

Mediation Mastery: Get the Most from Mediation



Here they are: the answers to your burning questions about mediation. With the increased application of mediation clauses in contracts and required mediation in statutes, I hear a growing interest in understanding the uses of mediation. Even in social situations when people ask about my work and I

answer that I'm a mediator, it often leads to questions about mediation.

What is mediation? In mediation a skilled impartial outsider assists people to negotiate an agreement so that they achieve resolution on their own terms. Generally mediation is non-binding, confidential and voluntary – non-binding in that the mediator cannot impose a solution. Voluntary in that the resolution is voluntary even if the participants are required to attend the mediation.

Is mediation new? Yes and no! Yes, if a century or so is new. "Mediation" began to be used as a formal term in Western societies around the turn of the 20th century. The term comes from the Latin *medi* or *medio* which means "middle". No, in that forms of non-adjudicative intervention in disputes have existed in most human societies. The concept of mediation pre-dates legal adjudication.

How is mediation different from other methods of resolving disputes?

Mediation is one option on a spectrum of dispute resolution alternatives. Some of the other options are negotiation, arbitration and litigation (court action). One key difference is that in arbitration and litigation the role of the impartial

outsider is to decide on the resolution of the dispute. One comparison that helps to explain this is to compare negotiation with driving your own car, selecting the endpoint and the route to get there. Mediation is like riding in a chauffeur-driven car - you decide on the destination, the driver looks after getting you there. For litigation or arbitration the analogy is riding in the car of spy movie origin with dark-tinted windows that pulls up to the curb, opens the door and you get in, sometimes against your will. You're going wherever they're going. You are not in control of the route nor the destination.

What are the benefits of mediation?

Speed: Mediation usually can be scheduled much faster than court action.

Cost effectiveness: Mediation usually is less expensive than court action or arbitration.

Relationship: Mediation preserves or often improves the relationship between the participants.

Privacy: In mediation, the circumstances can be kept private. In most court actions the proceedings are public. Arbitration may be private or public depending on the circumstances.

Compliance: Because people participate directly in the resolution of the dispute, research has shown that they are more likely to comply with the end result.

Are there different kinds of mediation?

There are several different styles of mediation. Generally my style is facilitative and interest-based because I find that style is very effective. The facilitative component is encouragement of better communication and creative problem-solving. "Interest-based" means that a key aspect is helping the participants focus on their interests not their positions. (For more about mediation styles see Common Ground, May 1999.

For more about interests see Common Ground, Sept/Oct 2000)

What is the role of the mediator?

This depends on the context of the mediation. Generally as mediator I create a forum for negotiation, help to reduce obstacles to communication, maximize the exploration of alternatives, address the needs of those involved, and facilitate the development of options.

What happens in a mediation session?

Before the parties arrive at mediation they have usually already agreed to the mediation, selected the mediator, and reached agreement on the mediator's role, mediator's fee, and the ground rules for the mediation. Sometimes part of this is decided at the beginning of the mediation, for example, the ground rules or guidelines for the mediation. Usually the parties start with identifying the issues that they want to resolve, they discuss information and interests, develop options for resolution and decide on the final agreement. There may be separate meetings with the mediator during the process.

How do I prepare for mediation?

Preparing for mediation is very similar to preparing for negotiation. (See Munn-thly Memo below and Common Ground # 22). The more important the outcome of the mediation is to you the more important it is to prepare thoroughly.

If we want things to stay as they are, things will have to change.

*-Giuseppe Di Lampedusa,
author of The Leopard*

Munn-thly Memo

In the last issue we had a question about preparation. The question is repeated here and the full answer follows.

Q. What do I do to prepare for a mediation session? I'm retired and I live in a townhouse-style condominium. My daughter and her nine-year-old son have been living with my husband and me for the last 6 months. The neighbours have complained about her car being parked in our driveway in contravention of the condominium rules. I don't think the car is in anyone's way since it's not on the road. My daughter is trying to get herself on her feet since the breakup of her marriage. She's in a college program, and working part-time until she graduates in about 8 months. Her plan is to get a job and be self supporting soon after. I don't want to throw her out because she and our grandson need our help and support. I have heard that there are also complaints about a child living with us. Now the parking issue is scheduled for a mediation session with 2 representatives of the condo board and I don't know what to do to be ready.

In mediation a skilled impartial person helps the parties to negotiate. The mediator's job is not to decide what to do, but to chauffeur the car to the destination you and the other party want. Therefore you need to prepare the same as for a negotiation, as described in the Group of Seven Preparation Prescription (Common Ground # 22). You need to consider interests, options, objective criteria, alternatives, negotiators, externals and logistics.

The first thing you will want to consider are your interests such as your desire to help your daughter in a time of personal crisis, and to provide a supportive temporary home for your grandson. You probably also value the condo lifestyle and sense of community. You may have interests in common with the condo board in having rules about the exterior appearance of the condos and in fair enforcement of those rules. You may be able to guess the interests of the board members for example that they want to do a good job in representing the owners and in being responsive to owners who have complaints about violation of the rules.

Think about some options for resolution - draw on your creativity to come up with lots of ideas. Maybe they would let you agree to park the car in the driveway or in the visitors' parking area for a specific temporary period. Maybe there is a neighbour inside or outside the condo who is not using all their garage space and would rent garage space. What if you spoke with each of your complaining neighbours, explained the situation and asked them to withdraw their complaints now if you make a firm commitment that the car will not be parked there after a certain date when your daughter will leave for sure. You could move out. Your daughter could move out. This doesn't have to be just options you want or would agree to. Sometimes the crazy options can spark further ideas.

Considering objective criteria might lead you to compare the rules of your condo with those of other condos (for example, through the Canadian Condominium Institute) and with human rights laws about age restrictions. A public library may help you to find information about both of those. How has your condo board handled similar problems in the past?

What are your alternatives? What do your condo rules say about the penalty for violation of the rules? Can you get this resolved before the mediation? How much does it matter to you whether you or your daughter stays there or moves? What are the condo board's alternatives? Do they face a group of upset owners who feel that their complaints have not been taken seriously?

Another consideration is the negotiators. Who should be at the meeting? Will your husband attend? Your daughter? Who will be there for the board? What is their negotiating style? How can you help them explain the options you propose to their constituents, the other owners? How can you build a good working relationship with them?

When you consider external factors you might find that the phenomenon of adult children returning to live with their parents after a marriage breakup is common. The result of this mediation may be used as a precedent for similar situations in the future. Another factor is that getting things worked out with other owners may be important to your comfort in living there in the long run. Enforcement of the rules - whether too rigid or too lax - may decrease the desirability of people buying into the condo and therefore decrease the property values for all owners.

Finally consider the logistics. How does the time and place of the meeting affect each of you? Clarify the issues to be discussed. Is it about the parking or the child living there or both? When is this meeting in relation to the election for the condo board or a general meeting of the condo owners? Will there be rules to protect the confidentiality of the discussion?

These ideas are a good start to getting ready for your mediation. Go to your mediation ready to listen and work with the board representatives to reach a result that all of you can live with.

Mark Your Calendar

Upcoming Training Events
Presented by Kathryn Munn

Dealing with Difficult People

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Credit Institute of Canada - London Chapter

For more information call 519-642-3300

Fundamentals of Mediation

Full 40 hour program

is scheduled to be offered in early 2005.

If you would like to be contacted about the course dates please call or email us.

I am pleased to fill requests for presentations about mediation and negotiation at meetings of professional and business groups. Call or e-mail to make the arrangements.

Electronic Common Ground

If you prefer to be on our e-mailing list please send us an e-mail. Common Ground is available at www.munnncrs.com.

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