
Kluwer Mediation Blog

I've Heard That One Before...

Anna Howard (Centre for Commercial Law Studies, Queen Mary University of London) · Sunday, December 31st, 2017

It was a comment made a few months ago and it has stayed with me: “But Anna, mediators are all tree-huggers.” There have been many variants of this type in response to my answer to the very English question: “So, what do you do?” These comments continue to irk me. Finally, as this year draws to a close, I’ve jotted down a few thoughts in response to them.

For our readers who are not native English speakers, “tree-hugger” is a derogatory term for environmental campaigners and refers, in particular, to the practice of embracing a tree to prevent it from being felled (the Oxford English Dictionary). In its application to mediators, I sense that what might be meant by the tree-hugger label is that mediators are a rather meek, idealistic and flaky bunch. If that is what is meant, it suggests a misperception of what many mediators do, and do not do. At the very least, the career path – or lack of one – for mediators is not for the faint-hearted. Many have left the safety, and strictures, of solid and well-established professional careers for the greater uncertainties of life as a self-employed mediator.

These tree-hugger comments led me to reflect on what it is that mediators do and, more specifically, what their qualities might be. At the time, I was reading Amy Cuddy’s *Presence*. That book led me to a quality which I have frequently seen displayed by mediators yet which I have not yet heard attributed to them: boldness. I do not mean the type of boldness which springs to mind due to the frequent association of “bold” with “brash.” Rather, it’s a boldness born of awareness, attention and authenticity. And it’s a boldness which has been present in many of the mediations which I have had the good fortune to attend (particular thanks to John Sturrock QC for his generosity).

I’ve seen boldness displayed in the types of questions asked by the mediators: the questions which no-one else wants to ask; the questions which matter but might be unwelcome; the questions which can lead to turning points. Leonard Cohen wrote: “There is a crack in everything. That’s how the light gets in.” Mediators often tease away at the cracks; they identify and ask the difficult questions which can open up the cracks. At times, that’s how more light gets in.

I’ve also seen boldness in mediators’ proposals on the process and, in particular, on suggestions of who might speak to whom, and when. And I’ve seen boldness in the mediator taking responsibility for an unfortunate situation, even though assuming that responsibility might have not have been a reflection of what had actually occurred. But the mediator wanted to absorb the flack, as it were, drawing it away from the parties.

Most importantly, I've seen boldness spread. The nudges – perhaps, in small part, from the mediator's example and, in larger part, from the questions asked – have prompted parties to act a little more boldly, to make those difficult decisions. And perhaps it's here where the tree imagery might actually work. Maya Angelou wrote: "Stand up straight and realise who you are, that you tower over your circumstances." Perhaps the mediator's presence and attention nudges the parties to stand up tall like a tree and feel emboldened. And this might be what mediators and mediation really do: empower – or "emtower" – the parties to decide for themselves what happens to their disputes.

The Kluwer team would like to wish all our readers a bold and happy 2018.


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