
Kluwer Mediation Blog

Reflecting on mediation as a new year beckons.....

John Sturrock (Core Solutions Group) · Monday, December 29th, 2014

As 2014 comes to an end, it is good to reflect. How privileged many of us are. I often remark to others that my “job” is better than “real work”. What do I mean when I say that?

As mediators, we have an extraordinary window through which we view life, other people and what happens in times of difficulty or distress. It is a vantage point which we need to cherish and respect.

In a period of ten days recently, I worked as a mediator in a number of diverse situations. These, anonymised here, have included an evening with townspeople explaining to a quarry operator their distress about the effects on a community of nearby blasting. I have sought to help a national sports body handle a very sensitive issue involving one of its athletes who could not compete at the level she expected, and facilitated meetings in which a long-standing customer of a national bank explained the devastating impact of the termination of funding on his family business, while the bank wrestled with recovery of a large debt. I have spent hours with a senior employee, of international distinction, as she came to terms with the loss of her career and reputation, for which she blamed her employers. I watched the owner of a ground-breaking sports facility plead with the builder to rectify faults which threatened its future, while learning that what happened may not have been anyone’s fault, and I have listened to representatives of a national insurance broker apologise to an entrepreneur who had been denied insurance recovery after her life’s project had been written off following an unexpected flood. And then there was the major corporate entity with a huge international business negotiating with a relatively small but passionate supplier whose company had been forced to close after a change in corporate policy had resulted in loss of half of its business overnight.

In what other occupation would one experience such diversity? Politics? Journalism? Church ministry? Perhaps. But I suspect there is a richness in what we mediators are privileged to do which is rarely matched. What do our experiences have in common?

Each carries with it a sense of loss, not just in money terms but in the sense of self, hope, dreams, expectations. There is also a sense of grievance that someone else’s actions, over which the “claimant” has little or no control, have led to the loss. Hurt, anger, resentment and a (sometimes disproportionate) desire to requite then follow.

The mere passage of time, the length it takes to get to a resolution, presents as a problem in itself. By the time the talking starts, it is often “too late”.... Then, there is the sense of helplessness, with everyone caught up in a complex system with its inefficiencies, or downright inertia, over which nobody seems to have any influence. Perhaps worst of all is the sense of being ignored, inadvertently, consciously or through lack of communication. Time and again it comes back to communication. “Why did we/they not have this conversation a year ago?” Or as a senior adviser put it to me: “why the f... didn’t somebody say to these guys ages ago that they need to sort this out?” They’d only spent millions on legal fees since..... Why hadn’t HE said it?

As mediators, we do what we do because it matters. What we do is counter-cultural. We are helping people, including the apparently hard-nosed business people, to express loss, to talk about hurt, to regain control, to communicate about painful things. We help them to rediscover humanity, to understand the other, to acknowledge and apologise, to explain, to engage, to have that conversation. All of the mediations in which I was involved in those ten days which led to final outcomes were concluded by the parties themselves meeting together with me (usually without advisers) and working out the final agreement.

Perhaps most important of all, therefore, is that those with whom we deal can, with our help, regain their autonomy, their control and their dignity. Achieving that is a worthy aspiration for a new year.

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