Not just for mediators:
taking the ADR skill set beyond our community

Olivia Davis and Prof Camilla Baasch Andersen
Re-thinking the nature of conflict

Re-thinking how we approach conflict
Conflict literacy = ability to handle conflict productively

A conflict literate person has:

**Knowledge** about conflict dynamics, human behaviour and emotional intelligence

**Skills** from the mediation skill set (e.g., reframing, reflecting, perspective taking)

**Qualities** including empathy, adaptability, mindfulness and tolerance
Scandinavian proactive law movement = re-thinking the role of law

Roots in preventive law (Louis Brown 1960’s)
One step further: why is the lawyer in the room?
Rethinking legal skills-sets more constructively
Innovating law: visualisation, collaboration, contract management...

...solutions outside the box.
What frame are we in?

**competitive**
- Goal-driven, based on our own needs
- Positional
- Inflexible
- Tunnel vision
- Compromise seen as a weakness
- Win - lose

**collaborative**
- Looks for shared goals and mutual interests
- Compromise seen as a strength
- Values the relationship
- Curious about context, and the other party’s interests/needs
- Win - win
Life’s better with ADR...

Things we can do more successfully when we use our ADR skills:

- Negotiate
- Cultivate positive relationships
- Make better decisions
- Manage people & teams
- Facilitate group decisions
- Learn from others’ points of view
Helpful concepts – a resource list

Mentalizing-based approach to mediation (Howieson & Priddis)

Generic Mediation, (Cognitive-)Systemic Mediation (Haynes & Fong)

Narrative Mediation (Winslade)

Humanistic Mediation (Rogers)

Transformative Mediation (Folger & Bush)

Settlement-Driven Mediation (Riskin)

Mediation through Understanding (Friedman & Himmelstein; Mnookin); (See Hans Boserup, “Six Ways in Seven Days”)

Understanding conflict as a system (Peter T Coleman)
Case Study A: “The Deal Breaker”

- Large US corporation refusing to continue negotiations with small German company: insists on boilerplate US dispute resolution clause. German company unwilling to potentially litigate in US.
- Negotiations brought to a halt, German negotiator intimating breach of pre-contractual liability to contract in good faith.
- Mediator/Arbitrator introduced to salvage issue of pre-contractual liability; but then decides to try to salvage negotiations of contract itself as it becomes clear that the parties are still basically interested in the deal.

What could a mediator do to help get negotiations back on track?

DISCUSS
Case Study B: Culture shock

- Large Japanese exporter of goods, small and newly established UK importer of goods.
- Both would benefit economically from contracting, BUT UK company unknown in Asia so Japanese exporter very unwilling to negotiate, but unhappy to disclose this as real reason, keep politely “stalling”.
- The UK importer has NO idea why negotiations can’t proceed, the lawyer negotiating the contract has no luck proceeding to the drafting stage, is very frustrated.

DISCUSS IDEAS FOR PROGRESSION
Parting thoughts …

Frames are often invisible – but they set the ground rules.

Bring your ADR skills to your next challenging interaction – see what happens!