

## Tools of the Trade

### Difficult Conversations: How to Discuss What Matters Most

by Douglas Stone, Bruce Patton and Sheila Heen of the  
Harvard Negotiation Project.  
Penguin Books, 2000

If you have any topics in your life that you find it hard to resolve with others (and who among us does not?), then this is the book for you. *Difficult Conversations* is another in the series of books by the Harvard Negotiation Project, best known for *Getting to Yes* from 1981.

The authors define a difficult conversation as anything you find it difficult to talk about. They break down a difficult conversation into three components: **The "What Happened?" Conversation**, the disagreement about what happened or who's right. **The Feelings Conversation**, which is part of every difficult conversation although not addressed directly. Finally, **The Identity Conversation** is the one we have with ourselves about what this situation means to us.

The authors then suggest the approach of shifting to a learning stance so that instead of arguing about who is right we "explore each other's stories", "disentangle intent from impact" and "abandon blame". They discuss finding - and negotiating with - our own feelings buried under judgments and accusations. While the identity conversation is never easy, our identity is less threatened if we are prepared to cope with a challenge when it comes up and to let go of all-or-nothing thinking.

The second half of the book is focused on the positive: "Create a Learning Conversation". There are chapters with practical suggestions such as "What's Your Purpose? When to Raise It and When to Let Go" and "Expression: Speak for Yourself with Clarity and Power". For those who are familiar with win-win negotiation, the ideas are old tried-and-true strategies such as listening from a stance of curiosity and interest-based problem-solving. While the ideas aren't brand new they are packaged in a format which may make them easier for readers to apply to the conversations in daily life. For those not already familiar with interest-based negotiation, this book may be even more helpful with its down-to-earth, step-by-step approach.

The writing style is smooth and easy to read. There are lots of concrete examples to illustrate the concepts. At the end of the last chapter there is a one page checklist which is useful for preparing to have your next difficult conversation. The book ends with a "roadmap" listing all the chapter and section titles in the book, a useful summary for review of the concepts.

## Ontario Mandatory Mediation Program: The Next Generation

Mandatory mediation is now a permanent feature of civil litigation in Ontario - at least in Toronto and Ottawa. What is not included in the announcement is the question for the rest of the province: when is the mandatory mediation program going to be extended to the other parts of Ontario? This "rollout" of mandatory mediation services was part of the government's original announcement of the program but was not part of the recent announcements.

In June it was announced that former pilot program for Toronto and Ottawa has been found to be successful and will continue permanently in the Ontario Rules of Civil Procedure. Rule 75.1 for mandatory mediation in estates matters will be extended for another 3 years for further evaluation of that Rule. There will be some minor changes to Rule 24.1. The text of the amendments is on the Ontario Gazette website at [www.ontariogazette.gov.on.ca](http://www.ontariogazette.gov.on.ca).

Good news for the beancounters. The regulation on mediators' fees will continue unchanged until 2004. This fixes the maximum which a mediator can charge to \$600.00 total for 2 parties up to a maximum of \$825 for 5 or more parties. This fee covers one-half hour of preparation per party and 3 hours of mediation.

As of July 1, Toronto also increased its case managed actions from 25% to 100 %. The mandatory mediation Rule only applies to case managed actions, a special system for court administration which is in some areas of the province.

So far the change to add three times as many mediation cases in Toronto has gone smoothly, perhaps due to the experience of counsel with the Rule for the previous 2 ½ years or perhaps due to the summer slowdown of litigation. It is expected that there will be an increase in case management motions concerning the timing for mediations as well as other steps in the process.



# Munn-thly Memo

**Q. I work with my brother and cousin in a business which was started by my father and uncle. I worked with another company for 6 years before joining the family company 3 years ago. I think it's time I got a raise. Whenever I have mentioned the subject of raises it has been dismissed by my cousin, the president, because he says the company can't afford to pay more. We just finished a year with profits up significantly. The shareholders are all family members including the 3 of us who are working in the company. Please help!**

**A.** Negotiating a raise is often difficult. Negotiating a raise with family members can be even more challenging. Avoiding the negotiation sometimes seems like the best route for family peace but that may leave you feeling that you're being taken advantage of.

The best way to begin is well before the conversation you want to have. First gather information. Here are some ideas to get started. What could you earn if you were doing the same job elsewhere? How easy would it be for you to find other work and how much would it pay? What are your personal financial pressures and how much would you need to earn to have a positive impact on your situation? What information is there which provides an objective measure of how well you do your job? How easy would it be for the family company to find an employee to replace you? What is happening with the company that may be creating financial positives or negatives?

Before the meeting starts is the time to walk through the three conversations that happen within this difficult conversation, starting with what you do know (your experiences, your feelings, your identity issues) and don't know (their point of view, their intentions, their feelings). Think about your feelings, your identity issues and possible distortions in your perception of the situation. (For information about a helpful book to consult see **Tools of the Trade**, in this issue).

If you decide to proceed with having the raise conversation, then there are the logistics to consider. Who should be at the raise conversation? It's best if you can speak directly to the decisionmaker(s). For example, is this a matter which will need to be decided by only your cousin or by your brother also? When is the best time when you and the others will not be under high stress? Should you arrange a meeting place outside the workplace or is there a boardroom available which will feel neutral and comfortable to everyone?

Once you get to the meeting where you will be discussing your request for a raise, don't try to get immediately to the solution. First ask them for the information you don't know about their perspective, their experience, and their feelings. Give them the information about what is important here for you and about your views and feelings. For each person in the meeting what are the things need to be considered to reach a fair outcome for everyone?

Then move on to problem-solving. Given what you have learned from listening to each other how can the situation be improved for the future? A good way to start this process is to get the creative juices flowing with brainstorming some ways to meet the needs of everyone involved. Then using the brainstormed list decide together what could be done that would be fair and workable for you, for the others working in the company and for the shareholders.

## Mark Your Calendar

### Upcoming Training Events Presented by Kathryn Munn

#### Mediation Training

##### Full 40 hour program

Fanshawe College

Part 1 - October 18 & 19

Part 2 - November 15 & 16

Part 3 - December 6 & 7

Call 519-246-1412 for more information and registration.

#### Mediation Level 1

October 31, November 1 & 2

The Management Centre, Lambton College, Sarnia, Ontario

Call (519)542-7751 Ext 505 for more information and registration.

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.

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