

Kluwer Mediation Blog

Of Elephants, Fish and Mediation

Joel Lee (National University of Singapore, Faculty of Law) · Wednesday, December 14th, 2011

I like the Christmas season. It marks a very happy time in the year for me and I'm afraid, it makes me a bit silly. In that spirit, I hope readers will forgive that I start off with an Elephant story...

I recently had the need to think about the various models of mediation that exist and it reminded me of the story of the blind men and the elephant. In one telling of the story (Modified from <http://www.jainworld.com/literature/story25.htm>):

“Once upon a time, there were six blind men in a village. One day the villagers told them, ‘Hey, there is an elephant in the village today.’

They had no idea what an elephant is. They decided, ‘Even though we would not be able to see it, let us go and feel it anyway.’ All of them went where the elephant was. Every one of them touched the elephant.

‘Hey, the elephant is a pillar,’ said the first man who touched his leg.

‘Oh, no! It is like a rope,’ said the second man who touched the tail.

‘Oh, no! It is like a thick branch of a tree,’ said the third man who touched the trunk of the elephant.

‘It is like a big hand fan’ said the fourth man who touched the ear of the elephant.

‘It is like a huge wall,’ said the fifth man who touched the belly of the elephant.

‘It is like a solid pipe,’ Said the sixth man who touched the tusk of the elephant.

They began to argue about the elephant and every one of them insisted that he was right.”

This teaching tale is often used to illustrate notions of relativity, multiple perspectives, harmonious living or even wave-particle duality. For our purposes, it also illustrates that what mediation is depends on what we focus on.

One point of focus is the settlement aspect of mediation. While we are often told that settlement should not be the measure of success in mediation, the euphoria associated with parties coming to a settlement is undeniable. It denotes a closure, hopefully a satisfactory one, to a dispute that has plagued the parties. Focusing overly on settlement however would be akin to the tail wagging the

dog. It will predispose the mediation towards a focus on rights and liabilities (a la the Evaluative mediation model).

Another point of focus is the transformative aspect of mediation. It is undeniable that mediation transforms. If nothing else, it transforms an otherwise ongoing dispute to a settlement that gives closure. But transformation can be more than that. It could involve value creation (a la the interests-based facilitative model) where 1+1 can be greater than 2. It could involve a focus on empowering parties in gaining clarity about their goals, resources, options and increasing their skills in resolving conflict, communicating and decision-making and recognizing the views, perspective, needs and experiences of the other party (a la the transformative mediation model). Transformation could also involve helping parties realize that their reality is of their own construction and that an alternate, more fulfilling reality could be constructed instead (a la the narrative mediation model).

It is evident from this discussion there is an inverse relationship between settlement and transformation. Depending on whether the focus is transformation or settlement, this will have implications on the content that we focus on in the mediation, the level of intervention of the mediator and the level of empowerment of the parties the mediation.

On the assumption that we, as practitioners, are not purists and that we use aspects of these models from time to time, then which model we use is informed by:

- Our purpose for mediating
- Time and cost considerations
- The nature of the dispute and the inclination of the parties

Put another way, a “one size fits all” approach may not always meet the needs of the dispute or the parties. Depending on the circumstances, we may want to focus more or less on either transformation or settlement.

If you’ve read to this point, you might be wondering “When is the fish going to turn up?”. I’m glad you asked. With only a tenuous connection with what we have been discussing, I’d like to suggest that one can express the various models referred to in these (admittedly whimsical) terms:

Readers will no doubt be familiar with the proverb “Give a man a fish and will eat for a day; teach him how to fish and you feed him for a lifetime”. Thinking on these lines:

- The Evaluative Model is giving the parties a fish;
- The Facilitative Model is helping the parties to fish;
- The Transformative Model is teaching the parties how to fish; and
- The Narrative Model is helping the parties see that the story doesn’t have to be about a fish.

Happy Holidays everyone!

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