

Kluwer Mediation Blog

The magic of empathy

Alan Limbury (Strategic Resolution) · Thursday, August 22nd, 2019



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We mediators are accustomed to recognising empathy as an important part of our mediation repertoire which is consistently reinforced in our training and professional development.

It is front of mind for many of us as we plan for and conduct our mediations. This blog has seen its fair share of commentary. In his February 2018 Kluwer blog “[Empathy](#)”, Charlie Irvine provided an insightful reflection on the significance of cognitive and emotional empathy and how they work best in combination.

Mediation teachers also continue to refine the tools they use to build a heightened awareness of empathy and its special role. In “[Without Compulsion: Teaching Mediators Empathy](#)” <https://www.mediate.com/articles/BillikopfG6.cfm>, Gregorio Billikopf explains:

“Using a tool I call seven words, participants learn how to: (1) establish a psychological connection through a conversation not related to the issue at hand (a step that may have to be repeated for a period of time before moving on to step two); (2) briefly introduce the fact that they have something important they wish to discuss; (3) speak something of a positive nature about the other party before diving into this topic to be discussed; (4) briefly introduce the topic of controversy by speaking slowly, softly, tentatively and using seven words or less; (5) let the other know they are being heard; (6) share their own perspectives and views now that they have listened to that of the other party; and (7) search for sustainable solutions...”

Even the judiciary recognises empathy’s value in the dispute resolution toolbox. In “[Empathy in Mediation: Listening Between the Lines](#)”, Judge Elaine Gordon (ret.) noted that:

“Success at settlement often depends on the mediator’s capacity for empathy. Mediators must display empathy to two competing sides while remaining neutral. It is both an emotional and intellectual task; one in which you put yourself in the shoes of the other person in order to understand that person’s emotions or feelings. A mediator needs to be comfortable with the expression of emotion and curious about the emotional core of a dispute.”

We are also regularly reminded of the delicate balance required to manage the tension between the display of empathy and the appearance of neutrality in an environment where parties can seek to transform our empathetic behaviour into a role as their advocate.

In “[Empathy, neutrality and emotional intelligence: a balancing act for the emotional Einstein](#)“, James Duffy notes:

“A mediator’s commitment towards empathy and emotional connection is one of the most subtle yet pervasive challenges to mediator neutrality. It is only through strong emotional self-awareness and self-regulation that mediator empathy can possibly co-exist with party perceptions of impartiality.”

A big ‘aha’ moment for me as a result of many of my post-mediation debriefs has been the recognition that sometimes the only way disputants can agree to end their dispute and live with the outcome is when each perceives the mediator to have been empathetic, even if the other party was not. I find displaying empathy sometimes works best in private session, so as to avoid arousing unfounded suspicion in the other party that the mediator is biased. However, I have learned to be careful, since it is not unknown for parties to return from a private session with the mediator to give an (often inaccurate) account of what the mediator has said, with the mediator feeling unable to set the record straight.

Despite my long experience of the value of empathy, a recent news item has shown me that I had completely underestimated its potentially lifesaving impact. I read with amazement of the presence of mind of a young woman who was kidnapped, knocked unconscious and held prisoner with the absolute certainty that the outcome would be her murder. I wonder how many of us mediators would be able to follow this young woman’s example. Fearing for her life she was still able to delve deep enough into her repertoire to be able to regain her freedom by expressing empathy to her captor. Lest you think this is the product of a wild imagination let me share with you a spell-binding article from the New York Times: “[She Thought He Would Kill Her. Then She Complimented His Orchids.](#)”

Amazing!

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