

All aboard the shuttle?

Pros and cons of the shuttle approach to family mediation

Family mediation practice is based on the use of the facilitative model, whereby the parties are encouraged to talk with each other with the assistance of an impartial third party.

While the facilitative model calls on the parties essentially to be able to see and hear each other, the complexities and often high conflict between the parties results in the use of shuttle mediation.

Shuttle mediation is often the structure used in family mediations concerning property matters or when lawyers are engaged, but what needs to be considered is whether shuttle mediation should be used as a matter of course. In shuttle mediation, parties are separated (which can occur in face-to-face, telephone or online mediation) and the mediator moves between the parties.

In face-to-face shuttle mediation, parties have staggered arrival and departure times so at no time does either party see each other. For telephone and online mediations, the mediator speaks with one party at a time and the parties are never on the telephone/online at the same time.

Advantages

The primary reason for a mediator to choose shuttle mediation is usually a concern for safety. It may be because a violence order is in place, ordering limited or no contact between the parties but allowing mediation around children or other family matters. This is not always the case, and often it is the mediator who determines that the parties cannot or should not be in contact with each other during the mediation, so the shuttle process is often chosen.

It could be because one or both parties have expressed concerns for their safety, or said that they feel intimidated by the other party. While a party can request shuttle mediation, it is up to the mediator to assess whether it should be used for that particular matter.

Another essential aspect of the mediation process is that the parties are able to express their needs and concerns in mediation without fear. Due to intimidation by the other party, many things are often left unsaid in a joint session, even though the mediator works impartially with all parties to give them a voice. For some parties, they feel unable to make statements in joint session because they don't have the same knowledge as the other party, or the other party has put them down previously and they are concerned that any statement they may make will be ridiculed or dismissed.

Shuttle mediation allows the parties to freely express their concerns and feel safe working through any issues, and also allows the mediator to assist the parties when necessary to obtain information or knowledge to help them deal with the matters in mediation. Emotions and conflict levels can be better kept in check in shuttle mediation and this can make the parties (and sometimes the mediator) feel more relaxed with the process.

Many parties in family matters will take positions or appear unwilling to negotiate on certain issues. A mediator needs to challenge the parties on their positions and work with them to identify the interests behind the positions, guiding them in negotiating with the other party. This is often perceived as being done more easily in shuttle mediation, as challenging one party in a joint session can be seen as the mediator losing their impartiality and the party challenged may feel that the mediator is biased against them. Shuttle mediation allows the mediator to conduct robust reality testing and allows the parties to express their concerns and interests in a confidential and safe environment, and thereby to move beyond positions they may have brought into the mediation.

Disadvantages

There are some disadvantages to shuttle mediation, rather than a combination of joint and private sessions, that need to be considered and weighed when choosing the most appropriate method of conducting the mediation.

The first disadvantage is that the process is slowed down, and in some instances considerably so. Simply, the mediator has to insure that he or she spends equal time with each party and this may mean literally doubling the time spent in a session. From the mediator's opening statement, which has to be repeated to the second party, through to working with both parties to set an agenda that is mutual and neutral requires time to be duplicated with each party.

In the exploration stage of the mediation, the mediator needs to ensure that equal time is spent with each party, which is often difficult to achieve as the very purpose of exploration is to allow the parties to discuss their concerns and interests based on the past, present and future. In shuttle mediation, many parties also feel they have a captive audience and can use the one-on-one time to vent to the mediator.

Another process concern with shuttle mediation in family matters is that the parties can't hear and acknowledge each other. For many parties involved in a family mediation, acknowledgement from the other party, be it that they are a good parent or that they understand how the children are dealing with all this, can be important to assist the parties to move from positions.

In shuttle mediation, even if the mediator is able to present the acknowledgement of concerns and interests by one party to another, it does not have the same impact as if the parties can hear and respond to each other. For many parties the opportunity to have the other party listen to their concerns about their children or just acknowledge that it is time to move can be a significant intervention in the mediation process.

This also raises the issue of how the mediator can ensure that all decisions made in shuttle mediation are truly joint decisions. A party may feel influenced by the mediator

While the shuttle process is a valuable tool for the mediator, its application to family mediation should be carefully considered, says **Linda Kochanski**.

and agree to something they may not have agreed to in a joint session; clearly the mediator in shuttle mediation must reality test not only possible options but the solutions and agreements reached with both parties vigorously to ensure that both have accepted the decisions and are able to live with them outside the mediation room.

Mediators working in the shuttle mediation process should also be careful not to act as messengers. This is particularly problematic as the mediation progresses and the parties in exploration stage want to let the other party know about their concerns and issues. Parties want to 'make statements to' or 'ask questions of' the other party and often the expectation is that the mediator will do this.

In these circumstances the mediator should check out why the statements or questions are being transmitted and how that may impact on the mediation. The mediator's role is to facilitate the mediation, notwithstanding that it is shuttle mediation. It is much more productive for the mediator to be able to work with each party to identify their interests and needs, and package up possible options to be presented to the other party.

A mediator may have to challenge a party asking for messages to be given to the other party through the mediator. The mediator may ask why a party wants a certain message relayed and how it will impact on the mediation. It is a similar process to when in joint session the exploration between the parties becomes circular or non-productive and the mediator needs to address the purpose behind the discussion.

Another concern is the confidential nature of the sessions and how and what can be given back between the parties. The confidential nature of the mediation process is made clear in the mediator's opening statement and that is reinforced in shuttle mediation as well. So the questions arise, does it breach confidentiality to give context to an option being presented, and is the mediator breaching confidentiality if they indicate the feeling of one party about an issue being explored to the other?

The big question is not so much about the 'substantive' information being passed from one party from another, as the mediator should always ensure consent is given prior to giving any information to the other party. The difficulty comes when dealing with the emotions and the reasons behind options or explanations. Can the mediator get consent to portray the emotion of one party to another, and the bigger question for some in practice is should they?

In a joint session the parties are able to observe or hear the other party when they discuss issues or present options, so the emotion behind these can also be heard. This may cause a party to respond differently, not because of what is said, but *how* it is said. Does it raise issues of confidentiality if a mediator contextualises an offer by indicating how the other party feels about it? And if the context has not been presented accurately, parties may still make decisions based on that information.

While shuttle mediation certainly has its place with family mediation, perhaps it should not be thought of as the primary way of dealing with a matter. The pros and cons of shuttle mediation should be considered in the light of the matter and the parties presenting to mediation. The mediator should then determine whether it is the appropriate structure to follow.

This article appears courtesy of the Queensland Law Society Alternative Dispute Resolution Committee. Linda Kochanski is an assistant professor at the Bond University Faculty of Law and a member of the committee.

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