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LET'S MEDIATE

The official newsletter of
Mediation in Motion Mediators

MEDIATION IN MOTION MEDIATORS

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From the Editor

Dear MiM Mediator,

As we celebrated heritage month in September, we dedicate this edition of Let's Mediate to the wonderfully diverse heritage of not only South Africa, but the world.

We, as mediators, have a wonderful and unique opportunity to understand, embrace and utilise the unique cultural diversity of persons agreeing to mediate, to facilitate, one-of-a-kind, tailor-made solutions to conflict.

We have an opportunity to help people see and hear other people, who they thought were so different to them, but who are also just human. Once you really see and hear another human being, there is suddenly room for conversation, engagement and ultimately conflict resolution.

Archbishop Desmond Tutu famously said, *"A person is a person through other people"*. And as you will read, Dr Mmatheo Motsisi summarised this so beautifully when she *says: "this, highlighting the indisputable fact that though we exist as individuals, we are interconnected and dependent on each other. There exists an invisible cohesive bond that binds us all. A unifying factor that is capable of breaking through all barriers*."

Heritage and unity are however not restricted to South Africa. We are also all citizens of the world. Technology has brought the world closer together and mediations over country borders are not uncommon.

When reading Adv Scott's Ponderings in this issue, you too will come to understand that: *"A good mediator will always be alive to these cultural differences, to the fact that it is important to establish what each party wants from the mediation. And in many instances, what they want cannot be obtained from the courts should the matter follow the legal route. A benefit that mediation has over litigation!"*

Do you know what the Singapore Convention is? If not, I would encourage you to keep reading and find out how this Convention which came into force on 12 September 2020 and has so far been signed by 55 countries, affects your mediation over International Boarders.

Letter from the Chair

Dear MiM Mediator,

As we head into the final stretch towards the year end, we are unfortunately observing an increase in irascibilities amongst our people, mainly caused by the poor decisions made by the leadership of our country. These decisions unfortunately have direct consequences to the quality of life that we are experiencing in South Africa at the moment. Electrical load shedding has become almost a daily norm, water shedding is now being introduced to some provinces, fuel and grocery prices are at an all-time high and the crime rate is on the rise. The resulting tension is almost palpable and certainly giving rise to various different types of conflicts, be it in personal relationships, the workplace, political activism, social services, professional services and within different communities, amongst many other examples. Given all these very real challenges, social cohesion is becoming even more difficult in a country that has a legacy of politically induced hate. The current situation has the potential to spiral out of control rather rapidly and we as mediators have a definite role to play towards rectifying this situation.

With our country celebrating Heritage Day on the 24th of September, I could not help but notice glimpses of what South Africa could be like if there was more interracial, intercultural, and interfaith tolerance. Many of us had workplace or community celebrations where we embraced the diversity of each other and our beautiful land. For those brief moments we were all proudly South African and forgot the injustices of our past and the blatant disregard of our rights and needs in the present. I remember thinking that this is the South Africa that I want to live in. It immediately cast me back to our training as facilitative mediators, where it reminded me that our role serves to help people see beyond their own versions of reality and to reduce the noise caused by many irrelevant and uncontrollable external factors. Our role is to help people to start seeing each other as human beings again, to get them to engage in meaningful conversations again, to encourage hope amongst them again and essentially reignite the spirit of UBUNTU.

This then brings me back to our beloved organization, Mediation in Motion Mediators (Non-Profit Organization). Many of us are well aware of the strides we are making towards improving the mechanics of our organization. We are investing in marketing opportunities and towards functional improvements of the organization.

We are embarking on a mammoth task of setting up an “Institute of Mediators” and getting SAQA accreditation followed by proper designations for our mediators. We are working with various professional societies and governmental departments to make mediation more mainstream and bring in work for our panel of mediators. The sad reality though is that all of this work is being conducted through the tireless efforts of the current EXCO only, for which I am sure that we are all forever grateful.

However, we currently have 637 trained mediators on our panel, which is by far the largest panel of mediators in the country. We often get asked the question, especially by our members, as to how we are making mediation more mainstream. The best answer of course is to have more successful mediations. So herein lies my challenge to each and every one of you, in that if you could do just ONE free mediation in a month for a community member, a work colleague, a society member, a family member or a total stranger then we will have over 600 more mediations done in a month, that will translate to over 7200 conflicts being resolved every year. This is how we will make mediation more mainstream and more importantly start to reduce the tension amongst our fellow countrymen. Let us embrace our roles of peacemakers and play our part in the healing of our country and unifying our Rainbow nation. We can do this, one mediation at a time. Otherwise, what’s the alternative? I shudder at that thought.

Best wishes.

Dr. Shamal Ramesar
Chairman – MiMM (NPO)

“I Am because We Are”

Patrick's Ponderings

What Heritage Day Means to Mediators

South Africa recently celebrated Heritage Day, with all people reflecting on their past and looking together to the future. What is interesting, is that South Africa has a very diverse history.

Part of South Africa's heritage is from the United Kingdom, and more specifically the monarchy. Now, as a mediator, I am going to avoid the debate of whether or not that is a good or bad thing. I have my views and I accept that others will have different views. However, after seventy years on the throne, Queen Elizabeth II passed away recently. People across the world mourned the loss of Her Majesty. She lay in State for several days at Westminster Hall and people travelled from all over the world to queue for hours to walk past her coffin and pay their respects. Six ladies flew in from Houston, Texas, queued for hours to pay their respects and flew back home.

What became apparent was that people from different backgrounds, different political views, divergent interests and many different nationalities, put aside their differences. They were all brought together by a common interest - mourning the death of the Queen. What has this got to do with mediation, you may rightly ask? The answer, of course, is quite a lot if we extract from this the principle that, if a common interest can be found, people can be brought together, and disputes can be resolved. And that is what we, as mediators, try to explore.

There is a well-known term from the principles of negotiation - the Zone of Potential Agreement (or ZOPA). What is a ZOPA? It is that area within which an agreement can be struck. Peter and Susan are negotiating the purchase and sale of a car. Peter is asking a price of R100 000 but would accept as little as R60 000. Susan will not pay more than R75 000 but makes an opening offer of R50 000. The ZOPA is between R60 000 and R75 000. In a mediation, the mediator will try and help the parties find their ZOPA, and then guide them to a settlement within that range.

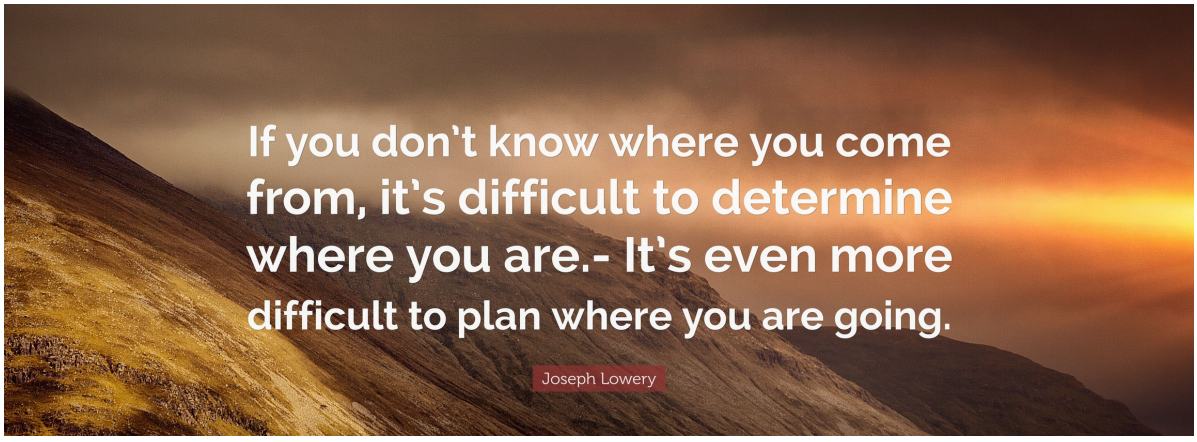
Moving from the more mundane area of the resolution of disputes involving money and other such basic elements, mediation skills can also be used to help people explore, and come to terms with, their heritage. Your heritage, your history, your past - these are all a part of what you are. Warts and all.

You can't erase history, and neither should you try. Don't pull down that statue of someone who is now identified as a slave trader. Let that statue stand as a reminder of the evils of the slave trade. By felling the statue, the memory of the slave trade is diminished. Your heritage is what makes you what you are today. The good, the bad and the ugly (to borrow from a well-known cowboy movie from my youth). We need to acknowledge all these aspects - that is what heritage is all about!
This brings me to another important aspect of mediation. Heritage is really about your culture. What principles you adopt in dealing with disputes. Different cultures have different values. Different ways of approaching a dispute. To some, principle is all important. To others, compensation is what they want. Yet others want to act for the common good, to ensure that a mistake is not repeated to the detriment of someone else.

A mediator needs to have regard to these cultural differences to be able to help the parties explore options that can satisfy the cultural ideals of both parties. I have done mediations where all the one party is looking for is an apology. An acknowledgment of the wrongdoing. If the other party offers money as compensation, that can derail the whole process. It can be seen as an insult. An attempt to "buy" your way out of the situation. A good mediator will always be alive to these cultural differences, to the fact that it is important to establish what each party wants from the mediation. And in many instances, what they want cannot be obtained from the courts should the matter follow the legal route. A benefit that mediation has over litigation!

Patrick

Patrick Scott has a Master's degree in Mediation and Conflict Resolution from the University of Strathclyde in Glasgow, serves on the Board of Mediation in Motion Mediators and practises as a mediator in Scotland and South Africa (remotely).



Mediation & Ubuntu

Mediation & Ubuntu, Spirituality & Nature / By Dr Mmatheo Motsisi

Mediation is the creative art of harmonious conflict resolution and restoration of human relations while dissolving barriers. A gateway towards transformation and reconciliation rooted on preservation of human dignity and trust.
The butterfly is a classic example of transformation. We are inspired when we see the freedom and delicate beauty that emerges from arduous growth and development. Butterflies are a reminder that all stages of life are to be valued. In its journey, the butterfly teaches us to trust that which is not yet fully formed as a direct reflection of our level of growth and transformation.

Ubuntu: The Primeval Model of Transformation
Mediation is a way of returning us to a selfless state of existence that honours the spirit of Ubuntu which is deeply ingrained in our matrix. In the process of our human evolution and technological advancement, we have drifted away from that which truly defines our humanness and interconnectedness. As we access the field of remembrance of ancient ways of being and knowing, we collectively awaken the effective ways that have been practiced by our forebearers in antiquity. The deeply embedded truth that Ubuntu is the first step to conflict transformation which has always honoured our state of oneness and it is deeply rooted in preservation of human dignity.

Ubuntu as the Primeval Model of Transformation seeks to promote unconditional kindness to all life, including ones' own, commonly referred to as compassion. A valuable quality employed in facilitative mediation which promotes genuine trust and openness. There is little of significance in our human endeavor which can be achieved without compassion. Ultimate healing that pierces through emotional barriers requires the invocation of the power of compassion both for self and the other. David Hawkins, a renowned lecturer and expert on mental process, expounds as follows:

> *We may observe how throughout history, society has tried to "treat" social problems by legislative action, warfare, market manipulation, laws, and prohibitions - all manifestations of force – only to see these problems persist or recur despite treatment. Although governments (or individuals) proceeding from a position of force are myopic, to the sensitive observer it eventually becomes obvious that conditions of social conflict won't disappear until the underlying origins have been exposed and "healed."[1]*

During this Aquarian Age, the spirit of Ubuntu is finally being resurrected within humankind. It transcends all created classification that categories humans based on race, creed, nation, religious and political afflictions, the list is endless. Its resurrection creates a paradigm shift both at individual and collective consciousness. We find ourselves in situations where many structures need to revisit their structural model of operations. The need to shed off the ideologies that no longer serve humanity at large. Ubuntu, a solid foundation that cannot be easily eroded strives to restore broken relationships. This is achieved through affording individuals the priceless opportunity to undergo the nature of healing that returns them to their state of wholeness. Thus, mending the broken emotional fibre that is often neglected in other approaches of conflict resolution e.g., litigation and arbitration.

Reconciliation begins with oneself and calls for deep introspection, the foundational stone of Ubuntu which is replicated wisely in the mediation process i.e., seeing self through the eyes of the other. A principle clearly understood by the Indigenous People, the Native Americans have always affirmed that in order to understand what the other is going through you have to wear their moccasins. The notion of knowing through becoming is an ancient concept and a natural way that unlocks the gateway of discernment in order to decipher the hidden or unspoken. This mode of direct knowing is achieved through merging or becoming one with the object of intentionality. Augustine Shuttle shares the same sentiments that “I only become fully human to the extent that I am included in a relationship with others.” [2]

This is a view shared by Archbishop Desmond Tutu that “A person is a person through other people”.[3] Thus, highlighting the indisputable fact that though we exist as individuals, we are interconnected and dependent on each other. There exists an invisible cohesive bond that binds us all. A unifying factor that is capable of breaking through all barriers.

The Great Father of the Rainbow Nation, Nelson Rolihlahla Mandela, a visionary elder ahead of his contemporaries, realized that diversity should not be a source of conflict and separation, it should amplify the multifaceted beauty and infinite creativity just like the rainbow. The colour in a rainbow is a vibrational effect involving light and matter, and its full spectrum of colour forever reminds us of our own many and varied facets. It is known that the rainbow’s colors only appear when white light is refracted into its separate wavelengths. This serves as a reminder that we are all a work in progress, as we strive for wholeness and clarity in our fragmented vibrational field. A principle ingrained in Ubuntu that as humanity we have all emerged from the primal Tree of Life that birthed all in existence. The Honourable Father affectionately seeded these wise words to the Rainbow Nation in an effort to facilitate healing and promote reconciliation:

> “*Ubuntu…asserts that the common ground of our humanity is greater and more enduring than the differences that divides us. It is so, and must be so, because we share the same fateful human condition. We are creatures of blood and bone, idealism and suffering. Though we differ across cultures and faiths, and though history has divided rich from poor, free from unfree, powerful from powerless and race from race, we are still all branches on the same tree of humanity".[4]*

The Awakening Mediator

The intense mediation course under Mediation in Motion in collaboration with the University of Cape Town has greatly contributed to igniting the burning flame of the spirit of Ubuntu at the core of my being. It served as a reminder not to stray away from that which defines me as human though perceived as an individual and yet an integral part of the whole. In this spaceship called Earth, we are here on a divine mission to birth change through meaningful self-exploration and interaction with all that around us. Therefore, being mindful is a prerequisite as the architect of the reality we want to manifest in the world of form through collaborative efforts with others.

I have arrived at the decision that the highlighted qualities and skills that were recommended to be employed by mediators discussed during the course, were actually the solid foundation upon which Ubuntu is built. Just to mention a few - the depth of understanding of the source of conflict, the application of sensitivity when dealing with variable personality types and cultural diversity, the importance of good listening skills and recognition of non-verbal communication, the genuine cultivation of trust and harnessing of patience, the refrainment from inducing harm and coercing of parties, the importance of remaining neutral and impartial during facilitative mediation processes.

In honour of the humanness within each one of us that calls for allowing one to be compassionate and empathetic during interaction with parties, the importance of honoring of human dignity and addressing the emotional issues positively including soliciting for apologies to be rendered where it is deemed appropriate in an effort to facilitate healing and transparency. Finally, the realization that the mediator as the facilitator of the process should adhere to confidentiality as the life support of the mediation process. Their primal focus should be the needs, interests and concerns of the parties during the collaborative–explorative phase of mediation. This has an empowering effect on the parties as it unleashes the infinite potential from within, to sincerely work toward a beneficial win-win solution instead of win-lose, which has been the trend with adversarial conflict resolution approaches e.g., litigation. The cornerstone that drives successful facilitative mediation is achieved through the creation of sacred space that allows parties to lower their guard, expose their vulnerability without shame nor fear of judgement.

I want to conclude this section by affirming that the realization of the role of the spirit of Ubuntu as the primal foundation for conflict transformation sets a conducive environment for the mediation process. Seeing oneself through a kaleidoscope of the spirit of Ubuntu is a dynamic state of being. The mediator is empowered with the tenacity and patience to flow with this artful creative process, knowing that surprising outcomes can spring to life in what seems like impossible situations.

A mediation process that is rooted in the spirit of Ubuntu should be woven in the fabric of humanity if we truly aspire to return to a state of harmonious conflict resolution that honours human dignity beyond colour, creed, race and nationality. I envisage incorporating this refined ancient skill in my personal life as an elder in the community, in professional engagements as a medico-legal expert and health practitioner (healer). Furthermore, in the spiritual pursuit with others as I partake with them in their sacred transformational journey of awakening to the deep knowingness that they are spiritual beings having a physical experience, and not the other way around.

Facilitative mediation as an umbrella does not only generate peace, but it is also the healing balm that restores broken human relations, thus achieving reconciliation at multiple levels. This is because a mediator rooted in Ubuntu will engage the process more openly, objectively, and humanely while harbouring a deep understanding that no one is an island. The empowerment dawns upon recognition that the one perceived as the enemy is after all human to begin with, that harbours deep emotions, values, and viewpoints in the same manner as one does.

Finally, I believe harmonious ways of conflict resolution anchored in the spirit of Ubuntu as explored during this mediation training should be made available even at an elementary stage of human development. It is imperative that humanity return to that which defines their humanness for the cultivation of peace and universal brotherhood. This collective awakening will serve as the barometer that will raise an awareness of the need to honour self through the other, our interconnectedness and the invisible fibre that binds us all as humankind. It will curb the violation of human dignity and activities that are rooted in greed or hoarding of resources which has resulted in skyrocketed scarcity, as witnessed in numerous sinking government institutions that are poorly serviced due to a lack of funding and the infrastructure on critical life support. These are multifaceted problems that require collaborative efforts in order to remedy the situations.

The moment is ripe for humanity to awaken to the spirit of Ubuntu that is lying coiled like a serpent waiting for the creative flames to be ignited so that it can rise and breakthrough the veil of illusion rooted in the Ego, a destructive beast that needs to be tamed. There is a need for humanity to put away their individualism and greed in an effort to work collectively towards uplifting each other in love and compassion. There will not be a need to fight over resources or power as we will be mindful of each other.

Credo Mutwa, a High Sanusi and Keeper of Ancient Knowledge left these deep soul-searching words with us:

> *A man who lives with his soul and who lets his soul, rather than his brain, guide him, is better equipped to face the mysterious and supernatural things, because his soul understands these things while they bewilder the brain. The brain drags them into quicksand of materialism.[5]*

References

[1] David R. Hawkins, Power vs Force: The Hidden Determinants of Human Behaviour (California, Hay House, 2002) 73.

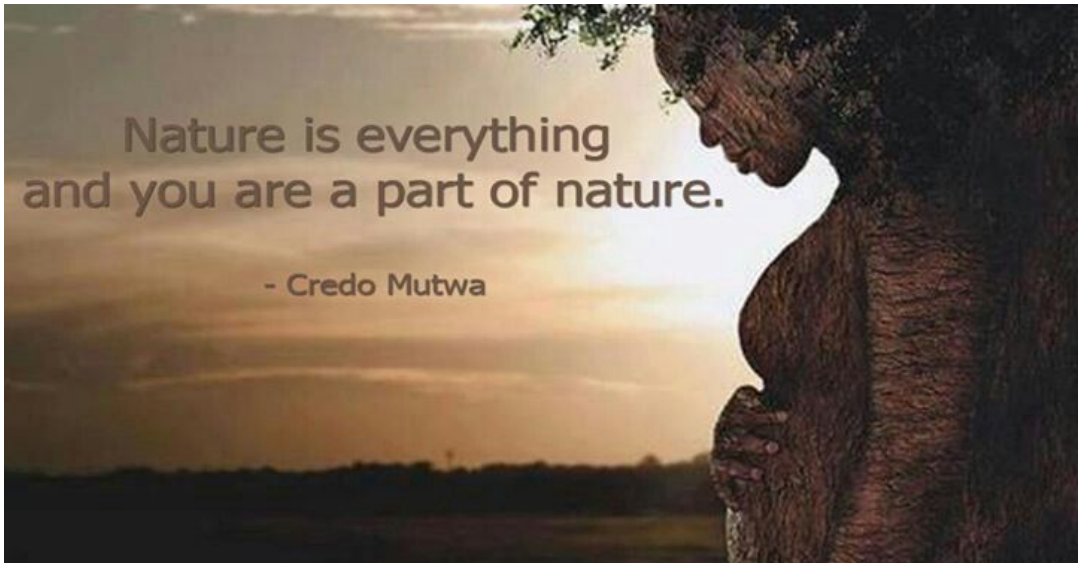
[2] David W. Lutz, 2009, “African Ubuntu Philosophy and Global Management.” Journal of Business Ethics. 84, no. 3 SUPPL.: 316. (Accessed March 12, 2015).

[3] Desmond Tutu, No Future Without Forgiveness (Doubleday Press: New York, 1999), 34-35.

[4] Nelson Mandela in David W. Lutz, 2009. African Ubuntu Philosophy and Global Management. Journal of Business Ethics. 84, no. 3 SUPPL.: 313-328. (Accessed March 12, 2015).

[5] Mutwa Vusamazulu Credo. Indaba, My Children (Edingburg: Payback Press, 1998) 612.

Dr Mmatheo Motsisi
Published Author of the Book: Odyssey of a Healer



CULTURAL ELEMENTS AT PLAY DURING MULTI CULTURAL MEDIATIONS

Insights submitted by Adv E. Raubenheimer

Culture is an important factor in the attitudes of parties involved in a mediation and will have a determinative influence in the success of the mediation. Cultural differences will serve as a filter through which parties will perceive the process as well as the communication between the parties, and between the parties and the mediator. This article will focus on the work of Hall and Hofstede, and Jeswald Salacuse.

Edward T. Hall categorized cultures according to communication content. He pioneered High/Low Context Communication. This is an important cultural difference at play in cross-border mediation. In low context cultures the communication is directly, explicitly. During communication reliance is on straightforward verbal communication. Adherents to this communication style discuss important issues openly irrespective of the sensitivity thereof.

This type of communication style is more prevalent in the United States, Canada, Australia, and most of Northern and Western Europe, where direct and explicit communication is used.

In High context cultures the communication is conducted in such a way that the information will be included in the context. It will consequently not always be communicated verbally. The conversation will tend to go around the point. These cultures place a high premium on tradition and history with strong community links and the resultant communal knowledge. This culture is more prevalent in Asian countries and the rest of the world not listed above.

The influence of these cultural differences has been described by Cohen. Participants from Low Context Communication cultures will be surprised by a party from a High Context Communication culture's preoccupation with history and hierarchy, and their apparent preference for principle over detail. They will also experience frustration with the reluctance of the High Context adherents "put their cards on the table," which is perceived as evasive or dilatory.

The High Context Communicators will be surprised by the Low Context Communicator's disinterest in history, their preoccupation with individual rights, excessive bluntness, constant generation of proposals and the inability to leave a problem pending.

The occasional obtuseness and insensitivity will not sit well with the High Content Communicators and will be interpreted as leaning towards confrontation.

These factors could pose a serious impediment to settlement. A mediator functioning in this sphere will need to be circumspect and sensitive towards these aspects.

Geert Hofstede identified Four Dimensions Related to Cultural Differences
The power distance index (PDI) represents the first dimension. A lower power distance culture values an equalization of power and competence rather than seniority. Hierarchy and status are very important in this culture. Societal inequalities are not frowned upon and are even desired.

Low PDI cultures, on the other hand, have a focus on equality and opportunity for all. These cultures are less dependent on superiors. There is a greater interdependence between people. According to Hofstede wealthier countries and countries from northern latitudes tend to have a low PDI. Most Asian, Latin and South American and Arab countries tend to have a higher PDI.

Individualism versus collectivism constitutes the second dimension. Individualistic cultures focus on individual needs and independence and prevail over those of the group.

In collectivist cultures, individuals are regarded as group members and put the interest of the group or organization before their own personal needs. Americans and Europeans are generally more individualistic, whereas Asians tend to be more collectivist.

The potential threats to mediation could be that individualists are primarily focusing on reaching a settlement agreement to be signed by the parties. The collectivists are more focused in maintaining a business relationship with erstwhile commercial partners. In individualistic cultures the negotiation trumps the relationship while the reverse is applicable in collectivist cultures.

Hofstede calls his third dimension “gender” and it indicates the level of assertiveness, competitiveness, and independence which is regarded as “masculine” or nurturing, cooperation and relationship focused, which is regarded as more “feminine.” An assertive culture values achievement, control, power, money, aggressiveness, dominance, challenge, ambition and competition. Winning is of paramount importance in this culture. Countries falling into this category are, for instance, Japan, Switzerland, Mexico and the United Arab Emirates. Cooperative countries are for instance the Scandinavian countries, Thailand and South Korea. There are a number of countries falling somewhere in-between, such as the United States and most European countries. Assertive negotiators will focus on dominating by using power tactics. They tend to be reluctant to make concessions. Cooperative negotiators, prefer to discuss interests and more readily make concessions. They furthermore perceive the dispute in a more neutral way to maximize the chances of settlement.

The attitude to risk constitutes Hofstede’s fourth dimension.

Risk averse cultures dislike risky, vague and unclear situations. Risk prone cultures are more accepting to new ideas and tend to be innovative and creative in their approach to problem solving.

Risk averse cultures tend to keep the mediation structured following the ground rules determined by the mediator due to their discomfort with unconventional situations. Precision, accuracy and predictability is very important to them. Countries falling into this category are for instance Greece, Portugal, Japan, Spain, Mexico and Belgium.

Risk prone countries are less rule-oriented and are more accepting of new and innovative solutions and have a higher tolerance for uncertainty. Countries falling into this category are the United States, England, Hong Kong, Sweden, Denmark and Singapore.
This is very important in cross border mediation as parties constantly suggesting new options for settlement whilst the other is unwilling to change its position, or considering creative or innovative solutions to the dispute could find it difficult to co-operate during a mediation process.
It is the task of the mediator to find a way around these cultural barriers. In an upcoming article we will deal with this topic.

TAKE NOTE

University of Strathclyde Glasgow
University of Strathclyde Mediation clinic
The UK Mediation Clinic Conference 2023
Saturday 18 March 2023
(online and in person in Glasgow, Scotland, UK)
"Working within the Courts: The Role of Mediation and Mediation Clinics in Civil Justice Systems"
With a keynote from Tony Allen "Mediating in the Shadow of the Law" as well as workshops, panel discussion and dedicated networking time, the event builds on the success of previous conferences.
Tickets and Registration
Click link or scan QR CODE to purchase tickets from the University Online Shop
Buy Tickets
All enquiries to: mediationclinic@strath.ac.uk
Mediation Clinic Conference 2023 | University of Strathclyde
TICKETS

Information below obtained from: mediatoolkit.com

Mediation in Motion Mediators is constantly looking at ways to enhance their offering to their members whilst being cognizant of the changing social media platforms.

Social media is in a state of perpetual change. Social channels constantly evolve and adapt their features based on user appeal and potential growth. This continuous flux also presents a great opportunity for marketers looking for new creative ways of reaching their audience. Following up and coming social media trends that are expected to dominate this 2023 year, is key for a successful marketing strategy.

First, let's address the elephant in the room. Social media usage is on the rise and steadily growing. With over 4.74 billion active users, which is **a boost of 4.2%** compared to the number of users reported the previous year. That means 59.3% of the world population is active on social media. The pandemic that started in 2020 is without a doubt responsible at least in part for the huge number of social media users. The data confirms it, as people find themselves spending more time on their preferred social channels.

This sounds great, right? More users means being able to target a bigger market share. However, it also means **increased competition** as all the effort is concentrated on a number of high-performing social media channels. Which can quickly translate to content saturation, user engagement fatigue, and going over budget. So let's take a look at where to best focus our marketing efforts.

Social Media Trends to Watch Out For in 2023

Utilizing guided social trends is sure to help MiMM stand out and increase our brand visibility, market reach and user engagement.

1. Authenticity is the key

Apart from video content that keeps on appearing on the trends list for the last couple of years, authenticity has slowly become the determining factor of success for social media platforms. In the time of overly-edited images and videos and customer cynicism, authenticity, posts in real-time and posts that customers can relate to are more of a demand than an expectation.

The popularity of TikTok and the rising BeReal platform demonstrates precisely that – the need for filter-free content and real relatable situations and personalities. This trend is slowly taking precedence over traditional, filtered, “insta” content.

But what does this mean for MiMM and its social media endeavours?

I believe that we can start by sharing stories, short, powerful stories designed to engage the general public, as opposed to our members only.

We do, however, need to have these stories, and access to the stories of our members and successful mediations (or even the stories that may not speak of success, but which have a life lesson to offer?)
It means just having a short 1 to 2 min reel of success, or a life lesson, or happening or a wondering of the impact of, or outcome of a situation or incident which should, could or is being mediated. **Filter-free and relatable!**

If you are willing and able to share a 1min or 50-word story, please email me on deidremapp@gmail.com and the social media committee will create the short reel for our social media platforms.

If you prefer a short call, in order to share the story, email your details and one of the members will contact you.

More information which MiMM and its members need to be aware of in 2023 include and in brief, the rise of:

2. Short video & TikTok as above.

3. Microinfluencers and their effectiveness which speaks to influencers talking about mediation and their experiences.

4. The increasing rise and trend of social commerce which requires content and engagement especially on Facebook and Instagram. Links should be created on each posting to immediately provide engagement.
Go where your customers are, or better yet get there first and set up a shop. That’s what Facebook is.

5. Social networks for customer service are becoming a customer service channel as well. It can be seen as a direct line of communication with the general public and potential clients.

6. Personalized ads on social media such as Facebook, Youtube, and LinkedIn, together with Instagram, are cited as the most effective means in reaching business goals.

7. Social listening & brand involvement and being aware of the proverbial social street happenings in order to pitch in and actively engage with what the trending discussions are.

8. Tight-knit communities have smaller audiences but high engagement rates. It provides the opportunity to gather feedback, offer valuable content, gain insights and empower the MiMM brand.

9. Rise of social justice and brand involvement is something which MiMM by it's very nature can engage with relatively quickly. It requires a bold marketing tactic OR sincere involvement with social justice, political and environmental issues. It involves humanizing the MiMM brand.

10. Connecting social media and email marketing is a little more tricky but with effort and data collected, email lists can be done and customized and lookalike audiences targeted.

11. Augmented reality is a rising trend popular with younger audiences. Augmented reality improves the social shopping experiences of the user.

12. Virtual reality is focussed on gaming and I am of the opinion, not an issue or conversation which we need to engage with at this point in time.

Social Media Trends are Changing, but focussing on trends which can stand the MiMM brand in good stead and help us achieve our goal of creating an awareness of mediation as the PREFERRED and ONLY option, will require a well-thought out and well-planned strategy that remains as fluid as the social media platforms. This is a challenge and we need YOU to support us building a positive and enduring MiMM platform and brand in the minds of the general public.

ENFORCEMENT OF INTERNATIONAL MEDIATION SETTLEMENT AGREEMENTS

Adv Ettian Raubenheimer

Although the consensual settlement of international commercial disputes was the preferred method of dispute resolution before the second world war, arbitration became the method of choice after the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, also known as the New York Convention, came into operation in 1959. It currently has 170 signatories and is widely regarded as the most successful commercial convention.

Due to increased commercial complexity, costs and duration, commercial actors have been searching for an alternative solution.
Mediation of commercial disputes has been practiced for quite some time in the United States and the Government submitted a proposal to the UN for the creation of a convention for the Enforcement of Settlement Agreements resulting from mediation in 2014. This proposal eventually culminated in the United Nations Convention on International Settlement Agreements Resulting from Mediation, better known as the Singapore Convention, which came into force on 12 September 2020 and has so far been signed by 55 countries.

The Convention is applicable to written international mediation agreements that was concluded with the aim of resolving a commercial dispute.
An agreement is regarded to be in in writing if its content is recorded in any form including electronic provided that it is accessible to be usable as a reference in the future.

Mediation is defined as a process in terms of which parties to a dispute endeavour to settle the dispute amicably with the assistance of a third person. This third person is not permitted to impose a solution on the parties.

Commercial dispute is not defined.
A mediation agreement is international when:

- at least two parties to the settlement agreement have their places of business in different States, or
- the State in which the parties to the mediation agreement have their places of business is different from either:

    the State in which a substantial part of the obligations under the settlement agreement is performed, or the State with which the subject matter of the settlement agreement is most closely connected.

Where a party has several places of business, the relevant place of business is the one closest to the dispute to which the agreement relates. If a party lacks a definitive place of business, the party's domicile is considered its place of business.

The Convention is not applicable where the settlement agreement was entered into to resolve disputes caused by:

- Consumer transactions for personal, family or household purposes;
- Family, inheritance or employment law;
- Settlement agreements aimed at resolving consumer disputes for personal, family or household purposes.

It is also not applicable where the settlement agreement has been approved by a court or if it was concluded during proceedings before a court and the agreement is consequently enforceable as a judgment of the courts of the particular State.

Where the agreement has been recorded as an arbitration award and is enforceable as such, the Convention is also not applicable.
Enforcement can occur in two ways. The parties can either apply for a declaration of enforceability with the competent authority or invoke the mediation agreement as a procedural impediment and a defence, proving that the disputed matter has been resolved.

For a settlement agreement to be enforced the following requirements have to be met:

- the agreement must be in writing and signed by the parties;
- the agreement must contain evidence that the agreement resulted from mediation, such as a signature from the mediator or a document signed by the mediator indicating that he or she carried out the mediation or an attestation by the administering institution.

The ground for refusal to enforce falls broadly into two categories, namely grounds that the parties may claim and grounds that a court may raise on its own initiative.
A party who wants to prevent the execution of the mediation agreement may rely on non-compliance with the formal requirements mentioned previously.

An opposing party may also oppose enforcement on the following grounds:

- a party to the settlement agreement was under some incapacity;
- the settlement agreement is null and void, inoperative or incapable of being performed under the law to which the parties have validly subjected it;
- the settlement agreement is not binding according to its terms or that it has been subsequently modified;
- the obligations in the mediation agreement have been modified or that they are not clear or comprehensible;
- granting enforcement would be contrary to the terms of the settlement agreement;

- a serious breach by the mediator of standards applicable to the mediator or the mediation, without which breach that party would not have entered into the settlement agreement; or
- the mediator failed to disclose circumstances that raise justifiable doubts as to the mediator's impartiality or independence, and such failure to disclose had a material impact or undue influence on a party without which failure that party would not have entered into the agreement.

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Courts have two grounds on which to refuse to enforce a mediation agreement:

- granting enforcement of the settlement agreement would be contrary to the public policy of the state including national security and national interest, and
- the subject matter of the dispute is incapable of being settled by mediation under the governing law of the nation.

The purpose of the Convention is to popularize mediation in the international commercial landscape. Time will tell whether this objective has been achieved. Preliminary reports indicate an encouraging move toward mediation in the international commercial sphere.