

# Kluwer Mediation Blog

## The Importance of Finishing Well

Geoff Sharp (Brick Court Chambers / Clifton Chambers) · Wednesday, November 30th, 2011



Yep, it's been an up-and-down month.

More down than up if I'm honest.

But hey! I've done enough of these things to know that my old Dad was right all those years ago when we'd stand at the top of a black run and he'd say "*Laddie, if you're not falling down, you aren't skiing hard enough*".

So this is challenging work we mediators do and on a number of days this month there was no getting to yes – as parties who had spent a big day together left the mediation table in a funk, throwing insults of the “see you in court” variety over their well-suited shoulders.

So how do you end a mediation nicely? And why is it important?

Well, other than the obvious poisoning of the well, it's important for not only the parties but also for the process and invariably, even in a failed mediation there are positives that are all but negated when it ends ugly.

It's a fine line, but often parties need to be saved from themselves at the conclusion of an unsuccessful mediation and the mediator is the one to do it – I have taken to coaching parties on how they wish to end the mediation as soon as it becomes blindingly apparent that we will finish the day without agreement – I'm careful here because they pay me for my optimism and timing is everything.

And that raises the whole question of not only how do we finish well on the day, but also what we mediators do afterwards – how far do we go to bring the parties back to the table, how hard can we push, is it more about our own ego and our obsession with resolution rates or do the parties actually want to be shepherded back to mediation?

A while back I took an unscientific survey of what my colleagues at the [International Academy of](#)

Mediators and Prof. John Wade of Bond University, Queensland, Australia do when they can't get there on the day.

In my article that came out of that survey [I Know It's Not My Problem : But It Happened On My Watch!](#) I describe some of the general themes that emerged;

**P.U.S.H.** *The Persist Until Something Happens* principle.... many colleagues surprised me with their tales of perseverance. Some were contacting parties up to a year after the mediation had concluded and talked of giving counsel a "window" to again discuss the matter with the client as well as an excuse to contact their opposite number.

### **Email**

Email is used heavily in this area – its cheap, non-intrusive and avoids telephone tag. It also shows the mediator to be interested but leaves the initiative with counsel to get the mediator back in.

Email provides an ability to craft a well-timed note and avoid ill-considered communications that may be abused by one party or the other in subsequent judicial proceedings.

But keep yourself safe. Consider the basics like can your email and any response still be considered part of the mediation process and is it a confidential communication even if the mediation is not still on foot?

### **'We are done but we are not finished'**

Mediators are adjourning mediations but not terminating them. By leaving the door ajar the parties have a way back into the room that avoids anyone having to be seen as initiating a restart.

### **Marketing**

Many of us are finding that perseverance is a great look for a mediator and that it is valued by our clients right up there with the patience, persistence and optimism that we showed them during the session itself.

### **Two sorts of interventions**

There seem to be two categories of interventions that experienced mediators use when the parties remain in dispute after mediation;

1. the first is, interventions usually tried by the mediator at the end of the mediation session itself, and
2. the second type is the 'morning after' variety.

[Read full article here](#)

You might also like to take a look at [John Wade's article](#) and his suggestion that a written follow-up turns a 'failed' negotiation session into a perception of (painful) progress and provides a clear

document to reflect upon rather than conflicting memories of tense spoken words.

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The graphic features a black background with white text and a circular icon. The icon depicts a magnifying glass over a group of stylized human figures, representing a search or investigation process. The text is arranged in a clean, modern layout with a blue and green horizontal line at the top.

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