

Searching for a mediator?

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Mediators recognize that, while conflict is inevitable, combat is optional. They understand that conflict is common in human affairs, since we meet opposition daily as we pursue our diverse interests and values, and that, psychologically, each of us sees things, not as they are, but as we are, hence we often have clashing perspectives on the same events. The mediator's objective is to guide disputants away from competitive combat towards mutually agreeable resolutions.

In the presentation *What is Mediation and How You Can Use It*, offered at the 2006 Appraisal Institute of Canada National Conference, I addressed the following:

- What is mediation?
- Keys steps in the interest-based model
- The skills of mediation
- Where to learn mediation
- Making mediation work for you
- Finding and assessing mediators

Here, a few points need to be stressed regarding the basic understanding of mediation, as background to advice about selecting a professional mediator.

Key features of interest-based mediation

1. Overall goals

The strongest single influence on the conduct of mediation is the stance taken on two principal facets of any conflict: a) the conflict problem, and b) the personal relations of disputants. At one end of the spectrum is the transformative approach focused exclusively on the relationship, in the belief that, once parties learn to get along, they will solve problems on their own. At the other extreme is the 'muscle mediator' concerned exclusively with hammering out a quick solution to the problem in dispute, with scant attention to



relationships. Most clients will want a middle path aimed at both good solutions and good relationships, which is in line with the interest-based model. Since goals heavily influence process, it is important that clients find a mediator who shares their basic goals.

2. The problem-solving process

Conflicts always start with a clash of positions, where one party tries to impose its self-regarding solution on an opposed party pursuing a different outcome. The mediator has to move the parties away from being rivals contesting rigid, antagonistic positions towards acting as collaborative solvers of a problem they share. There are two major hurdles here – one logical, the other psychological.

On the *logical side*, the mediator must skillfully help disputants put order in the chaos of claims, counterclaims, and negative emotions typical of conflicts. This is why an effective mediator will use a template for problem-solving like the interest-based model. This involves, in sequence, unpacking the context of the dispute (the story), mapping the interests, needs, desires of the parties, clarifying the issues or what needs to be fixed, creatively generating options

that could meet the interests, evaluating the pros and cons of potential solutions, and reality-testing the long-term viability of agreements.

On the *psychological side*, the mediator must motivate parties to avoid relationship-destroying attitudes such as "I am right, you are wrong" or "you are to blame," negative assumptions about others, and, tactics of attack and defense. Fear, suspicion and anxiety must be replaced by safety, trust and confidence. Again, the interest-based model procedurally requires relationship-building features such as ground rules for respectful communication, ethical transparency, active listening by all parties, and mutual understanding.

3. The principle of party self-determination

Mediation keeps the parties at centre stage. They enter the process voluntarily, choose the mediator, speak for themselves, retain ownership of the problem, and are responsible for the solution. (For contrast, consider litigation.) This principle leads to other essentials such as mediator neutrality, process transparency, and confidentiality, all aimed at empowering the client.

4. Neutrality

The essence of mediation is that it is managed by a neutral third party. This distinguishes it from negotiation, arbitration and litigation. Neutrality connotes fairness, non-partisan attitudes, absence of bias. This criterion is a constant challenge, since nobody is totally free of bias or preference. In terms of personal neutrality, conscientious mediators need a high degree of self-awareness to either mitigate the effects of personal bias or to disqualify themselves from a case. In terms of neutrality about the substance of a case, mediators must avoid pre-judging solutions. Clients should know that mediators seriously violate their role and 'morph' into arbitrators or judges if they impose their own solutions.

5. Process management

Mediators bring to the conflict a set of theories, values, methods, skills and tools designed to guide disputants in specifically collaborative directions and to steer them away from conflict-producing behaviours. Therefore, mediators are **not** neutral about the process. They have a duty to obtain informed client consent about the process before proceeding and then they must apply it fairly.

6. Future orientation

The interest-based model minimizes causal investigation of the past in favour of facilitating client identification of present needs and their search for ways to meet them in the future. Mediators are neither investigators nor psychotherapists. 🐼

A checklist for selecting a mediator

Prepare for the meeting (ideally, a face to face interview) by reviewing the conflict situation, the needs of all parties and the items below.

1. Educational background and work history

Do you want a mediator to also have expertise in the area of conflict, such as a business background for a commercial dispute, or a social work background for a family dispute? What experience does he or she have with cases similar to yours? If the mediator is expert in the area of the problem, will he or she have preconceived solutions? If not an area expert, does his or her experience suit your case?

2. Specific mediation training

Mediation is an unregulated profession. Training is available from a wide range of commercial and academic providers offering credentials for as little as 40 hours of training or as much as a PhD. I recommend verification of a minimum of 180 hours of formal mediation training at a reputable institution. Ask if the mediator pursues continuing education and belongs to any professional conflict resolution associations. Can references be provided?

3. Mediator goals

In relation to the dual goals of solving the conflict problem and repairing the relationships, does the mediator emphasize one aspect or the other, or attend to both?

4. Stance on party self-determination

Keep in mind, lasting agreements are more likely if this principle is observed, as people commit best to what they themselves have crafted. Beware of the coercive 'muscle mediator.'

5. Process used

Referring to the points above about mediation, it is crucial to ask for a clear description of the process intended.

6. Neutrality

Will the mediator be and be perceived as neutral by all parties? Are there any conflicts of interest?

7. Ethics

Does the mediator subscribe to a code of professional ethics?

8. Boundaries

Does the mediator recognize boundaries to the role and know when to refer to other experts such as accountants, counselors, lawyers, etc. Playing dual roles jeopardizes neutrality.

9. Contract

Ask for a sample contract covering responsibilities, process, confidentiality, fees, logistics, etc.

10. Insurance

Does the mediator have liability insurance? (Relatively new in Canada)

11. Personality

During the interview, does the mediator reflect the kind of sensitivities, values, and style acceptable to all the parties?

Take the time to choose wisely and reap the truly affirming benefits of mediation.

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