
Kluwer Mediation Blog

In Praise of Private Sessions

Joel Lee (National University of Singapore, Faculty of Law) · Saturday, April 14th, 2012

It is the end of semester at the Faculty of Law, National University of Singapore and I have just wrapped up the Mediation Workshop that I teach every year. This workshop is intended to equip senior law students with foundational skills of mediation and mediation advocacy through active learning activities like role-plays and reviews. One of the issues we talk about is whether private sessions should be engaged in and if so, when and under what circumstances.

Let me be clear. I am a firm supporter of joint sessions. In fact, this post was inspired by a [paper](#) presented by [Geoff Sharp](#) (also one of this blog's contributors) at the 1st Asian Mediation Conference held in Singapore (4 – 5 June 2009). I believe there is tremendous value to having parties in the same room and ironing out their differences together. I also do not think that a mediator should shift to private session simply because there is the expression of some conflict between the parties. This is why, for more than half of a 13-week workshop, I restrict student mediators from going into private session. I believe that mediators need to be comfortable with and have the skills to manage conflict between parties at joint session.

However, I do believe that in appropriate circumstances, there is value to moving the mediation to private session. The trick or skill, of course, is knowing when to make this shift.

Conventional mediation training and wisdom provides us with some guidance. Private sessions allow parties the opportunity to express their views and interests in private that they might not otherwise be willing to express in joint session. It allows the mediator to reality test parties' entrenched positions and to explore parties' bottom lines. It follows then that it might be appropriate to shift to a private session should parties be at an impasse or if the mediator gets a sense that parties are not yet providing a full picture of their interests and concerns.

In addition to this, I would like to share two considerations that I hope can assist mediators in making this determination.

The first is where one or both of the parties come from a culture, whether national or organizational, where issues of hierarchy matter. This is expressed by Hofstede's [Dimensions of Culture](#) as the Power Distance Index. This can manifest in a number of different ways.

- If both parties are from hierarchical cultures, different hierarchies and they are of equivalent levels, then one can expect them to communicate as we would any set of parties in a mediation.
- If one party is from a hierarchical culture and the other party is of the equivalent level, then one can expect them to communicate as we would any set of parties in a mediation.

- If both parties are from hierarchical cultures, the same hierarchies and they are of equivalent levels, one might expect some reticence in their communicating in joint session as there might be face saving or face giving concerns.
- If both parties are from hierarchical cultures, the same hierarchies and they are of different levels, one might expect some reticence in their communicating from the party lower down in the hierarchy in joint session as there might be face saving or face giving concerns.
- If one party is from a hierarchical culture and the other party is of a different level, one might expect some reticence in their communicating in joint session but for different reasons. The person lower in the hierarchy might have face saving or face giving concerns. The person higher in the hierarchy might not wish to give the party lower in the hierarchy face.

Of course, more can be said about these variations but for our purposes, it is sufficient to give us a flavor of how this might affect our choice in whether to stay in joint session or shift to private session.

The second consideration was prompted by the [Myers-Briggs Type Inventory \(MBTI\)](#), which I recently had an opportunity to take again. One of the 4 continua of personality that the MBTI measures is whether one tends towards introversion or extraversion (this is how the MBTI spells it). I tend towards introversion. Introverts have a high need for privacy, need time to observe and be comfortable in new situations and need time to think. Put another way, if both parties are introverts, they may not be very forthcoming in a joint session especially if mediation is a new experience for them. If only one party is an introvert, that party may withdraw further as being in the presence of extraverts can be intimidating and tiring. The extraverted party of course may mistake the introverted party's reticence for dishonesty.

Where this situation presents itself, a mediator sensitive to this dynamic may wish to shift to private sessions to accommodate the needs of the introverted party.

To conclude this post, I would like to make three brief points. First, private sessions can create concerns of collusion, dishonesty and partiality. Therefore it goes without saying that the manner of shifting to private sessions must be handled with care. Secondly, the two considerations presented above do more than inform a mediator *whether* to move to a private session. It may well be that it will affect *when* the mediator chooses to move to a private session. In both considerations, moving to a private session much earlier may be called for. Finally, these ramblings are a mental construct of the writer and should not be taken to be true. I would invite readers to test this mental construct against their real world experiences.

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