Mediation – What does the Mediator want from you?

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Most parties who have been sensibly advised about Mediation will know what they wish to achieve from the mediation. Their hope is that they will be able to reach a conclusion sufficiently satisfactory for them to be able to draw a line under the dispute, and as the saying goes "move on". What they expect from the mediator, is some guidance through the issues and the stimulation necessary for finding some mutually acceptable resolution.

Less obvious is what the mediator wants from the parties in order to succeed in these aims. Most competent mediators have learned from experience that parties enter into mediation carrying with them a heady cocktail of emotions and different motivations. Conflict can be relied upon in some measure to produce anger, upset, fear, vengefulness, the need to be heard, a sense of isolation, a desire for "justice". All of these feelings are real, and all need to be given some form of outlet during the mediation – indeed, sometimes, unless they are ventilated, it may well be that a satisfactory conclusion will remain illusive.

Yet the need to talk out such background needs to be balanced carefully with the the time constraints which are inevitable for most mediations. Occasionally, multi-party mediation will run into 2 or several days – but the vast majority of mediations are booked for one day. Sometimes that may be a very lengthy day, but the parties will have arranged their work schedules and budgets in the hope that a way through will be found within that allocated timeframe. In order to achieve that, the Mediator will need from the parties:

Focus

It is rarely a good idea to come to mediation with a rigid game-plan. One of the many beauties of mediation is that it is a dynamic process, which if it works well, will develop its own momentum. A mental strait-jacket will not help this process – so leave it behind. On the other hand, some careful and considered thought as to what are your "wants" and "needs" before the mediation, will help speed the process from the outset. What you want is your ideal world. It is unlikely you will achieve this, because it generally involves more than the other side is either able or willing to offer. Your needs however are central to the mediation. What do you genuinely <u>need</u> in order to be able to sign an agreement, and walk away from the mediation, sufficiently satisfied to leave the dispute behind you? You should think carefully about this beforehand

Give the Boot to Bottom Lines

Together with the mental strait-jacket – leave behind the "bottom-line syndrome". It is unhelpful because you may not yet have explored the variant packages available for settlement, and an insistence from the outset on a "bottom line" may frustrate the opportunity to find that package. This is not to say that you should not prioritise your needs. That is no more than sensible preparation. But an openness to some new ideas, even to the extent of ditching that which seemed to you "non-negotiable", provided a sufficiently attractive substitute formula can be found, will serve only to speed and facilitate the settlement process.

Listen and Learn

Be ready to listen to, not just hear, what the other side has to say – even if you fundamentally reject it, and even if you feel you have heard it a hundred times before. It is surprising how often, when parties either have not met face to face for some time (or perhaps ever at all), something comes out of the discourse which was lost in all the combative legal correspondence. Sometimes a mutual and new understanding of respective positions will emerge from this interface, which unlocks a previously closed door, and allows progress to be made.

Respect the Background – but get the Background to Respect you too.

As mentioned, most disputes will have a history – of hurt, misunderstanding, resentment and a sense of injustice. Ignoring this is folly – but equally, an unhealthy fixation on the past will make it the more difficult to construct a new future. Sometimes this can be the most challenging aspect of the mediation – but it is crucial that you, as a party, consider not only what has been, but what will be. Striking this balance appropriately can be a major component in achieving a successfully mediated settlement.

Don't Play Games

The Mediation is not the appropriate forum for sophisticated gamesmanship. If your motivation for being at the Mediation is to tease out as much information as possible from the other side, in order then to gain an advantage in subsequent litigation – it would be better not to come at all. Most experienced mediators will detect this tactic very quickly, and the impact of the discovery by the other side is likely to harden positions in the long run. It destroys the credibility of the process, and reduces rather than increases the prospects of an out of court settlement.

Swap Sides

This may sound like a strange suggestion – but it is in your interests. The longer a dispute drags on the harder it is to see what the other side is objecting to. Try standing on the other side of the fence – not in order to abandon your position, but in order to take in the view from the other side. The different perspective obtained can provide the

breakthrough, or at least part of the breakthrough, for a mutually acceptable accommodation.

What if……..?

Think forward to the consequences of not reaching a mediated settlement – not as a "frightener", but as a factor to weigh into your considerations, in assessing realistically your needs. You may well decide that litigation is the only acceptable way forward for you – but if you do, you need to understand in real terms that litigation comes at a price not only financially (which will be considerable) but also in terms of management time and sometimes emotional investment. You should make your decision on a properly informed basis and be comfortable with it.

Keep Fit!

Some Mediations are simple – most are not. You will need energy, patience and persistence. So … try to avoid a late night the night before, and do whatever is right for you to keep your energy levels up during the mediation. There will be no prizes for fasting all day, so eat and drink properly, and if you feel a short break would be helpful, ask for it. The other side is probably feeling the same way. Perhaps as important as anything is the need to stay positive – not irrationally, but try to maintain the conviction that a deal is going to emerge from this process. If you will it – it will be!

The overwhelming majority of those involved in Mediation have found it a productive forum for resolving their disputes, at a fraction of the emotional, financial and other outlay that would otherwise have been necessary. Bearing in mind the factors above will increase yet further the prospects of a happy outcome.
Is that a deal?

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