

Kluwer Mediation Blog

The Alchemy of Mediation, Part 2: outcomes to interests

Constantin-Adi Gavrilă (ADR Center Romania) and Margaret Halsmith (Halsmith Dispute Resolution) · Thursday, May 14th, 2020

Recap: The Alchemy of Mediation, Part 1: actions to outcomes training exercise

In this part we explored what little information, context and insight the actions of each of us provide for the other. In our example, it seems that while we were each comfortable with doing what the other did in the morning (the actions), what we were looking for from each action (the outcomes) was distinctly our own.

That is, from like actions people seek unlike outcomes (and from unlike actions can result like outcomes)

That is, actions do not reliably predict preferred outcomes.

Part 1 indicated that undertaking an action had little if any correlation with a preferred outcome. We could go so far as to say that it is risky, unfair and unconstructive to assume that from an action you can predict a preferred outcome. We think of this this as not only relevant for dispute resolution practitioners like mediators, but for all people, regardless if they are professionals or not.

Scenario

Based on the experience of COVID-19, the recent identification of COVID-20 has resulted in a smooth transition to infection control, including reinstatement of the work-at-home policy. Adi and Marg, in two separate households, whose six children are aged from 6 to 12, decide to assist each other with weekday mornings. They agree to explore making some changes to morning activities and expectations with the view to harmonising their mornings.

In April Adi and Marg each developed a series of tables in response to short questions, as a first step in gathering information about their respective mornings.

Q: Please make a list of three of your usual morning activities.

Adi's morning activities	Marg's morning activities
Clean teeth	Walk the dog
Chat with children	Make the bed
Pack briefcase	Packed lunches

Table 1.1: Morning activities of Adi and Marg

Q: What is your preferred outcome from each activity?

Adi's morning activities	Preferred outcome of Adi's activities	Marg's morning activities	Preferred outcome of Marg's activities
Clean teeth	Avoid the dentist	Walk the dog	Catch up with the neighbours
Chat with children	Stay in touch	Make the bed	Have tidy house
Pack briefcase	Get my head in the right space	Pack the lunches	Keep costs down

Table 2.1: Adi's morning activities and preferred outcomes and Table 2.2: Marg's morning activities and preferred outcomes

Q: What would be your anticipated outcomes if your usual morning activities were the other person's?

Adi doing Marg's morning activities	Adi's anticipated outcome of Marg's morning activities	Marg doing Adi's morning activities	Marg's anticipated outcome of Adi's morning activities
Walk the dog	House pride	Clean teeth	Clean teeth
Make the bed	Keeping cool and serene	Chat with children	See if they are organised
Pack the lunches	Energetic attentive children	Pack briefcase	Keep options open

Table 3.1: Marg's morning activities with Adi's anticipated outcomes and Table 3.2: Adi's morning activities with Marg's anticipated outcomes

Part 2: Outcomes to Interests

Marg: How quickly a month goes by! Here we are to shape the information we gathered last month into a form which morphs with a little cajoling into agreement.

Here's a précis of the steps we will take to arrive at the cajoling stage.

1. Confirm the purpose of the task ahead: to prepare to harmonise Adi's and Marg's mornings.
2. Referring to last month's list of activities and preferred outcomes, consider the 'categories of concern' that underpin each activity.
 - a. For example, a concern that Adi identified last month about clean teeth related to going to the dentist and included the distance, the parking and other factors. One of the categories of those concerns could be **convenience**.
 - b. Consider another example: a concern that Marg identified last month about walking the dog related to walking where her neighbours walk to get double the value of her walking time. One of the categories of those concerns could be **efficiency**.
3. Again, referring to last month's list of activities, consider the what would be your 'categories of concern' that could underpin the other's activities.
 - a. For example, Adi could imagine walking Marg's dog and identify a 'category of concern' that might be **management**, the concern being the damage that the dog will render if energetic for the day.
 - b. Jointly assemble a table showing the six morning activities paired with melded 'categories of concern'.
4. Consider the extent to which for each of the activities, the 'categories of concern' are relevant for both.

5. Finally, on another day, activity by activity and referring to the concerns among the melded ‘categories of concern’ that are relevant to each, develop a range of options from which will be created the new, shared preferred outcomes for harmonised mornings.

Adi: Before we go any further Marg, let’s have a chat about these ‘categories of concern’.

Marg: With pleasure.

Adi: I have two concerns: one is that I have not heard the term before; the other is that I’m here to talk interests and to shift more and more of my mediation practice to an interest- based approach.

Marg: It’s been my experience that there is a chasm between understanding the concept of interests and identifying them. Many trainees and supervision clients have raised this issue. It seems to be one which saps the confidence of many dedicated mediator. After exploring interests and their use in mediation with supervision clients over some years, I decided to workshop the terminology these mediators ‘use in their head’ when they are mediating. ‘Category of concern’ is one that often gains traction.

Adi: Well, now I know! To be clear, we could substitute ‘interests’ for ‘categories of concern’ above and work through steps 2. to 4. above, exemplified in the tables below and we’d have taken the double leap from actions to outcomes and from outcomes to interests.

Marg: A quick word about interests. You might say why bother? In short, when you’re working with interests rather than with positions, ‘impasse’ is a term that will fade from your vocabulary... and there are lots of benefits to mediators, participants and support people when that occurs.

Adi: This approach flows for me and makes sense to me however I find myself wondering why not go directly to interests by whatever name works for the mediators in question? Why take the steps from activities to outcomes then from outcomes to interests? People may see these lateral steps as unnecessary – I am thinking about participants that come to a mediation, place interest in an efficient process, cut to the chase, make a proposal and demand a response immediately.

Marg: I started unpacking interests this way when in my discussions with mediators regarding the tricky topic of interests prompted me to realise that preferred and anticipated outcomes were often referred to as interests. They are not up to the task however. Rather than dismiss them, it seems that for some they can be useful step toward identifying interests. That is it seems that identifying preferred and anticipated outcomes enables the next step of identifying interests.

Adi: I can accept that. We have each filled out a number of tables to progress toward identifying our combined interests relating to harmonising our mornings.

Q: What are your interests for each of your preferred outcomes?

Adi’s morning activities	Adi’s preferred outcomes	Adi’s interests in morning activities and outcomes
Clean teeth	Avoid the dentist	Health, Convenience, Time, Peace, Financial
Chat with children	Stay in touch	Fun, Connection, Responsibility, Acknowledgement, Harmony
Pack briefcase	Be organised	Efficiency, Self-image, Reputation, Professionalism

Table 4.1 Adi’s morning activities, preferred outcomes and interests

Marg's morning activities	Marg's preferred outcomes	Marg's interests
Walk the dog	Catch up with neighbours	Social, Connection, Efficiency
Make the bed	Have tidy house	Responsibility, Preparedness, Pride, Certainty
Pack the lunches	Keep costs down	Financial, Health, Family

Table 4.2: Marg's morning activities, preferred outcomes and interests

Q: What might be your preferred outcomes and interests for each of the activities of the other?

Adi's morning activities	Marg's preferred outcomes	Marg's interests
Clean teeth	Just do it	Health, Appearance, Identity
Chat with children	See if they are organised for the day	Responsibility, Parenting, Role modelling, Harmony
Pack briefcase	Keep options open	Reputation, Reliability, Financial, Family

Table 5.1 Adi's morning activities and Marg's preferred outcomes and interests

Marg's morning activities	Adi's preferred outcomes	Adi's interests
Walk the dog	Garden bed intact	Neighbourliness, House pride
Make the bed	Keeping cool and serene	Certainty, Self-image
Pack the lunches	Energetic attentive children	Health, Family

Table 5.2: Marg's morning activities and Adi's preferred outcomes and interests

Morning activities	Walk the dog	Clean the teeth	Make the bed	Chat with the children	Pack the lunches	Pack the briefcase
Interests	Social Connection Efficiency Neighbourliness	Convenience Time Health Appearance Identity	Responsibility Pride Certainty Self-image	Fun Connection Responsibility Harmony Acknowledgement	Financial Health Family	Responsibility Reputation Reliability Accuracy Financial Family

Table 6.0 Combined morning activities and interests

Marg: I'm thinking back to when we were discussing and recording the outcomes that we wanted from our activities during each of our mornings.

Adi: It was instructional to see that when we considered a list of straightforward morning activities, how varied and often incompatible our preferred outcomes were when undertaking the same activities. I can't keep the garden bed intact while catching up with neighbours for example. I can't keep a tidy house while remaining cool and serene!

If outcomes are our anchoring points for option generation and then for decision-making, agreement is likely to result from capitulation and compromise. The more preferred outcomes, the less likely an agreement.

If interests are our anchoring points for option generation and then for decision-making, agreement is likely to result from creativity and collaboration. That is, the more interests, the more likely an agreement.

Marg: Yes, I find that mediators know this. Where most of us get stuck some of the time is in the practice: in treating participants' preferred outcomes as their interests. **The alchemy of mediation is facilitating the step-by-step transformation of individual's preferred outcomes to shared interests which sets the scene for creative development of options each of which can be assessed according to the extent and ways in which they meet shared criteria, namely**

interests.

Adi: Margaret, this is helpful in many ways. It relates to the roles of the mediator and the necessary skills to perform these roles. Perhaps even experienced mediators can recognize that these skills can always be improved with every case and with every day. Also, I find it particularly useful in creating the space for a conversation about the path and the tools that mediators and participants can use in an effective mediation process.

‘The Alchemy at Work during Mediation’ is to follow. In the meantime, feel free to contribute in the comments section below.

PS.

Scenario

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...time passing

You’ll be interested to know that Adi and Marg’s mornings harmonised smoothly so much so each was able to meet their parenting responsibilities and work commitments during the COVID lockdown.

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