

THE NEED FOR PSYCHOLOGY IN MEDIATION

The Role of the Mediator

The principal task of a mediator is to achieve an attitude shift. Parties come into a dispute with fixed, rigid positions and perceptions, either about:

- the other party – e.g. that they are the sole cause of the injustice; or
- themselves – e.g. that they are the victims of the injustice; or
- the dispute - e.g. that the dispute is critically important.

Without a change of any of these attitudes, the dispute will remain unresolved.

Not through logic

The first lesson for mediators is that this positional shift cannot be achieved through logic or rational reasoning. Experienced lawyers and eminent experts on both sides of a dispute deploy impeccable logic and unimpeachable legal reasoning, yet are unable to persuade the other party of the correctness of their case. And so they end up in court – and pursue repeated appeals when they lose. This is because there is no such thing as ‘objective truth’, yet each side fervently believe that only they - and the Judge - possess it.

Emotions

The blockage to resolution is invariably emotion. All disputes are emotional, even the ‘driest’ commercial cases are driven by powerful emotions. Parties often say: ‘This is just about money – it is not emotional’. Yet money is a most powerful emotional driver: it represents several layers of emotion: the desire for

- revenge: to punish and hurt the other party (in the pocket where it hurts most)
- vindication – to prove to the world that they were right
- retribution - to recover what has been lost, and possibly to profit

Emotions are also involved in our 'fight or flight' responses. The Amygdala are organs in the brain that govern our instinctive responses. Upon perceiving a threat, they block our neuro-pathways to the slow-thinking analytical part of the brain, causing us to act instinctively and defensively (the 'amygdala hijack'). In modern dispute situations, an 'amygdala hijack' can be triggered by any injustice, or allegation of negligence or breach of contract. All are felt as attacks upon our integrity.

Self Esteem

Challengers to our professional or ethical integrity is seen as an assault upon our self-esteem. We all have an image of ourselves as we would like others to see us. We all need the approval of others, and are all averse to disapproval. At the extreme, we abhor humiliation (hence our intense fear of public speaking). In disputes, parties constantly protect their self esteem. It is often what brought them into the conflict, and then leads to deadlock preventing them from extricating themselves from it. Their self-esteem persistently seeks to avert humiliation.

Two further examples of self esteem are the need to be heard and the need for control. Being ignored or not listened to can be a damaging assault upon our self-worth; and losing control takes us outside our comfort zone.

Values

These are the principles by which we live: we create them because we have found them to serve us well. Honesty, loyalty, punctuality, tidiness - all examples of values which help us navigate through the uncertainties of daily existence. When these values are confronted or challenged, we quickly descend into conflict. Many everyday behaviours that 'push our buttons' do so because our values have been attacked, and consequently our self esteem lowered. Mediators need to identify parties' values in order to work, with rather than, against them.

Biases and Assumptions

We all have biases and are constantly making assumptions – about people, their behaviour, their thoughts, intentions, and motives. Yet a common but dangerous assumption is that we are totally unbiased. A good mediator will work to reveal these ambiguities of the parties, and so dispel misperceptions and identify the commonalities of the parties.

Conclusion

Regent's mediators are taught to recognise, identify and effectively deal with these shared psychological characteristics of human behaviour. Mediators with a good understanding of them are likely to be more efficient in facilitating resolutions and will spend less time perplexed at the conduct of parties in conflict.

* * * *