

# DISPUTE RESOLUTION WITH THE ELDERLY: EXPERIENCE FROM A RURAL MEDIATION PRACTICE

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In a rural aging population there appears to be a steady increase in the age gap between those owning the assets and those who work them or those likely to inherit them. This can be a ripe area for dispute and requires a tailored approach. It could be argued that this paper is not "Mediating with the Elderly" but could be re-titled "mediating with an age gap" or "helping younger parties see their own positions from an elderly person's point of view". Some attention will be given to the physical and mental difference of an age gap and in particular the appreciation of the differing values and needs including disability and capacity.

Parties of a younger generational nature often include busy young family members who have become money focused and have changed views on succession planning or will interpretations. A new partner or caregiver may have filled a void that children were unaware of until the will is read out. It is not uncommon to have a gradual reduction in respect for older farm owners or lessors or employers. Younger contractors, leasee's or sharemilkers practice modern business methods, have multiple businesses and sometimes forget verbal commitments and historical favours. Credibility of the mediator is enhanced with knowledge of background issues.

## ***I FARM SUCCESSION MEDIATION***

Farm succession mediation is an increasing area of work. This could be phrased "adult family" mediation or intergenerational mediation. It sometimes includes will challenges. This type of mediation is characterised by multiple parties e.g. parents,

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children or in-laws, and sometimes there is a new partner to a relationship that throws the context significantly for some parties. Secondly, a common characteristic is the mix or clash of urban and rural cultures. It is not uncommon for urban based people to view farms as a large asset and lifestyle which it can be but it can also have debt and the hours of hard work are forgotten. Lastly, this type of mediation is asset or care based and the reality of cost of rest homes can have a sobering influence on trust beneficiaries as the asset gets eaten away.

## **II THERE ARE MORE AGING RURAL PEOPLE RELATIVELY**

The average age of a farmer in NZ is now well over 50.<sup>1</sup> As the baby boomers<sup>2</sup> are now the land and business owners, there are older people in rural areas relative to younger people. There is a declining rural workforce and an aging population. There are three major reasons for this:

1. Declining birth rate
2. Better life expectancy
3. Young people are attracted to cities (*Auckland in particular*) for work, face to face contact and connectivity.<sup>3</sup>

## **III MĀORI**

There has been a strengthening of the Māori economy and there is a creative and entrepreneurial class<sup>4</sup> of lessor. Party identification is paramount; the younger educated whanau members can be present too. The challenge is to interpret Māori values and needs in a way that places a high importance on integrity, mana (prestige) and power. This multiplies with age. I have found that if respect is not evident from the very first meeting, there won't be a second. Coaching a younger leasee in respect and acknowledgement is imperative.

## **IV WHAT STEREOTYPES OF OLDER PEOPLE DO YOU HOLD AS A MEDIATOR?**

Not all older people are poor, hard of hearing and confused. Don't let your perception of the parties influence the mediation. I have found that:

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1 <[www.anz.co.nz/resources/d/6/.../File-MediaRelease-20111123.pdf](http://www.anz.co.nz/resources/d/6/.../File-MediaRelease-20111123.pdf)>.

2 1946-1964.

3 Natalie Jackson, Professor of Demography–Waikato University <[www.mpdc.govt.nz/pdf/MayorsDiary/MayorsDiaryAug12.pdf](http://www.mpdc.govt.nz/pdf/MayorsDiary/MayorsDiaryAug12.pdf)>.

4 R Walker *Struggle Without End(RevEd)* (Penguin Books, NZ, 2004) 319.

- Older people often have money and don't care about spending it on legal fees to prove a point.
- They like being in control
- They sometimes have had a poor conflict resolution history
- They value their own hard work and are prepared to guard it.
- There may or may not be poor health or disability issues
- They have little time for lengthy dialogue including lengthy mediation.
- Looks can be deceptive – often they are as sharp as a tack!

## **V WHY WOULD OLDER PEOPLE CHOOSE MEDIATION?**

Many have had a life of getting their own way and can't understand how they got into a conflict situation this time. Mediation provides:

- A method of overcoming communication blocks before it is too late.
- A method to control outcome.
- The opportunity of bridge fixing and communication as the reality of mortality dawns.
- The opportunity to retain mutual respect of the 3<sup>rd</sup> person (mediator) and the other younger party.
- Safety to address family emotional issues and retain dignity.
- The opportunity to rebuild trust – small steps to communicate, commit to honesty and gain the courage to say the hard things.
- At the intake stage it needs to be ascertained what factors affect suitability for mediation e.g. capacity, representation or disability.

## **VI MEDIATION PROCESS**

The basic mediation process needs to be enhanced in critical areas when dealing with elderly parties.

1. **Intake:** At the preliminary stage it needs to be ascertained what factors affect suitability for mediation e.g. capacity, representation or disability, or what special factors need to be taken into account. Mediation is not the practice of law or counselling and the parties may have to be challenged to consider the use of other professionals e.g. setting up the power of

attorney, trust formation or accounting advice. Session length and timing will need to be considered to make sure that optimum endurance is achieved eg it may have to be just mornings and 9.00am start.

2. **Opening:** Defining the role of representatives and multiple parties will need to be made clear
3. **Issue Identification:** The need to involve all parties is necessary to uncover common ground.
4. **Reflection and Summary:** Where communication is difficult this will require greater emphasis on listening, brainstorming and clarifying.
5. **Problem Solving and Resolution:** Inviting all parties to contribute to creative solutions

## ***VII STROKE SURVIVORS AND DISABILITY***

Many older people are lucky enough to be healthy and independent but this is not always the case. For those with less than ideal health it can lead to anxiety, low self-confidence, depression, despair, mood swings and fear of a reoccurrence. For mediators, we must understand that there is a risk that the elder party receives less than optimal understanding. This is particularly so for stroke victims. Emotions of all survivors are damaged to some extent, there is unknown degree of mental impairment and there are many personal costs.

The most debilitating is aphasia.<sup>5</sup> As mediators, it is our job to understand and listen, be careful not to appear patronising, treat stroke victims normally. I have found that the speech can be affected but the brain is just fine, but this is not necessarily so at all. No two people are similar with severity, previous speech, communication skills or character. Here are some tips I have found useful:<sup>6</sup>

1. Make sure you have the person's attention.
2. Eliminate background noise
3. Don't pretend to understand if you don't
4. Don't talk down
5. Don't talk loudly.

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5 Aphasia (ay-faze-yuh) n. Partial or total loss of the ability to articulate ideas or comprehend spoken or written language, resulting from damage to the brain caused by injury or disease.

6 <[www.aphasia.org/Aphasia%20Facts/communicating\\_with\\_people\\_who\\_have\\_aphasia.html](http://www.aphasia.org/Aphasia%20Facts/communicating_with_people_who_have_aphasia.html)>.

6. Use other methods of communication e.g. white board, writing, drawing, yes/no responses, choices, gestures, eye contact, facial expression, site visit.
7. Give plenty of time to talk and to respond
8. Clarify and rephrase with yes or no answers.
9. Make it pleasant and boost their confidence eg "I can understand that!" - use humour if appropriate to relax them.
10. Absolutely involve them with decision making.
11. Give time for a reply
12. Don't give up
13. Try again.

### ***VIII SITE VISIT***

There is nothing more satisfying for an elderly or disabled person to make a site visit to view their assets or view the standard of work by a family member, contractor or employee. This is the reality check that can break an impasse. Things do change and methods used 20 years ago may not stand up to the requirements of modern business. Not only is seeing, believing but it gives time for contemplation and reflection and takes the rush out of the mediation process.

### ***IX ENDURING POWER OF ATTORNEY FOR PROPERTY***

"This kind of power of attorney will be given by a person who currently has full capacity but knows that it is likely that at some time in the future he or she will lose that legal capacity. When the donor becomes mentally incapable, the attorney then exercises the powers given to him or her".<sup>7</sup> Sometimes well-meaning adult children contribute unnecessary complication by mistakenly taking over the decision making role when they aren't really the ones with the authority, they will need an agency agreement. Time spent on this preliminary matter is time well spent.

People working with older people have a lot of power and control over what happens. Their position of power may inhibit the expression of opinion and free

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<sup>7</sup> P Gerbic, M Lawrence *Understanding Commercial Law* (6<sup>th</sup> ed, LexisNexis, Wellington, 2006) 191.

choice.<sup>8</sup> As a mediator authority for decision making power should be proven by siting an enduring power of attorney relating to property<sup>9</sup> certificate and the accompanying certificate from the qualified health care professional.<sup>10</sup> Otherwise the elder person may have full legal capacity to make a valid contract. For the parties, this is where solicitors input is invaluable.

### ***X CAUCUS - COACHING THE YOUNG PEOPLE?***

This includes the mediator but coaching the younger party in caucus may need to include:

- Basic good manners.
- Absolute respect will increase the potential for compromise
- You have to really listen and acknowledge.
- Older people often repeat themselves – listen anyway.
- Give them the benefit of the doubt – it might be something not heard before.
- You can influence people's perception of themselves by being positive.
- Block out negative stereotypes.
- Use the wisdom, experience and reflection on change to question perception.

### ***XI CONCLUSION***

Mediation offers opportunities where family members lack problem solving ability. Additionally, it offers a platform for businesses to endure under a different management structure where the needs of the original owner can be met.

The mediator must ask themselves if they are influenced by their own stereotypes of older people. Always be respectful and non-patronising.

Value the wisdom and experience of the elderly party to mediation.

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8 <[www.ageconcern.org.nz/health/health-system/who-can-make-decisions-you](http://www.ageconcern.org.nz/health/health-system/who-can-make-decisions-you)>.

9 Section 94A(2), Protection of Personal and Property Rights Act 1988.

10 <[www.ageconcern.org.nz/money/planning/enduring-power-attorney](http://www.ageconcern.org.nz/money/planning/enduring-power-attorney)>.