AIMS

- To present an argument for using EI as a conceptual framework for thinking about emotion in mediation
- To construct that framework using EI and reflective practice
STRUCTURE OF PRESENTATION

• Emotion in mediation
• Emotional intelligence
• Emotional intelligence in mediation
  • Reflective practice
EMOTION IN MEDIATION
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• What is an emotion?
• “a mental state that arises spontaneously rather than through conscious effort, and is often accompanied by physiological changes; a feeling: the emotions of joy, sorrow, hate, and love” (Reilly 2005, 302).
<table>
<thead>
<tr>
<th>Amazed</th>
<th>Foolish</th>
<th>Overwhelmed</th>
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</thead>
<tbody>
<tr>
<td>Angry</td>
<td>Frustrated</td>
<td>Peaceful</td>
</tr>
<tr>
<td>Annoyed</td>
<td>Furious</td>
<td>Proud</td>
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<tr>
<td>Anxious</td>
<td>Grieving</td>
<td>Relieved</td>
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<tr>
<td>Ashamed</td>
<td>Happy</td>
<td>Resentful</td>
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<tr>
<td>Bitter</td>
<td>Hopeful</td>
<td>Sad</td>
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<tr>
<td>Bored</td>
<td>Hurt</td>
<td>Satisfied</td>
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<tr>
<td>Comfortable</td>
<td>Inadequate</td>
<td>Scared</td>
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<tr>
<td>Confused</td>
<td>Insecure</td>
<td>Self-conscious</td>
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<tr>
<td>Content</td>
<td>Inspired</td>
<td>Shocked</td>
</tr>
<tr>
<td>Depressed</td>
<td>Irritated</td>
<td>Silly</td>
</tr>
<tr>
<td>Determined</td>
<td>Jealous</td>
<td>Stupid</td>
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<tr>
<td>Disdain</td>
<td>Joy</td>
<td>Suspicious</td>
</tr>
<tr>
<td>Disgusted</td>
<td>Lonely</td>
<td>Tense</td>
</tr>
<tr>
<td>Eager</td>
<td>Lost</td>
<td>Terrified</td>
</tr>
<tr>
<td>Embarrassed</td>
<td>Loving</td>
<td>Trapped</td>
</tr>
<tr>
<td>Energetic</td>
<td>Miserable</td>
<td>Uncomfortable</td>
</tr>
<tr>
<td>Envious</td>
<td>Motivated</td>
<td>Worried</td>
</tr>
<tr>
<td>Excited</td>
<td>Nervous</td>
<td>Worthless</td>
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EARLY APPROACHES IN LAW AND NEGOTIATION

Negotiation literature

• Early scholarly and popular literature referred to a supposed need to “keep one’s cool” in negotiations (Katz & Sosa, 2015)

• ‘Thinking like a lawyer’

• Contra: social science approaches centralizing emotion as a diagnostic tool
ARE EMOTIONS RELEVANT TO MEDIATION?

Constructions of conflict in mediation:

• An expressed struggle in which two or more parties are experiencing **strong emotion** resulting from a perceived difference in needs or values (Katz, Lawyer, and Sweedler 2011)

• Three dimensions of conflict definition and resolution: cognitive (perception), **emotional (feeling)** and behavioural (action) (Mayer, 2000)
LITERATURE ON EMOTIONS

• Emotions play a central role in mediation as they help to define the scope and direction of a conflict (Duffy, 2010)
• ‘Few would deny that emotional experience typically defines and drives conflict or that it is an integral part of conflict dynamics.’ (Maise, 2002)
• Mediators must recognise the role of emotion in conflict (Jones and Bodkter 2001)
• Important to address emotion in negotiation practice (Fisher and Shapiro 2005)
• How emotions shape negotiations (Olekalns & Druckman, 2014)
• Lawyers who participate in negotiation and mediation frequently ignore the emotional content of conflict (Foong 2007)
ARE EMOTIONS RELEVANT TO MEDIATION?

Shapiro, 2002 ‘Negotiating Emotions’: Three propositions

1. Emotions affect our ability to reach negotiation goals
2. Emotions are a means to communicate relational identity concerns
3. Parties can further their negotiation goals through explicit negotiation of emotions and relational identity concerns
THEORY ABOUT EMOTION IN MEDIATION

Four themes

• Simple recognition of emotion
  • Expression (silence)
  • Ground rules

• Integral part of experience of conflict: strategies around particular emotions

• Emotion as a key element of conflict itself and hence of its resolution

• Emotion not merely as a component but as a defining characteristic of conflict
TRAINING ABOUT EMOTIONS IN MEDIATION: LAW TEACHERS

Douglas and Batagol (2010)

1. Did law teachers recognise emotion as important when teaching ADR?
2. Why did law teachers consider emotion to be important in teaching ADR?
3. What strategies were employed by law teachers to teach emotion in ADR courses?
WHY DID LAW TEACHERS CONSIDER EMOTION TO BE IMPORTANT?

- Law teachers who were focusing on mediation practice skills in dedicated ADR courses saw emotion as very important for a range of reasons:
  - Students who become mediators will need the capacity and skills to handle emotion: their clients’ and their own;
  - Students need to understand how expressions of emotion by clients may necessitate variations in mediation practice;
  - Students will benefit from understanding the connection between how they deal with emotions in their personal lives and how they’ll deal with emotion as a mediator;
  - Lawyers need to understand emotions, especially in family law practice.
- Review of the literature used; other ad hoc strategies used
Schreier, 2002

Asked mediation trainers if they think mediation training sufficiently teaches how to handle the emotional reactions of the parties to a mediation:

- Of those using primarily the transformative approach 67 percent did not;
- Of those using the problem-solving approach, 54 percent said no;
- Of those using a combination of approaches, 50 percent answered negatively, and
- Of those using the facilitative approach, 20 percent said no.
Research suggests that training to understand and manage strong emotions helps a mediator:

1. build tolerance for expression of emotion,
2. develop detachment and reduce stress,
3. inculcate patience and humility,
4. promote a realistic understanding of outcomes
ISSUES IN RELATION TO EMOTIONS

• What do we need to know about emotions?
• What strategies do we need to employ in dealing with emotions?
• Note:
  • Emotions as *experiential*
  • Conducive to *reflective learning_practice*
EMOTIONAL INTELLIGENCE
EMOTIONAL INTELLIGENCE

• Emotional intelligence is a type of social intelligence that involves the ability to monitor one's own and others' emotions, to discriminate among them, and to use the information to guide one's thinking and actions (Salovey & Mayer, 1990).

• Emotional intelligence is the ability to perceive and express emotion, assimilate emotion in thought, understand and reason with emotion, and regulate emotion in the self and others. (Mayer, Salovey & Caruso, 2000)
MODELS OF EQ

• The ability model: Salovey and Mayer
• Mixed models: Goleman; Bar On
• The trait model: Petrides et al
• Goleman’s model
MODELS OF EI

Models of EI (psych and management literature)

• Three main models of EI have now been proposed (Spielberger, 2004): the ability model, the mixed model and the trait model.

• The ability model, by Salovey and Mayer (Salovey and Mayer, 1990), defines EQ as a set of 4 distinct yet related abilities: perceiving emotions, using emotions, understanding emotions and managing emotions.

• Mixed models include those proposed by Goleman (1998) and Bar-On (1997). Goleman’s model (Goleman, 1998) views EI as a wide array of competencies and skills that drive managerial performance with five dimensions that are categorised into two areas i.e. personal competence (self-awareness, self-regulation, motivation) and social competence (empathy and social skills).

• The Bar-On model (Bar-On, 1997) also has five dimensions: intrapersonal, interpersonal, stress management, adaptability, and general mood which encompass mental abilities and a wide range of personal qualities, such as optimism, independence and happiness.

• The trait model (Petrides et al., 2007) proposes that trait EQ is “a constellation of emotion-related self-perceptions located at the lower end of personality”, and this model comprises 15 facets that range from adaptability to emotions and traits such as optimism.
<table>
<thead>
<tr>
<th>COMPONENTS OF EI</th>
<th>Definition</th>
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<tbody>
<tr>
<td><strong>Intrapersonal dimensions</strong></td>
<td></td>
</tr>
<tr>
<td>Self awareness</td>
<td>The ability to recognize our moods, emotions and drives and their effect on others.</td>
</tr>
<tr>
<td>Self regulation</td>
<td>The ability to control or redirect disruptive impulses and moods. The propensity to suspend judgment – to think before acting.</td>
</tr>
<tr>
<td><strong>Interpersonal dimensions</strong></td>
<td></td>
</tr>
<tr>
<td>Motivation</td>
<td>A passion to work for reasons that go beyond money and status. A propensity to pursue goals with energy and persistence.</td>
</tr>
<tr>
<td>Empathy</td>
<td>The ability to understand the emotional make up of other people. Skill in treating people according to their emotional reactions.</td>
</tr>
<tr>
<td>Social skills</td>
<td>Proficiency in managing relationships and building networks. An ability to find common ground and build rapport.</td>
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DOMAINS OF EI

- Self awareness
- Self management
- Social awareness
- Relationship management
SELF AWARENESS

- **Self-Awareness** is the ability to accurately perceive your emotions and be aware of them as they happen. You can increase your self-awareness by understanding your strengths and limitations, while seeking professional and personal opportunities for growth.

- “When you put yourself in a model of space, time and relationship to others” Michio Kaku

- [https://www.youtube.com/watch?v=uzANarERgkQ](https://www.youtube.com/watch?v=uzANarERgkQ)
- [https://www.youtube.com/watch?v=8pasAi28Ol4](https://www.youtube.com/watch?v=8pasAi28Ol4)
SELF MANAGEMENT

• **Self Management** is the ability to stay flexible and positively direct your behavior when you are experiencing different emotions. You can do this by using self-awareness skills. Learning to control your emotions and respond to others in an appropriate way is positive self-management. One example of positive self-management is having the ability to defuse your anger by listening and recognizing the feeling of others - even when you feel they are wrong.

• [https://www.youtube.com/watch?v=u3k7lykTWTk](https://www.youtube.com/watch?v=u3k7lykTWTk)
Social Awareness is the ability to accurately sense others’ emotions and understand what is really going on. Being empathetic, acknowledging the emotions of others, being thoughtful and considerate, and making decisions that take others’ feelings into consideration can help build your social awareness.

https://www.youtube.com/watch?v=NGVSIkEi3mM
**RELATIONSHIP MANAGEMENT**

- *Relationship Management* is the ability to use awareness of your emotions and the emotions of others to manage interactions successfully. The basis of relationship management is developing and maintaining good relationships. Clear communication, inspiring and influencing others, working well in a team, and managing conflict all contribute to relationship management.

- [https://www.youtube.com/watch?v=ClvpNWU0A8Q&list=PLlwZnliELIU24FmR5ydQNRz96MRtn8eEF&index=8](https://www.youtube.com/watch?v=ClvpNWU0A8Q&list=PLlwZnliELIU24FmR5ydQNRz96MRtn8eEF&index=8)
<table>
<thead>
<tr>
<th>I. Self Awareness</th>
<th>II. Self Management</th>
<th>III. Social Awareness</th>
<th>IV. Relationship Management</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>Know your story and how it affects you</em></td>
<td><em>Develop skills for breathing and relaxation</em></td>
<td><em>Understand nonverbal communication</em></td>
<td><em>Develop skills for reflective listening and empathy</em></td>
</tr>
<tr>
<td><em>Make peace with your past</em></td>
<td><em>Learn positive, self-affirming beliefs</em></td>
<td><em>Develop a positive view of others</em></td>
<td><em>Develop skills for assertive communication</em></td>
</tr>
<tr>
<td><em>Know your beliefs, your emotions and your behavior patterns</em></td>
<td><em>Develop self-soothing and self-motivation skills</em></td>
<td><em>Understand the basic emotional needs</em></td>
<td><em>Learn conflict resolution skills</em></td>
</tr>
<tr>
<td><em>Know your relationship patterns</em></td>
<td><em>Maintain good physical health</em></td>
<td><em>Understand “games” and personal integrity</em></td>
<td><em>Learn skills for support &amp; affirmation of others</em></td>
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EMOTIONAL INTELLIGENCE IN MEDIATION
EI IN MEDIATION

• The importance of EI for negotiation (Katz & Sosa, 2015)
• A negotiator must be emotionally intelligent in order to acquire information, make decisions, and deploy effective tactics throughout (Fulmer & Barry 2004).
• Of self awareness in mediation (Dickenson, 2010)
• Of self-awareness and self regulation in mediation (Schreier, 2002)
• Empathy and impartiality made possible through EQ (Duffy, 2010)
EI COMPETENCIES REQUIRED

Leary, Pillemer, and Wheeler 2013; For negotiators:

1. Identifying the emotions they and others are experiencing
2. Understanding how those emotions affect their thought process
3. Using that knowledge to achieve better negotiation outcomes
4. Positively managing emotions, tempering or intensifying them for strategic purposes
EI AS REFLECTION PRACTICE

• Reflection-in-action and reflection-on-action (Schon, 1983)

• Reflection-on-reflection (Hardy, 2009)

• Building in opportunities for self-reflection on individual experiences of emotion as a learner can be a fruitful way to help the trainee develop competency as a mediator (Picard & Stiltanen, 2013)