

Mediation Styles: Facilitative, Evaluative and Transformative

Why would I pay for mediation if the mediator is just going to do the same thing that a judge does in a pre-trial conference?

Will the mediator tell me [or the other party] what we should do?

How can I resolve this situation and still have a workable relationship with my business partner / supplier / neighbour / family?

The people who have asked me these questions are as confused as many others about what mediators do. The last 50 years have seen tremendous growth and evolution of mediation in North America and many other parts of the world. There is no longer just one service in the marketplace called "mediation".

The number of variations which are all labeled "mediation" creates confusion for the consumer and for the professionals such as lawyers and accountants who advise mediation participants. In some places, parties in a lawsuit are required to go to mediation, sometimes even with an assigned mediator. What kind of mediation service are they going to get?

Facilitative: In the 1960's and 1970's the form of mediation generally in use was what is now called facilitative. It is also called interest-based mediation. This form of mediation recognizes that participants in a dispute are the people most able to resolve their dispute and that if they do so, the outcome will have the greatest durability. The facilitative mediation style is effective whether or not the parties choose to have lawyers attend with them.

The role of the facilitative mediator is to provide a process for the participants to resolve their dispute, and to let the participants control the outcome of their dispute. The mediator asks the participants questions to help them identify the significant needs for each of them and then assists them to develop options and build an agreement from those options. The mediator does not provide her or his own opinion of what the participants should decide.

The facilitative mediation style tends to have participants meet together at the same time with the mediator, although in many cases they also meet separately with the mediator at times. Facilitative

mediators generally need to have some experience in the subject matter of the dispute but need not be experts in the subject because the parties are in control of the outcome.

Evaluative: Evaluative mediation grew from the settlement conferences being conducted by judges. This mediation style tends to be chosen when the participants are represented by lawyers and often for matters which are or may become a court action.

The evaluative mediator reviews the information from each participant and then gives an opinion about what a judge or jury might decide if that information were evidence in court. Evaluative mediation focuses on legal rights, the assessment of fairness, and the costs and benefits of settlement options compared with court action.

Typically an evaluative mediator meets one at a time with the participants in the dispute and their lawyers. An evaluative mediator may meet with the lawyers together but often not with the participants themselves at the same time.

Many evaluative mediators are lawyers or retired judges who have experience with court-based settlement conferences. Because part of their role is to provide an opinion about the outcome, evaluative mediators generally have experience in the subject area of the dispute.

Transformative: In 1994 Joseph Folger and Robert Bush challenged and transformed the mediation field when they published "The Promise of Mediation: The

Transformative Approach to Conflict". The concepts of transformative mediation were derived from the elements of facilitative mediation, such as the interest in empowering participants, and helping them shift from their individualistic vision to a new perception of how they relate to the other person.

Transformative mediation is based on the values of "empowerment" of each of the parties, and "recognition" by each party of the other party's needs, interests, values and unique point of view. The goal is to achieve understanding of themselves and the other, reverse their negative, downward conflict spiral and help them transform the quality of their conflict interaction, ultimately leading them to achieve a resolution as defined by them.

The focus of the transformative mediation style is that parties or their relationships may be shifted away from weakness and self-absorption towards strength and responsiveness during the mediation. Therefore the participants meet together with each other and the mediator. Typically lawyers would not be present even though lawyers may be advising the parties outside of the mediation. Matters suitable for transformative mediation often are matters which could not effectively be resolved through the use of a court action.

What mediation style is right for you? This is a subject for discussion with your lawyer or other professional adviser. See the next issue of *Common Ground* for more on this topic.

Mediation Styles at a Glance:

	Facilitative	Evaluative	Transformative
Purpose	Solve the problem	Get an outside opinion	Change the conflict interaction
Role of Mediator	Facilitate negotiation	Assess merits	Support parties to understand each other and make decisions for themselves
Activities of Participants	Identify interests & assess options	Provide information	Speak fully about what is important
Mediation Meeting Format	Participants mainly meet together with mediator	Participants mainly meet separately with mediator	Participants meet together with mediator

Munn-thly Memo

Q. What questions should I ask when I'm selecting a mediator?

A. First ask yourself what you need to resolve the dispute. What are the characteristics of the people involved in the dispute? What is their purpose for using mediation? What mediation style are they likely to find helpful? What is the preferred time period and is there a deadline for the mediation services? What is the available budget?

After you have identified what you need, here are some ideas for questions when you interview a prospective mediator:

Mediation style: What style of mediation do you use most of the time? What other mediation styles do you use? For consideration of mediation styles see the article above and the next issue of *Common Ground*.

Training and experience: What training have you had in mediation? How long have you been a mediator? What professional mediation credentials have you achieved? What other work do you do besides mediation? What professional organizations do you belong to? What is your website address?

Some of these answers may be on the mediator's website or in the mediator's directory listings with such services as the International Mediation Institute www.imimmediation.org or ADR Connect through the ADR Institute of Canada www.adrcanada.ca.

Credentials such as the achievement of Chartered or Qualified Mediator recognition by the ADR Institute of Canada or certification with the International Mediation Institute provide an indication of the mediator's experience and commitment to developing their expertise.

Professional organizations such as the ADR Institute of Canada require members to follow a Code of Conduct.

The mediator's website is another way to gather information about the mediator's experience by looking at the information they have posted for the public. Also if the mediator has a website it can serve as a simple method to pass on information about the mediator to all the mediation participants.

References: What information can I get about you from your past clients? Providing references is a challenge for mediators because most of the work we do is confidential, even including the names of the organizations or individuals involved. One example of a way to provide information without compromising clients' confidentiality is that mediators certified by the International Mediation Institute have feedback from clients or their lawyers provided to a reviewer and the feedback digest summarized by the reviewer is available on the website www.imimmediation.org.

Timing: When are you available? Early in your contact with the mediator let the mediator know the timeframe that you want the mediation services. If the mediator does not have time available within your preferred dates you may need to contact the participants to decide on other dates when the mediator can be available or consider another mediator.

Budget: Don't be shy about asking. Does the mediator charge by the day or by the hour? Is there a minimum charge? Will there be travel expenses? Will there be additional expenses for meeting room(s)?

Even if you ask the mediator for an estimate in advance it may be that the time involved expands or contracts when the meeting actually is in progress. Much depends on the willingness of the participants to listen to each other and to shift their thinking. For example when participants are very entrenched or when they are people who need time to consider new ideas, more than one meeting date allows them time to gradually shift their thinking and may allow them to reach a resolution which could not be achieved in one meeting. Sometimes trust can be rebuilt with baby steps, for example, tentative agreement terms that can be tried for a short time until a subsequent mediation date when the terms can be assessed and possibly altered by the participants.

I find that while it is difficult to predict how long it will take to resolve a specific situation, often setting a specific, reasonable deadline can help to focus the participants on efficiently finding a resolution. Sometimes the fine details of an agreement can take time to work out with the input of legal or other advisers, even when the participants seem to be substantially in agreement. If the plan is to consult advisers after the mediated discussion, setting another meeting date to iron out any details still outstanding by that date can also help the participants maintain the momentum to complete their agreement.

Mark Your Calendar

Upcoming Training Events
Presented by Kathryn Munn

Fundamentals of Mediation

Intensive 40 hour program
March 23, 24, 25, April 4, and 5, 2011
*Deadline for early registration discount:
February 23, 2011*

8:30 AM to 5:30 PM each day
Course location: London, Ontario
This course is approved by the
ADR Institute of Ontario.
Registration form available at www.munnrcs.com
Please call 519-660-1242
(toll-free 1-888-216-3202) or email
kmunn@munnrcs.com for more information.

Mediation Beyond the Basics

Advanced 21 hour program
For graduates of Fundamentals of Mediation or
equivalent 40-hour mediation program
May 9, 10, and 11, 2011
*Deadline for early registration discount:
April 8, 2011*

9:00 AM to 5:00 PM each day
Course location: London, Ontario
Registration form available at www.munnrcs.com
Please call 519-660-1242
(toll-free 1-888-216-3202) or email
kmunn@munnrcs.com for more information.

Advanced Mediation

Advanced 21 hour program
For graduates of Fundamentals of Mediation and
Mediation Beyond the Basics
November 23, 24, and 25, 2011
9:00 AM to 5:00 PM each day
Course location: London, Ontario
Registration form available at www.munnrcs.com
Please call 519-660-1242
(toll-free 1-888-216-3202) or email
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