
Kluwer Mediation Blog

Mediation and Change

Sabine Walsh (Sabine Walsh Mediation) · Sunday, November 6th, 2016

Rather than use Brexit and the US elections as introductory examples of dramatic change, I'm going to use yesterday's seismic event in Chicago instead. Yesterday, the Irish rugby team beat New Zealand's All Blacks for the first time ever (111 years). If that hasn't changed the landscape of rugby, I don't know what will.

Anyway, back to mediation. Over the past three weeks I've been at two conferences which explored the relationship between mediation and change, more specifically how mediation and mediators can help facilitate and manage change. At the first of these, the Mediators' Institute of Ireland's Annual Conference, US Professor Carrie Menkel-Meadow and Ashok Panikkar of Meta-Culture in Bangalore, India spoke of how mediation and dialogue-based approaches are essential for managing change on a global level, pointing out how win-lose, either-or decision making has led to both Brexit and the US election, which appears to be increasingly about the lesser of two evils.

The second conference in the UK focused mainly on family mediation and how mediators can help families negotiate the painful changes that occur as a result of a relationship breakdown. Sessions focused on what skills mediators require to encourage and facilitate the necessary changes that people must undergo to manage a separation well, and how to assess when a conflict is actually ready, or ripe for positive change such as those that (we hope) occur in mediation and when it isn't. Both events led to some thoughts on mediation and change of relevance to my own practice, and to our broader role as mediators in society.

What was immediately highlighted was the complicated relationship most of us have with change. Some of us crave and thrive on change, others avoid it and enjoy stability and constancy. The idea of change can sound great - Trump has built a campaign on promising change - yet we don't really know what it will look like, and sometimes don't like the look of it when it comes. We can welcome change and yet fear it at the same time. For our mediation clients, how people feel about the changes they are mediating, be they business, community or personal, is influenced hugely by whether they are seeking or have instigated the change or are on the receiving end of it, so to speak.

As mediators one of our jobs is to accompany people through change. Not push or

coax or force, just accompany and maybe facilitate a little. Exchanging stories about experiencing significant change in mediation at the UK conference showed us that accompanying change can be as simple as acknowledging that it is happening and that two people might feel very different about it. One colleague told a story about how permitting a client to talk about his fear of growing old alone was enough to change the whole course of a mediation. Another told a story about how allowing a huge (and loud) outburst of emotion to happen and pass changed the power balance between two clients, for the better.

More difficult for mediators is accepting when change is not going to happen, or when the kind of change that is, is one that we don't see as positive, for example from mediation to litigation, from agreement to disagreement. We have all had cases where it appears parties have left the mediation process more angry and polarized than when they started. This can be due to one or both parties' resistance to change (or at least to the type of change that we mediators like to see) or to the fact that the situation, the dispute or the parties are just not ready yet. As an example of the latter I am always reminded of a couple who were experiencing such a high level of conflict between them I was worried for the safety of both of them and we abandoned mediation after two sessions as neither was able to engage with the process for this reason. Over a year later, they contacted me to resume the mediation. They arrived together, with an outline of things agreed between them, talking and laughing and as utterly changed in themselves and their interaction as one could imagine. What magic skills had I used? None. All that was needed was the passage of time.

This capacity to change was the topic of one of my favourite sessions of the two events, led by a wonderful neuroscientist, who talked about neuroplasticity, or the brain's capacity to change, in the context of conflict and mediation. Using the latest research in the area, and a few amusing experiments involving fake hands, he showed us that we are only beginning to understand how profound human beings' capacity for change and adaptation is, physically and psychologically.

For me, this was the key learning I took away from both these events. Even when we think nothing will change, be it as between our clients or in the world, our ability as humans to change and to manage change is enormous. It is key to our survival as a species. As mediators it might be the case therefore that our role is more about creating a space for the type of change that comes from a feeling of being heard and respected, of having options and the opportunity to consider them, rather than the change that comes from either-or decisions making, from fear or a sense of powerlessness. We can certainly do this for our clients by using all the skills we have as mediators. Perhaps we can even do this in the wider world as well, by continuing to offer an option for resolving even the biggest conflicts in a way that can bring about positive change. On reflection, I would go so far as to say that this is, in fact, what we are doing already, one case at a time.

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The image shows a screenshot of the Kluwer Arbitration Practice Plus web application. The interface is primarily blue and white. At the top right, there is a navigation menu with a checkmark icon and the text 'Explore Practice Plus'. Below this, a profile card for 'Gary R. Ryan' is visible, including a profile picture, name, and some statistics. To the left of the profile, there is a 'Relationship Indicator' section with a heading 'By Relationship' and a list of names. Below the profile, there are three circular charts representing different data points. The bottom of the image features a dark blue banner with the text 'Kluwer Arbitration' on the left and the 'Wolters Kluwer' logo on the right.

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