

Justin Patten is an experienced solicitor turned accredited mediator and set up Human Law Mediation in 2002 when he observed that mediation was a powerful tool for legal dispute resolution. Justin has written several articles for high profile publications on issues relation to mediation and is frequently interviewed and his advice sought out on this fast growing and fascinating area of law. Justin also has his own award winning blog, Human Law. In this interview, Justin tells us why mediation is the way forward and how it is shaping our attitudes towards resolving legal dilemmas.

**Can you tell us a little about why you became a solicitor?**

I became a solicitor as I felt that the work would be intellectually challenging yet do something that would interact with people as well.

**Your field of expertise is mediation; how does mediation work?**

To some extent this depends on the type of training you have had in mediation and the field of law that you work in. Generally it involves the mediator sitting down with the parties initially together and thereafter on an individual basis to identify the issues and whether there is scope for a solution.

**What different types of mediation are there and is it a flexible and responsive medium?**

I prefer a different form of wording because it may be better to say what forms of ADR (alternative dispute resolution) there are.

Essentially you have mediation, negotiation (which we all do every day), conciliation and arbitration to name but a few. In family law you have what is called mediation but it is less formal and more direct than say commercial mediation. Essentially the tools of ADR are flexible and can be tailored to the individual situation.

**As a lawyer, how do you find mediation and legal intervention work side by side?**

It works side by side as any lawyer should be looking for an opportunity to settle a case provided it is in the clients' interests. Since mediation works in at least 70% of cases it is a tool which can enable a lawyer to help settle a case prior to going to trial.

**Lawyers are born to battle; are there any difficulties in using lawyers in the mediation process and does their involvement drive mediation away from collaboration and towards polarisation of the parties?**

The statement "lawyers are born to battle" is a little provocative but there can be an unnecessary polarisation in the mediation process due to macho posturing by lawyers. There can be difficulties but effective lawyers have an understanding of the process and know when to give and take. If a lawyer knows what he or she is doing, problems can be avoided.

### **How do you see mediation evolving in the Family Justice System?**

I think you will, see more of it and it becoming more formal, more like the commercial system.

### **Many going through this system have been exposed to mediation and found that it only works if the parties are open and honest with each other: can a mediator coax that good nature out of the parties involved?**

This is a very real issue for mediators. I think coaxing the good nature of parties may be idealistic but ultimately a mediator will identify and communicate to a "difficult" party that in some circumstances settlement is really in their interests.

### **What would you say are the ingredients needed to be a good mediator?**

Ability to listen. Optimism. Integrity. An understanding of the human condition. An ability to know when to apply pressure on a party and when to be quiet. Sometimes silence can be your best tool to resolve a dispute.

### **What has been your best experience to date in mediation?**

Recently I settled a case with a Queens Counsel in mediation. It was satisfying to settle a very difficult case when the parties were at such loggerheads and at times settlement looked unlikely.

### **If there was one thing you could change to the mediation process, what would it be and why?**

I thought about this and I can honestly say I am happy with the process primarily as it is so flexible. The danger is that if we move to more regulation, mediators will be afraid to experiment and try different things. We must value diversity and flexibility in the process and recognise the individual strength of mediators.