



# MINDFULNESS AND THE MEDIATOR

**Barry Winbolt**

## **Abstract**

References to 'mindfulness' in relation to mediation and dispute resolution are becoming increasingly common. As with any term we are constantly exposed to, there is a risk that 'familiarity breeds contempt' and that rather than understanding what the term means (and its potential benefits) we presume understanding by association and look no further. This article seeks to address this by offering some definitions, and then putting forward explanations of the reported benefits and applications of mindfulness. It moves from the general to the specific, converting a buzzword into an exploration from which mediators can draw informed conclusions. It also dares to suggest a course of action which mediators can follow to familiarise themselves with the practice of mindfulness, and so enhance their own development and that of their practice.

## **Keywords**

Mediator, mindfulness, mediation, increasing awareness

## **Some Definitions**

Mindfulness, as it is being discussed here, is a contemplative practice that encourages self-awareness, receptiveness to new information, and personal growth. It is of particular value to any professional group, such as mediators, that requires its members to cultivate a spirit of reflection and self-awareness in their continuing quest of personal development (Egan, 1994; Barsky, 2000; Lang and Taylor, 2000).

Mindfulness has been variously defined as "paying attention in a particular way: on purpose, in the present moment, and non-judgmentally" (Kabat-Zinn, 1994:4); "a deliberate, present-moment, non-judgemental awareness of whatever passes through the five conventional senses and the mind" (Riskin, 2012:635); and "enhanced attention to and awareness of current experience or present reality." (Brown and Ryan, 2003:822). In short, it "focuses our attention on the task in hand," (Germer, 2004:25). It is both a practice and a discipline; practice because it prescribes a set of techniques or habits, and discipline because it requires a certain attitude towards one's own conduct (Riskin, 2012; Brown and Ryan, 2003).



## **Mindfulness in Mediation**

The origins of mindfulness go back to the roots of Buddhist practice and beyond. Although this might evoke spiritual rather than more prosaic uses, it has been described as a "fundamental orientation towards life in general" (Fisher, 2003:1). There has been wide and growing professional acceptance and it is increasingly linked to professional development and practice in many spheres; of particular relevance here, Conflict Resolution (Smyth, 2011), and Mediation (Lang and Taylor, 2000; Fisher, 2003; Bowling and Hoffman, 2003). Riskin calls for mindfulness to be taught as a "foundational skill" in legal education (2012:639), Davis and Hayes who propose it as a "necessary component" of psychotherapy training (2011:204), and Reudy and Schweitzer, who say that mindfulness is a "critical component of the ethical decision process." (2011:73). While not all mediators will identify themselves with the legal profession or psychotherapy, all must be clear about their ethical standards (Moore, 2003).

Mediation is founded upon a dynamic set of professional skills, as such we can learn, develop and maintain the habits of practice which distinguish us as conflict resolvers. As any profession evolves, outdated habits and practices can be discarded in favour of ideas which prove to be more effective, and are more in keeping with the times. Mediation has learned much from other disciplines in recent years. It has moved on from the original prescriptive models to become more facilitative - less concerned about process and more aware of human potential - than was once the case. Mindfulness is compatible with this ethos. It is a practical way of building on or enhancing skills and habits which are already woven into mediation.

Mindfulness can be practiced in a moment-by-moment way – by focussing attention only on the task in hand – and in the form of meditative exercises which help re-educate the mind and promote a mindful disposition. Mindfulness is above all about potential. By making a conscious choice to train ourselves in habits of thinking we can learn to practice ways of being which will make us more effective in work and life.

## **Parties Benefit Too**

This article primarily discusses how mindfulness can be of value to mediators as an aspect of their personal development, and as an aid to enhancing performance (reflection-on-action and reflection-in-action [Schön 1983]). At the same time, it is worth noting that when a mediator adopts a more mindful approach, disputants can also benefit.

Mediators seek by various means to encourage mindfulness in the parties. Reframing, summarising, transforming of narrative, rhetorical questions are all intended to encourage reflection, offer a different perspective and foster insight and self-awareness. Mindfulness, as writers on the subject remind us (e.g. Fisher, 2003; Germer, 2004; Gethin, 2011), is the antithesis of the sort of mindless activity that provokes and maintains disputes in the first place. Jumping to conclusions, clinging to positions, refusal to listen, distorted and/or unchecked beliefs, prejudice... these are behaviours seen in disputants, familiar to any mediator, and which by various means we seek to challenge or change. It is not my contention that mediators should teach mindfulness to parties in dispute (though why not?), but they can model the behaviour that would benefit disputants (presence, paying attention, listening, focussing on one thing at a



time, etc.).

These attributes – familiar to and practiced by all mediators of course – can all be enhanced by consciously adopting a mindful approach to the task in hand. Thus, a mediator who strives to be more mindful in his or her practice might find that they indirectly benefit the parties they work with as well.

### **Increasing Awareness**

Mediators, who by definition "...seek to enhance their ability to be dispute resolvers by moving beyond knowledge and skills to deeper levels of engagement in their work" (Bowling and Hoffman, 2003: 4), have become in the last two decades more receptive to ideas drawn from the fields of counselling and human dynamics. This parallels a burgeoning interest in society – some might say a trend – of the value of self-awareness, particularly awareness of one's emotional responses and how these influence 'rational' thought and behaviour.

One of the signals of this trend was the concept of Emotional Intelligence (EI), popularised by Daniel Goleman in the mid-nineties (1996). He defined EI as a set of abilities which include self-control, persistence, and the ability to motivate oneself. Underpinning this was the notion of self-mastery. Understanding ourselves, argued Goleman, "speaks to (the) keystone of emotional intelligence; awareness of one's own feelings as they occur." (Goleman, 1996:46).

The surge of interest in EI provided a viewpoint from which the 'emotional and rational minds' were seen as partners rather than competitors. The term 'Emotional Intelligence' quickly became shorthand for a cluster of soft skills which should be fostered by anyone working with people. Fundamental to this was, of course, the idea that EI can only be developed through self-awareness – of our thoughts, emotions and responses – in order to grow and thereby develop the essential characteristics of mastery (Egan, 1994; Lang and Taylor, 2000). This echoes qualities that can be usefully cultivated as recommended by writers in the field of professional development (Schön, 1983; Bowling and Hoffman, 2003; Lang and Taylor, 2000).

### **Mediation Evolves**

As these ideas gained hold with the public and professions, the world of mediation was also shifting. From the original systematic and practical approach to mediation proposed by Moore, for example (Moore, 2003:15), to a transformative approach presented by Folger and Bush (1996), and even transcendent concepts embracing holistic principles and speaking of the mediator's personal qualities such as 'presence', 'authenticity', 'congruence' (Bowling and Hoffman, 2003), terms hitherto more familiar to counsellors than mediators. Even if these concepts would have been understood by the earlier authors, they made little or no reference to them as essential factors in the development of a professional who would aspire "through diligence, patience and intention... to make the journey to artistry." (Lang and Taylor, 2000:11).

### **The Value of Mindfulness for Mediators**

If there is not yet consensus, we are at least seeing general acceptance among mediators of the idea that development of the practitioner is as important as technique and therefore an essential element in



Continuing Professional Development (CPD). Mindfulness can be considered as a valuable contributor to this process (Roeser et al., 2012). To be mindful "stresses process over outcome, allows free rein to intuition and creativity, and opens us to new information and perspectives." (Langer, 1989). In 2003, in a chapter entitled Emotionally Intelligent Mediation, Johnson et al, used Goleman's EI framework (self- awareness, self-management, social awareness and social skills), to support their belief that "improving one's emotional intelligence is an essential developmental path for mediators." (Johnson, 2003:155)

The reported benefits of mindfulness now seem unequivocally established. In the last 30 years clinical and psychological studies have demonstrated both usefulness in personal and professional development and effectiveness as an aid to performance of people working in what might broadly be described as 'the helping professions' (Kabat-Zinn, 1994; Hülseger et al., 2013).

Regular use of mindfulness techniques which encourage focused 'in the moment attention' have shown a number of benefits relevant to mediators' practice and their professional development. Most of the sources cited in this article refer to these benefits explicitly. Examples listed by them include:

Heightened self-knowledge  
Enhanced self-regulation (of emotions)  
Loosening of attachment to outcomes  
Greater clarity of thought and action  
(Brown and Ryan, 2003)

Improved self-control  
Greater objectivity  
Enhanced flexibility  
Better concentration and mental clarity  
Emotional Intelligence  
Increased compassion, kindness, acceptance  
Increased ability to manage distractions  
(Davis and Hayes, 2011)

Reduced stress and anxiety  
Improved job satisfaction  
Reduced emotional exhaustion  
Emotion regulation  
Burnout prevention.  
(Hülseger et al., 2012)

Other authors mention benefits which are less tangible but no less beneficial; increased spirituality, self- acceptance, relationship with food (Kriteller, 2003); relationship management, habits of mind,

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increased empathy (Roeser et al, 2012); enhanced awareness, managing of rumination, improved self-care and psychological wellbeing (Hutchinson and Dobkin, 2009).

The lists above almost read like a checklist of desirable mediator qualities. Consider, for comparison, Lang and Taylor's six Hallmarks of Artistry:

Attention to detail: Responsive in the moment

Curiosity: Open to new perspectives

Exploration and discovery: Not bound by limiting assumptions

Developing and testing formulations: Holding on tightly, letting go lightly

Interpretation: Resilient and flexible

Patience and vision: Balanced between process and outcome.

(Lang & Taylor, 2000: 24-5)

Since reflection is, or should be, a regular part of a mediator's repertoire, it is then a small step to encourage a more mindful disposition in oneself, with a view to enhancing both one's practice and personal wellbeing. Lang and Taylor say that for a mediator to move "from the ordinary to the unique... the conventional to the innovative", it is essential to learn how to reflect (Lang & Taylor, 2000:120). Mindfulness is a way of deepening that process and developing creativity and bringing vitality and fluidity to critical reflection (Nugent et al., 2011).

## **Stress and Burnout**

So far this article has considered mindfulness for its contribution to mediation practice; working mindfully helps mediators to become better at what they do. There is another aspect which is also of value.

If there is one area in which the practice of mindfulness stands out as a core technique it is in stress reduction and psychological wellbeing (Delmonte, 1998; Kabat-Zinn, 1994; Benson, 1998; Brown and Ryan, 2003).

Mediation can be emotionally demanding for practitioners. Those working in 'people-centred' occupations, mediators among them, "face emotionally charged encounters, and they need to manage their emotions as part of their jobs." (Hülseger et al., 2012:311).

Mindfulness is one of a range of techniques – such as Tai-Chi, Yoga, Chi Quong - which are recommended as aids to stress management and improved performance at work generally (Grossman et al., 2004; Hülseger et al.,2012; Walsh and Shapiro, 2006). The practice of mindfulness techniques is also specifically recommended for its therapeutic benefits with depression, anxiety, and other mental health problems (Segal et al.,2013).

Practitioners therefore could and should take note of anything that provides a way of managing the stresses and vicissitudes of business and working life. Adopting a more mindful approach not only helps mediators manage the process they are engaged in with disputants, it also increases personal resilience in the face of these inevitable pressures.

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## How to be Mindful

Mindfulness refers simultaneously to a state of mind, to behaviour, and to an attitude. If this seems at first glance confusing, then consider this. One can be attentive (state of mind), at the same time pay attention (behaviour), and at the same time cultivate attentiveness (attitude).

The ability to be mindful – to pay attention to something in such a way that distractions and intrusive thoughts are excluded – is an innate capacity of the human mind. As such there are countless opportunities to be mindful in our everyday life (Brown and Ryan, 2003; Smyth, 2012). It is therefore relatively easy to deliberately exercise this ability by focusing on discrete activities as we go about our daily lives. Examples given by the various authors on the topic include such mundane activities as housework, listening, walking, taking a shower, cooking, interacting with others, even, in one study on how mindful attention increases enjoyment, eating chocolate (Brown and Ryan, 2003).

For mediators wishing to cultivate a more mindful approach to their work it is therefore a simple first step to become more mindful generally. Deciding to become more fully aware of something as we do it – "zero in on the sight, sound, smell, taste and feel of these activities" (Tartakovsky, 2012) – and practising the habit, starts the gentle process of re-educating the mind into focussing and paying attention.

One of the initial effects of this is that one becomes keenly aware of the 'monkey mind' – the continuous jumping of the thought from one point to another – so that we can begin to make choices about how we keep it under control (Kristeller, 2003). The uncontrolled thoughts that continually tumble into the mind one after another are not thinking at all; real thinking can only happen when we can use our mental energy "to guide us rather than to tyrannise us." (Kabat-Zinn, 1994: 9)

While at first this can be a bit of an effort, with practice it can become habitual and automatic (LeShan, 1974; Williams and Penman, 2011, Crossland-Thackray, 2012).

Noticing one's experience fully means being consciously aware of one's thoughts, feelings and sensations as they occur, without judging. This is of course a challenge; mindfulness requires commitment and engagement from anyone hoping to derive benefit from it (Williams and Penman, 2011). In order to adopt any course of action consistently, one first has to make the promise to oneself: "I advocate commitment to a practice that develops being." (Hoffman, 2003:277). With practice one should find that doing things mindfully becomes habitual and absorbing, that concentration improves, and intrusive thoughts become less frequent. The beauty of this first step is that it is accessible, and opportunities to take it abound.

## The Proof of the Pudding...

Mindfulness is not a destination. The aim of mindfulness is that we stop, tune in to where we are, become aware of our experience in the present moment, nothing more. Therefore, there is not some ideal state to be attained, there is no specific insight nor understanding to grasp, and no 'right way' to go about it. In a world where we are obsessed with getting it right or having success, the concept of mindfulness (or any contemplative practice), seems odd. But it is not about doing, it is about being. That is all.

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This is an elusive point which can best be clarified when we realise that "the best way of getting



somewhere is to let go of trying to get anywhere at all." (Kabat-Zinn, 1994:16)

In a world where we so often expect a 'result' it can seem odd that a practice that requires a specific attitude, discipline, effort and engagement doesn't actually deliver an immediately measurable result. This is why it takes practice at doing nothing and observing, witnessing our own experience, paying attention to our thoughts, feelings and sensations without – and this is the essential point – judging, evaluating or expecting.

Thus, the proof of this pudding is not in the eating (in the sense that something like hunger is 'satisfied'), it is more in experiencing the pudding (savour, smell, appearance, texture, temperature, moisture...), and knowing that is all that is needed.

### **The Practice of Mindfulness**

It must be remembered that mindfulness involves all the senses, not just the intellect. Articles like this can introduce and to a certain extent explain the topic, but to really grasp mindfulness one must experience it (Fisher, 2003). Since mindfulness involves observing experience rather than thinking about it (analysing, evaluating or judging it), to be mindful means minimising intellectual activity. If mindfulness is discussed only at an intellectual level rather than practiced experientially it will not be understood (Hutchinson and Dobkin, 2009).

In my conference lectures and training sessions I frequently demonstrate this by asking those present to engage in a very brief guided mindfulness exercise. This involves simply focussing on their experience (I always start with breathing) to focus the mind. This generally produces a marked effect in individuals and a change in the atmosphere in the room. Feedback from this exercise over the past 20 years has shown me that even the sceptics realise that we can markedly change our 'state' very quickly and that this helps clarity of thought, concentration, problem-solving and energy levels. There is a certain irony in that a two-minute exercise carries more weight in terms of understanding the subject than several hours of explanation by an 'expert'.

### **Conclusion**

Mindfulness is a naturally occurring capacity but not one which most of us use consciously. In this article I have suggested that choosing to work more mindfully can benefit mediators in their own development and in their day-to-day work with parties in dispute. It is further suggested that the benefits of such an approach are not limited to the mediator, and can also help the process of mediation as well as the disputing parties through modelling of the mediator's attitudes and behaviours which they generally lack themselves, at least while they are in dispute.

In addition, the benefits of mindfulness contribute to personal autonomy, resilience, stress management, anxiety reduction and spiritual growth, as well as general psychological and physical wellbeing.

Mediators wishing to become more mindful in their work are advised to start by examining the underlying assumptions that they bring to their work. Mindfulness cannot be considered as some sort of 'bolt-on' or technique. We have first to understand who we as mediators and to know what truly motivates



and inspires us. Combined with the will to do better, this is what separates those mediators who aspire to artistry, from the rest.

It must be remembered that, in common with other aspects of mediator behaviour, mindfulness requires engagement of all the senses. Practitioners are advised to avoid over-intellectualising their study of the topic, and to simply try it. Understanding of mindfulness can only be fully imparted through 'learning by doing'. Mindfulness is above all about potential. Making a conscious choice to train ourselves in habits of thinking can help us escape the trap of automaticity and enable us to have access to the full range of our conscious and unconscious possibilities. To paraphrase Jon Kabat-Zinn, this is simple, but not easy.





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**Barry Winbolt MSc** is a trainer, mediator, psychotherapist and writer