Read the book? Seen the movie?
50 Shades of Evaluation

With Prof. Nadja Alexander

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Overview

• Evaluative mediation approaches within the meta-mediation spectrum
• 2 evaluative models: expert advisory and wise counsel
• Opportunities and risks
• Evaluative and facilitative mediation compared
• What does an evaluative mediator do?
Mediation Meta-Model

INTERACTION DIMENSION

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<th>INTERVENTION DIMENSION</th>
<th>PROCESS</th>
<th>INTERVENTION DIMENSION</th>
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<td>Settlement Mediation</td>
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<td>Tradition-based Mediation</td>
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Assumptions

Facilitative

• Parties are best placed to solve their own conflict
• Parties’ interests are paramount for resolution
• Direct communication between parties
• Parties likely to implement an agreement they create
• Parties satisfied if involved in process
• Duty of impartiality prevents a mediator advising
• Aim: conflict resolution

Evaluative

• Party autonomy means choice
• Parties (with lawyers’ advice) can make rational choice to protect their vulnerability* with expert mediator OR seek guidance from wise elder
• Mediator is well placed to offer advice
• Mediator is well-placed to identify suitable solution
• Legal form of outcome will maximise enforceability and implementation
• Aim: dispute settlement

*Note: The asterisk indicates a condition or additional consideration relevant to the context.
What’s the aim of your mediation?

- Positions (Legal)
- Interests
- Values
- Identity
50 Shades of Evaluation

- Verbal
- Non-verbal
- Procedural/Structural
- Environmental
- Structural
- Intensity of intervention
More Shades ...

• Providing information
• Expressing an opinion
• Advising
• Being critical or judgmental
• Acting as agent of reality
• Offering a risk assessment
Remember ..

1. Evaluative mediation is an approach
2. There are variations on the evaluative approach
3. Look for a mediator with 50+ shades, i.e. someone who can move around the evaluative continuum (and beyond)
Remember ..

4. Evaluative mediators will work with lawyers to ensure the perception (and reality) of neutrality is maintained

5. Check your mediator has professional indemnity insurance which covers advice giving in a mediation context

6. Check your agreement to mediate permits an evaluative mediation model
Questions?