

**Mediation: transformative by name, transformative by nature**

My participation in the Open Justice Mediation Project has served to re-affirm my belief in the importance of pro bono work in law, but I may have underestimated its particular benefit when it comes to mediation. Having worked briefly on the Criminal Justice Project as a volunteer last year, I had seen how vital pro bono work is for those convicted of a crime who have exhausted all other avenues of appeal. When I embarked on the mediation project, I was not sure how mediation would compare. Was it really that helpful or important in the scheme of things?

In the Open Justice Mediation Project, participants are split into small groups to work through the training together and practice various mediation skills to build a “mediation toolkit” that we then drew on for our final simulated mediations, which we undertook in pairs. The aim was to learn the skills to enable us to carry out a transformative approach to mediation with the hope that the parties would be able to take things forward and continue to work together after the mediation, as required. An important aspect of the training was to assess our existing skills against those required for a good mediator and to undertake a lot of role play in order to hone the new skills we needed!

We role played as both mediators and clients in a variety of practice scenarios, including a business-to-business dispute, a local community dispute and an employer/employee dispute. In each dispute, the question inevitably arose (often when things were at an impasse), “What would happen if this went to court?” The response was usually that the parties could not afford it, did not want the stress of it, would not be able to continue their relationship, etc. On reflection, this brought home to me why pro bono mediation has such an important role. While mediation is fairly widely available, not everyone can afford to pay for it. There are many scenarios where avoiding court is an advantage and where there would likely be a power imbalance between the parties in court, with all the social (in)justice implications that brings. This is particularly true of employment and family disputes where there is often a need for the parties to be able to continue their relationship going forward. This is where the transformative approach of mediation really comes into its own.

Another thing I had underestimated about mediation is the key difference in terms of professional identity between a mediator and a lawyer, namely that a mediator must be completely impartial. This was something that my team grappled with regularly throughout our training and practice, probably because as law students we had been programmed to be on the side of our client. I wrote in my journal in January, “I need to find a way to be impartial, even when I feel one side is being unfair to the other. Think about empathy for both sides; why does the client feel the way they do?” (Perks, 2023). My team discussed and reflected on this before our final simulated mediation and, with their help, I was able to successfully overcome this difficulty. Interestingly, I could sense the clients responding positively to the atmosphere of fairness and balance we created in the mediation. Impartiality is difficult to achieve but so very important to a successful outcome for the parties and it is vital that they feel fairly treated and not judged. Overall the mediation project has been a thoroughly amazing learning experience in which I have discovered so much about myself; one could say, quite transformative!

**(599 words)**

### **REFERENCE LIST**

Perks, S. (2023) ‘*Extract 1*’, originally written 19<sup>th</sup> January 2023.