

# Conflict Management in the Family Field and other Close Relationships

## Mediation as a Way Forward

(2011) Nyhed  
180 sider Indbundet  
1. udgave 2011  
ISBN 978-87-574-2303-7

### Chapter 7.

## Mediation as a Process for **Healing**

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*Mediating the effects of sexual and physical abuse within religious institutions and the lessons that can be applied to mediating disrupted relationships.*

Can mediation be recognised in its own right as a valid and effective process to help people who have suffered a deep emotional trauma move forward with their lives? Can it be used as an agent for healing in situations involving people who have suffered deep emotional hurt through the actions of others?

It is rare for any dispute to come before a mediator without a significant emotional element in play. High levels of emotion are not just restricted to family law disputes; they can also be observed in most areas of conflict, including commercial and organisational disputes. Parties who have lost money or feel betrayed in commercial disputes can be overwhelmed by the emotions of loss, despair and rage. While it is often said that mediation is carried out in the shadow of the law (Mnookin & Kornhauser, 1979), it can also be argued that it is carried out in the shadows of the parties' emotions.

It is quite natural for people, at the focal point of their conflict, to feel strong emotions, emotions which usually dissipate once the core issue has been resolved. However, many people live with deep emotional trauma caused by events that are not related to the issue in dispute. Mediators might feel that a sudden outburst of emotion is caused by the issue under discussion, when in fact it might be symptomatic of a much deeper emotional malaise.

The issue for mediators and the mediation field is how to distinguish between emotions generated by the heat of the moment alone and emotions born out of a deep psychological trauma. At what point in the continuum of emotional disturbance and trauma does mediation, as a method of resolving practical issues, cease to be appropriate? Should mediation be denied simply because one or both parties is suffering from a pre-existing deep emotional trauma that has been reignited by a dispute?

Family and relationship breakdowns are a common cause of conflict in the community. Their prevalence exposes a significant section of the population to the traumas of separation. Many people in long-term relationships can, over time, become emotionally enmeshed. Not only is the ending of a relationship a traumatic event in itself, it can trigger a resurgence in any latent emotional wounds and traumas. These latent traumas can be the result of many factors, including the effects of the disrupted relationships of the parents of those experiencing such traumas.

It is ironic that, at the time when separating parties are required to decide extremely important practical issues such as where the children will live or how to divide the property, they are emotionally at their most vulnerable. Mediation can play a valuable role as an alternative to adversarial litigation, in helping people resolve these important practical issues.

This paper will examine the issues of dealing with heightened emotions in the mediation session, identifying deep psychological traumas, and assisting those who experience them to resolve disputes by way of mediation. It will do so in the context of claims of child sexual abuse by clergy in religious institutions. It will focus on the process of delivering an apology and offering assistance to the victims which will help them move forward with their lives. It will seek to consider transferable skills and approaches that can be applied to mediating family law disputes where one or both parties has a significant long-term emotional trauma.

In many respects, religious communities are like families. There is a hierarchy and a collective group mentality bonded by deep spiritual beliefs. The sexual abuse of young children within that community can have a devastating emotional impact, not just on the victim but on the group as a whole. Many victims of child sexual abuse complain that, not only are they emotionally damaged, they have also lost their connection to their religious community.

This abuse can have long-term effects on the young victim's ability to form and maintain relationships, and often eventually results in quite traumatising relationship breakdowns. Many such breakdowns are caused by the hidden effects of childhood sexual abuse. Much of this can be hidden, because many people do not disclose even to their partners that they have suffered this form of abuse, leaving its presence to go unnoticed — even with very effective pre-mediation conferences.

This paper's particular focus will be on mediating the apology and the provision of retrospective reparation by the church for abuse by the clergy. The examination will be from the perspective of the practising mediator, and will not focus on restorative justice procedures between the victims of sexual abuse and the perpetrator.

This topic will be looked at from three different but interconnecting perspectives. Firstly, it will explore some techniques and approaches that can be used by the mediator to prepare parties for the mediation, especially identifying and focusing on the role which heightened emotions play in the process. Secondly, it will consider the mediator's relationship with his or her own emotions, memories and desires, as well as the urge to understand and help, and examine how these influence the dynamics of the mediation session. Thirdly, it will explore

the process architecture of a number of differing dispute resolution systems that have been put in place by religious organisations and complainant groups to pursue or manage claims of sexual abuse.

*Techniques and approaches to manage the mediation session in a highly charged emotional context*

Mediating between parties who have suffered deep emotional trauma can present many difficulties and risks for the mediator. The onus is squarely on the mediator to assess the parties' suitability for mediation fully, prior to undertaking the session. The primary duty of the mediator is to do no harm. Mediating between victims of sexual abuse and religious institutions falls into this category.

These mediations have added difficulties, partly because the abuse took place when the complainant was a child and extremely vulnerable. There appears to be a common pattern to the way perpetrators groomed their victims. They generally targeted young boys and girls just prior to puberty or in early puberty; they focused on young children whose parents had a close connection with the church, thereby allowing them access to the children in the parental home. Their preference was to target the more spiritually inclined children, who were generally more trusting of religious figures. They kept well away from the more robust and streetwise children; the more spiritually inclined child is likely to be easily threatened and embarrassed into not making a complaint.

More often than not, the young victims were able to suppress these traumatic events for a number of years by simply getting on with their lives. Often the emotions would lie dormant until middle age, when long-term memories of traumatic events would begin to resurface. In the last few years, victims have also faced constant publicity of sexual abuse cases in the media. All of this has contributed to the re-emergence of the symptoms associated with the deep emotional trauma, and the shattering of their sexual identity by the original abuse. The issue for the mediator is how to manage these emotions sufficiently to allow a constructive meeting between the complainant and the religious leader to take place safely.

In some respects, mediating with people who have suffered sexual abuse is somewhat easier, in the sense that it can be readily assumed that the complainant has suffered a deep emotional trauma by the event. Therefore, the mediator is 'on notice', and can take the appropriate precautions, where in family law cases the presence of a deep emotional trauma can be masked.

The importance of a pre-mediation meeting with both the complainant and the church representatives cannot be underestimated. The aim is for the mediator to make a reasoned determination as to whether the complainant is emotionally capable of receiving some benefit from the mediated meeting, and to avoid re-traumatising the complainant.

The following are some techniques that can be used to assess the capacity of the victim to take part in the mediation. They attempt to identify how far the complainant is along the continuum of readiness to move forward with life. This is the key issue. However, it has two distinct parts to it. Firstly, have victims reached the point where they are ready to revisit the abuse through meeting the current head of the religious organisation? And secondly, are

they ready to move beyond the actual meeting with the current head of the religious organisation in question — and, if so, what might that ‘movement beyond’ look like? In being asked to focus beyond the mediation, victims’ capacity to disengage from the past is being tested.

There are two questions that can be helpful at this point. The first is to ask complainants to assume that the forthcoming mediation meeting turns out to be a success. They are then asked whether they are able to visualise sometime in the future when things might be better than they are at present, and, if so, what that would look like. The purpose of this question is to ascertain whether complainants have the capacity to look to the future. Some complainants say that they cannot see a future, and that they can only consider the prospect of suicide. In such situations, complainants are certainly not ready for a face-to-face meeting. Others, while struggling with the question, are able to turn their minds towards a future point. This is a good indication that they are sufficiently robust to at least consider the possibility that they can move forward with their lives.

There is some similarity between the purposeful framing of this question and the objects of solution focused therapy (de Shazer 1985). However, in cases such as those discussed here, framing is used more as an assessment tool to determine how the victim might cope with exploring the future. Over the years, I have trialled a number of forms of this question; however, in a heuristic sense, I have found that form of words to elicit the best response. (The question was adapted from a course in Dispute System Design with CDR Associates in Boulder, Colorado, 1994.) When designing a dispute resolution system for an organisation, it was suggested that the question be posed — *“if the system were to work well, what would it look like?”*

Another technique for assessing the emotional capacity of the complainant is to suggest, in the pre-mediation meeting, the following: “although you are a mature person and can think like a mature person, it is the  $x$ -year-old boy or girl (where  $x$  is the age at which the sexual abuse occurred) that will be meeting the religious representative”. I have found that victims’ responses to this question can indicate how far they have emotionally progressed. The purpose is not to get an answer from them, but to plant the thought in their minds, opening them up to a different way of thinking about themselves in relation to the forthcoming meeting. In fact, any answer they give at the time is not important. The most powerful questions a mediator can ask are ones that do not need to be answered.

I have found it helpful, at an appropriate time in the mediation session, to ask complainants how the  $x$ -year-old boy or girl is feeling at that moment. It often allows them to reflect openly on their progress. It also helps the religious leader to understand that, while the person sitting opposite them appears calm and rational, there is a fragile and emotional person within.

### *The apology*

There has been much written on how to make an effective apology (Schneider, 2000; Deutschmann, 2003). The most effective apology is one that is not prepared in advance. It is one that evolves out of a process of listening, and allows an emotional connection to form in the here and now of the session. If this can be achieved, then the words that follow often do

not automatically need to contain the actual word 'sorry'. The power comes from the emotional connection and energy that flows from the interaction between the giver and the receiver. It is the sharing of this emotional experience that gives the apology its healing force.

To help achieve this, it is important to prepare both the complainant and the religious leader for the mediation encounter. Many senior religious figures are of an advanced age, and have spent many of their later years in administrative positions. They can tend to take a somewhat academic or intellectual view, from reading the history of the abuse and the medical reports. A way of breaking down this intellectualism is to ask religious leaders not to prepare any formal apology in advance of the mediation. They are asked to sit quietly while complainants give their thoughts and feelings about how they feel at that particular moment.

Complainants too are requested not to prepare for the mediation. They are advised that the opening question to them at the beginning of the mediation session will be "what thoughts come to you about all of this, as you sit here today?" This is a deliberately open question. Most complainants at first struggle when trying to collect their thoughts and express their feelings. This allows church leaders time to find a connection with claimants before being asked to speak. At this point, the mediator tries to hold the space and to encourage the complainant to continue. When the mediator feels that the complainant has expressed him- or herself sufficiently, the mediator will turn to the religious leader and ask them to reflect on what has been said. It is often interesting to watch senior religious figures also struggle with their words, a struggle which forms the basis of a personal connection between the two. This emotional response from church leaders, if they allow themselves to properly engage with complainants, can often demonstrate a more profound sense of sorrow and regret than any formalised set of words.

#### *Mediators' relationship with their own emotions, memories, desires and understanding*

Parties in mediation who are suffering a deep emotional trauma require very sensitive handling by a mediator. It is not sufficient to have good pre-mediation structures in place and a good pre-mediation conference. The other essential ingredient is the mediator him- or herself. To undertake this form of work, mediators have to be really clear about their own emotional status, so that it does not exacerbate the parties' own emotional state. The mediator's presence in the room has as much impact as that of the parties.

A mediator is not an empty vessel. Mediators bring all their own life experiences and their own particular traumas into the room. We should not assume that we sit in the session passively observing the proceedings while occasionally drawing from our toolbox of skills to make interventions here or there. A mediator's emotions, desires and beliefs and worldview all have an impact on how s/he behaves in the session. It is important that we recognise this, and accept they mediators have these impulses, which influence their behaviour. This awareness allows mediators deliberately to let go of any of these attachments, so as to be totally present in the here and now of the session. It is important that mediators are able to create a safe space for the parties, without letting their own emotions and beliefs impinge.

So, how does a mediator suspend or detach from his or her emotional responses and desires, so as to remain totally attuned to both parties' reactions and emotional status?

Wilfred Bion (1967) looked at this issue from the perspective of an analyst. He suggested that, to be fully present in the here and now of the session, the analyst had to detach from his/her memories, desires and the need to understand what was happening at a particular point in time. The problem, he said, was not having memories, desires and an interest in understanding what was happening; we all have these urges, and he suggests that it is not about forgetting them. What is required is a deliberate act of letting go of an attachment to such urges within the session. The problem with having memories, desires and a need to understand is that they occupy a space in the mind of the therapist that should be left empty for something new to enter.

Bion drew on Freud's elegant and insightful passage on the techniques of analytic practice, where he suggested the state of mind that physicians who wish to practice analysis should develop:

*"It consists simply in not directing one's notice to anything in particular and in maintaining the same 'evenly-suspended attention' (as I have called it) in the face of all that one hears. In this way we spare ourselves a strain on our attention which could not in any case be kept up for several hours daily, and we avoid a danger which is inseparable from the exercise of deliberate attention. For as soon as one deliberately concentrates his attention to a certain degree, he begins to select from the material before him; one point will be fixed in his mind with particular clearness and some other will be correspondingly discarded, and in the making of this selection he will be following his expectations or inclinations. This however, is precisely what must not be done. In making the selection; if he follows his expectations he is in danger of never finding anything but what he already knows; and if he follows his inclinations he will certainly falsify what he may perceive. It must not be forgotten that the things one hears are for the most part things whose meaning is only recognised later on" (Freud, 1912, p. 432).*

What Freud is suggesting is that therapists allow themselves the space to experience the new, and do not try to understand it until after the experience has been completed. Bion has suggested that if we over-invest in our need to understand what is happening, or become attached to our memories and our desires, it can prevent us from sharing the parties' experience. He postulated that people only grow or evolve through "experiencing an experience" (Grotstein, 1981). He also recommends that we should be open to allowing ourselves to be surprised (Havens, 1989). Freud suggests that it is important that we can fully experience what happens in the session before allowing our thoughts to crystallise. Both Freud and Bion, in effect, recommend de-cluttering our brains, so that there is space for the new to enter. It is by allowing this empty space to be filled with what is actually happening in the here and now of the session that triggers the mediator's intuition response. This response can aid the mediator in deciding what to do next in this session (Rooney 2007).

Theorists such as Zariski (2010) suggest that theory, rather than intuition, should inform the mediator's view of any situation. However, in mediations involving people with deep emotional stress and high levels of conflict, it is important for the mediator to be fully

present to monitor proceedings at each moment. The mediator must be ready to respond instantly. The pre-mediation conference is the opportunity to question and test the complainant in preparation for the mediation session; theory can help us make sense of what happened in that session. However, once the mediation session starts, it is the mediator's prime role to hold the space and respond when required. Our response has to be instantaneous and relevant to what is occurring at each particular point in time. While mediation theory might frame a lot of what we do, it can unwittingly distract us if we stop to ponder the theoretical implications of what is happening before us. Theory is best if it used as a post-mediation reflective tool.

Our memories and desires can seem so natural to us that we can assume that anyone who does not see the world as we do must be somehow wrong in their thinking. We can make the assumption that our worldview and our observations are valid and correct. This is referred to as naïve realism (Ross and Ward 1996, Zariski 2010).

Naïve realism is based on the premise that some people believe that they see the world clearly, and that those who do not share their view see the world through biased eyes due to incorrect beliefs. It is therefore important to be aware of one's own sense of realism, and that it might be divergent from others'. Again, it is not problematic to have differing perceptions of reality; what is problematic is if we become attached to our own worldviews.

If mediators begin to focus on their own emotions and desires, or start assuming that the parties see the world as they see it, they then create obstacles which prevent their being fully present in the here and now of the session.

Other factors can also influence how we behave in the mediation session. People in the helping professions (such as therapists and mediators) can be drawn to these professions by the natural desire to help people. While this desire is admirable, it can have the unintended consequence of distorting our behaviour as professionals. Salzburg Wickenburg (1970) addresses some of these issues in her advice to social workers. She warns against this desire to help, and suggests that it must be tempered by what is realistic and beneficial to the patient. She submits that this need to want to help can lead to social workers seeking approval from the patient, in being reassured that they are providing something of value. The focus thereby moves away from the patient's needs to those of the social worker. This can blur the professional distance that social workers, mediators and other professionals need to maintain when dealing with patients or clients, especially those who have suffered a deep emotional trauma. It can lead to a more directive or parental stance, resulting in a more interventionist style.

The mediation of an apology in sexual abuse claims is enhanced by the ability of complainants to express their thoughts and feelings freely, and the openness of church leaders to receive them. The mediator's role is to create a safe place and to hold that space, allowing such an interchange to occur. The ability to be in the moment and to observe both the claimant and the church leader clearly is extremely important. This helps determine when to turn to the church leader and ask for his/her thoughts on what the complainant has said. The interchange between the complainant and the church leader that follows forms the basis of the apology.

### *Process Architecture*

Preparation is always extremely important for the success of a mediation, especially for parties and disputes with the potential for a highly-charged emotional exchange. All issues leading up to the mediation need to be considered and designed so as to support not only the parties but also the mediator.

A mediation does not typically take place in isolation; there is always a process leading up to the first mediation session, which in turn gives the mediation a context. This context is a construct of the drivers that led the parties to choose mediation, the dominant mediation model that is agreed upon, the jurisdiction within which the mediation takes place and which any agreement will be subject to, and other factors including the choice of venue, the presence or otherwise of legal representation and support personnel. The mediation takes place in the shadow of these factors, all of which influence what happens in the face-to-face session.

This influence has a subtle but significant effect on the parties and the mediator within the mediation session. It is similar to the influence that the architecture of a building has on its inhabitants. The shape, design and ambience of a building and the effects of light and shade have an impact on those who inhabit the building. In much the same way, the architecture and shape of the context or process within which the mediation takes place has a direct impact on the behaviour of the parties and the mediator.

It is therefore important fully to consider the design of the process architecture that is built around the mediation session, particularly where the parties have suffered deep emotional trauma. The underlying process architecture is more than just carrying out an effective pre-mediation meeting.

### *The Process Architecture of the "Towards Healing" process*

The sexual abuse of young children by religious clergy can result in significant psychological damage and emotional trauma, which can impact on children for the rest of their lives. Any attempt to mediate between victims and current church authorities has to proceed with caution. An example of a process architecture that is supportive of both the parties and the mediator is one set up by the Catholic Bishops of Australia in 1996 to resolve complaints of sexual abuse made against the church. This process has been called "Towards Healing", and has been refined and developed over the past 16 years (Parkinson 2002, Rooney & Ross 2007).

The essential feature of the architectural design of this process is that it is voluntary, and open to anyone who wishes to make a complaint of sexual abuse and who is willing to enter the program. Its primary focus is to deliver a pastoral response to complainants without them needing to prove legal liability.

Other features include the creation of a Professional Standards office in each state of Australia to manage all complaints of sexual and physical abuse. Although this is a church body, it is designed to be one step removed from the clergy about whom the complaints are made. The director of each Professional Standards office is required to advise complainants

of their rights to make a formal complaint to the police or to take civil action against the church. The director is also required to assist complainants in contacting the police, and to act with concern with respect to their well-being in cases where they choose to pursue civil claims against the church.

If a complainant chooses either to go to the police or to commence legal action, then the process is suspended until such action is completed. The Towards Healing process is specifically designed for people who do not want to or are not able to mount a successful legal case for compensation. It does not depend on the complainant proving that the church is legally liable for the abuse. All that is required is, firstly, that there is evidence that the complainant was actually present at the time of the alleged abuse, and that on the balance of probabilities the alleged abuse occurred. Even in situations where, for historical reasons, the complaint cannot be verified because of the passage of time, there is still provision for a pastoral response from the church.

The Towards Healing process is a good example of a process architecture that has a direct impact on a face-to-face mediation session. The most important part of the design is that the complainant has direct personal contact with the director of the Professional Standards Office throughout the investigatory part of the process. The complainant is given personal assistance in progressing the complaint, and can be provided with immediate counselling at the expense of the church if in emotional distress.

In many cases, complaints can be quickly accepted in a short space of time, especially where the accused has a well-documented history of abuse. There can sometimes be delays in the assessment process, due to lack of records and other factors. At all times, the director of professional standards maintains personal contact with the complainant. There is a requirement on the director to limit the number of times complainants have to relate their story.

For the mediator, this process can be of great value. By the time the complaint is ready for mediation, the director has built up an understanding of the complainant's needs and fears. The mediator is then able to build on that work. In difficult and highly emotional cases, much of the groundwork in preparing the complainant for the session can be undertaken, including the provision of significant amounts of therapy prior to the face-to-face session.

The other advantage is that the Director of Professional Standards can work with bishops and heads of religious organisations who will be present at the face-to-face meeting. The director can help church representatives to prepare for the mediation session by getting them into the right frame of mind for the meeting.

For victims of sexual abuse, it is important that not only do they get an apology but they also get something that is a real and tangible representation of acknowledgement — usually money, or some direct in-kind assistance. In a family law separation, both parties also require something that is a real and tangible representation of their contribution to the relationship. The true value of someone's contribution to a relationship over many years or the loss caused by being sexually abused as a child is incalculable. Therefore any attempt to perform such a calculation can trigger a significant emotional response.

The Towards Healing process attempts to address this issue by using the word 'reparation' rather than 'compensation'. This is an attempt to acknowledge that no amount of money can repair the damage caused by this form of abuse. It seeks to differentiate itself from a court process that is simply designed to measure a loss. The prime aim of Towards Healing, as its name implies, is to help victims move forward with their lives. The Towards Healing process defines reparation as:

*“ A monetary sum or some form of in-kind assistance that is directed to the provision of practical means of support in order to promote healing for the victim. It is provided by the church authority as a means of recognising the harm suffered by a victim of a criminal offence or civil wrong, and as a tangible expression of the church authority’s regret that such abuse occurred. Reparation may be offered independently of whether the church authority is legally liable.”*

Paragraph 41 of the the Towards Healing principles and procedures document outlines the outcomes that relate to the victim. This section provides :

*“ 41.1 in the event that the church authority is satisfied of the truth of the complaint, whether through admission of the offender, a finding of a court, a penal process under canon law, an assessment under these procedures or otherwise, the church authority shall respond to the needs of the victim in such ways as are demanded by justice and compassion. Responses may include the provision of an apology on behalf of the church, the provision of counselling services or the payment of counselling costs.*

*41.1.1 financial assistance or reparation may also be paid to victims of a criminal offence or civil wrong, even though the church is not legally liable.*

*41.2 a bishop or leader must seek the advice of the consultative panel in determining how to respond to the complaint.*

*41.2 and the church authority may seek such further information as it considers necessary to understand the needs of the victim, including a report from a suitably qualified and independent professional concerning the impact of the abused on the victim. Such a report will be at the church authority’s expense.*

*41.3 the facilitation shall be the normal means of addressing the needs of the victim.”*

These protocols are built around the facilitative or mediation process, with a pastoral approach as its key driver.

There are a number of other approaches aimed at resolving sexual abuse claims against religious institutions. Firstly, there is the traditional legal approach, where complainants instruct lawyers to represent them in claims for damages against the church. In many of these cases, lawyers are happy to advise their clients to work through the Towards Healing process because it offers a without prejudice opportunity to resolve the matter quickly, as well as allowing clients to have face-to-face meetings with religious leaders as a way of obtaining some personal and emotional closure. If complainants are not satisfied with the

outcome of the Towards Healing process, they can still commence a civil action for damages against the church.

However, there are many lawyers who understand their duty to act in the best interests of their clients to exclude opportunities to obtain a personal apology from a religious leader. This group tends to see the lawyer's duty as limited to maximising the compensatory dollar return to their client. They often see the face-to-face apology as an attempt by the church to mitigate its own losses by providing some form of on-the-spot healing, and take the attitude that, the longer their client is able to remain in a distressed state through the negotiation period, the better their dollar return. They therefore resist any attempt at a face-to-face apology.

The process architecture of this approach remains adversarial and accusatory, and often includes the use of the media as a means of putting negotiation pressure on the church's representatives. The negotiations hinge only on the strength or otherwise of the complainant's legal case. The claims are often drawn out over a longer period of time, with significantly higher legal costs. This process architecture has a marked effect on the mediation session, with some lawyers keeping the client well away from the church leader and, in some cases, away from the mediator.

Some lawyers request access to the Towards Healing process as a vehicle for negotiation, but do not want a face-to-face meeting nor any pastoral element other than monetary compensation. This issue was dealt with in a recent review of the Towards Healing program by Professor Patrick Parkinson from the University of Sydney. In his second review in 2010, Professor Parkinson made the following comments with respect to the two approaches for dealing with victims of abuse:

*" The first is the legal approach-both to complaints and accused. The strengths of this approach are the emphasis on due process including proving claims to a requisite standard, assessing compensation fairly in accordance with the objective gravity of the harm caused, and treating like cases alike.*

*The second is the pastoral approach of giving a compassionate response, seeking to promote healing for the victim, and to the extent that it is possible, bringing about some level of reconciliation between the victim and the church, while also being fair to the accused persons. This also has great strengths. It does not aim to offer a quality legal approach to the resolution of civil claims for compensation, but rather to engage in restoration and healing, acknowledging within that the importance in many cases of making reparation is a tangible expression of sorrow and also as a means, but not the only means, of promoting healing for the victim. The pastoral approach also needs to address properly the requirements of due process for the accused."*

There is a deliberate separation between the Towards Healing process and formal legal claims for compensation. If the complainant does not participate directly in the process, then by definition, it is not a Towards Healing case. However, even within the Towards Healing protocols there have evolved two different variations with respect to the process architecture for negotiating the amount of reparation.

The traditional approach is to provide the opportunity to deal with an apology and a resolution of the reparations issue at the one mediated meeting. This process proceeds along lines of a welcome and introduction by the mediator, the opportunity for the complainant to express his/her current thoughts and feelings about what has happened and where s/he would like to get to in the future, and a personal response from the church leader. There is then a break, followed by a negotiation to consider a fair and reasonable sum of money to represent a reparation. The parties' lawyers are usually in attendance, and take part in both the apology stage and the negotiation for the payment of reparation. These meetings usually take between three to four hours; in situations where final agreement on the reparation has not been completed, offers are usually left on the table for a number of weeks for parties to reconsider their positions.

An alternative approach favoured by some directors of professional standards is to have the negotiations with respect to the amount of reparations resolved by arm's-length negotiation before having the face-to-face pastoral meeting. If and when that agreement is reached, the face-to-face meeting is scheduled for the formal apology. The stated reason for this approach is that it avoids a situation where a complainant feels let down after the apology, particularly when the amount of reparation does not meet what s/he considers to be an adequate response.

While these two approaches both fall within the context of the Towards Healing protocols, they have a different effect on the dynamics of the mediation, as well as on the parties and the mediator themselves.

#### *Separating the apology from the calculation of reparation*

An example of a successful mediation program in which the apology was separated from the payment of reparation was the Goodwood Orphanage Program, developed by the Archdiocese of Adelaide and the Sisters of Mercy. The Goodwood Orphanage was set up in Adelaide in the early 1900s by the Sisters of Mercy. During the 1950s and 1960s, the orphanage exhibited a culture (or process architecture) of discipline, regimentation, corporal punishment and deprivation. This paralleled the post war culture that existed in Australia at the time. Two teaching nuns were appointed to live with and educate 100 orphans, 24 hours a day and seven days a week. Many of these orphans were British child migrants sent to Australia after the Second World War.

Over the last two decades, there has been a growing number of complaints from those orphans about the physical and emotional abuse they suffered at the orphanage at that time. The complaints included harsh and excessive physical punishment, bedwetting programs that involved ritual humiliation of the children, poor food, lack of the provision of a proper education, forced unpaid labour and the general lack of Christian love and compassion.

The archdioceses commissioned a study into what would have been considered a proper level of education and proper care practices for the time. Each complaint was measured against those standards, and when it fell below that general standard, a set amount of reparation was offered for each claim. The decision as to whether the care fell above or below that standard was referred to an independent lawyer for assessment. As with

Towards Healing, the process architecture of the Goodwood program had at its heart a pastoral response. This was achieved by providing an additional amount of money for extra services, provided the complainant agreed to a face-to-face pastoral meeting. The aim was to encourage the orphans to engage in the pastoral part of the process. At first, a small number of people took up this option. However, as the word spread from those who had experienced the mediation process and received the personal apology, more chose this option.

Each claimant knew in advance that his/her claims had been accepted, and knew the amount of reparation which would be received. The meeting provided an opportunity for claimants to give their personal accounts of what had happened, and to allow the current Sisters of Mercy to express their personal regret and sorrow. These meetings often ended in an emotional release, involving tears and hugs.

In a sense, the program worked because the Goodwood protocols contained an element of uniformity that reflected the culture of the institution at the time. The protocols effectively paralleled this, by looking at the levels of abuse in a group sense that reflected the shared institutional suffering of the orphans.

However, claims of child sexual abuse by members of religious orders are unique to each victim. In some sense, they lack the uniformity of the institutional abuse that occurred in the orphanage situation. For example: some victims suffered horrendous sexual abuse over long periods of time, yet through their personal coping mechanisms were able to cope with life reasonably — notwithstanding retaining a deep emotional scar. Others, whose abuse could be described as occurring at the lower end of the scale, suffer hugely disrupted lives through the deep emotional scarring of the event. It is thus much harder to characterise victims into groupings without appearing overly callous.

Negotiating the reparation package separately from the apology tends to put a focus onto a comparative mathematical exercise. It can descend into an exercise of comparing levels of abuse. However, combining the apology and the monetary negotiation provides a greater visible link between the two. Often religious leaders will be so moved by the interaction surrounding the apology that they will draw deeper into their financial reserves to assist the complainant — more than they would otherwise have done in the standard commercial arm's-length type negotiation.

The writer has experienced a situation in which two cases of child sexual abuse by clergy were resolved on the same day. The levels of abuse and the effects on both victims were very similar. The first was resolved under the Towards Healing protocols, with a personal apology given by the head of the religious organisation. The process took three months to set up from the first complaint. The reparation was 20% higher than what would have been the normal amount of reparation, mainly because the religious leader was so moved by the complainant's experience.

The second matter was the resolution of a class action of twenty claimants brought by a lawyer. They each received 20% less than the Towards Healing complainant. In addition, each of the claimants had to pay five times the legal costs to the lawyers than the legal costs

paid by the Towards Healing claimant. The class action took two years of bitter negotiations, and resolved without any formal face-to-face apology. This is one example of where the non-adversarial Towards Healing approach delivered a larger monetary package to the claimant, in addition to all the benefits associated with receiving a personal apology.

The difficulty with negotiating the reparation package first is that it can leave the more pastoral aspects of the process and the apology as simply a postscript. It can have the effect of downgrading the apology to a mere afterthought. Combining the apology and the negotiation for reparation in the one mediation session is a more holistic approach. It allows for a much more dynamic interaction to occur between the parties, and establishes a direct link between the apology and the reparation which stand or fall together. This creates a lot more pressure on mediators; however, if it is handled well by the religious leader, it can open the door to a greater level of experience and, in many cases, deliver a more profound apology.

The mediation of claims of sexual abuse has to proceed with caution. At all times, it has to be assumed that the victim has suffered some deep psychological impact that will have an effect on the process. All structures that are put in place to bring the victim and the church authority together have to have a process architecture that is supportive of both the victim, the church authority and the mediator.

### *Summary*

The presence of deep emotional scarring and heightened emotions by a party in a mediation creates unique challenges, both in deciding whether to mediate and — if so — how to mediate. This is applicable whether the issue is the division of matrimonial property, access to children in a family law dispute, or the apology to the victims of child sexual abuse within religious institutions.

The decision whether to mediate must be made carefully. The process of deciding must include continual assessment and monitoring of the party or parties. It is also important to encourage active involvement by the parties in helping make the final decision whether to go ahead with the process.

In court-appointed mediations or mediation arising out of a government or private sponsored programs, it is important that there is sufficient flexibility in the process architecture of those programs to cater for people who suffer from deep emotional traumas. The Towards Healing process and the Goodwood Orphanage Program are two examples of a process architecture that is both supportive of the mediator's decision-making process and promoting the ownership of the process by the emotionally damaged party. Some family law jurisdictions have adopted less adversarial processes, particularly in determining children's matters. They include options for court-appointed mediation to be part of the actual decision-making processes.

Once the decision has been made, and it has been accepted by all parties that the mediation should proceed, then the onus is on the mediator to manage the facilitation in such a way to maximise the chance of a resolution without re-traumatising any party. The key to achieving

this rests with mediators' ability to detach from their own emotional state. This allows the parties uncluttered space to engage with each other. Mediators can benefit from having regular supervision, particularly with respect to recognising and then detaching from their memories and desires.

It is the mediator's ability to achieve a form of reverie that allows him/her to be fully aware and awake and attuned to the parties' individual and collective needs. This is the key for any professional who works with people who have suffered deep emotional traumas. It allows the mediator to form a connection with the parties in the here and now of each particular moment of the session. For the mediator, it allows a more heightened awareness, and thereby greater access to his/her intuitive thoughts. This connection helps the mediator to sense when and how to intervene.

Mediation has a place in resolving practical issues for people who are suffering an emotional trauma, whether as a result of being the victim of sexual abuse, or through the trauma of a relationship breakdown. However, mediators need to be at one with their own emotions, and have the support of the institutions that are involved in this challenging area of work.

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