order if convinced that violence has or will occur. This might encourage the applicant to reach an agreement without returning to Court and so save on expense.

The lawyer might lose a client but would at least be freed up to take on another where litigation really is the only path to choose! ●