

Preparing Parties to Participate in Mediation— The Evolution of a Coaching Model

Regardless of how skilled mediators are at managing the concerns that participants have when entering mediation, many participants bring anxieties, questions and fears that can interfere with their ability to effectively engage in the process. Many people are actually ill-prepared to participate and are initially reluctant to engage in a face-to-face conversation with the other person. When I discussed the matter of mediation preparedness with other practitioners, I found that they shared my concerns, so I researched and developed a method for conducting a pre-mediation process that supports and prepares people to effectively take part in a mediation conversation. This article details the evolution of my thinking and that process.

In the beginning...

My mediation training and practice started over 35 years ago. Like most mediators of my vintage, I started with an interest-based process. *Getting to Yes Negotiating Agreement Without Giving In* was the seminal text, and the theory and practice made perfect sense. We learned the language—BATNA, WATNA, loss aversion—and other terms and phenomenon that apply when disputing parties negotiate their differences.

Thousands of people settled their disputes and continue to do so based on the well-worn theories posited by Roger Fisher and William Ury. Of course, other great texts began to line our libraries as other theories gained credence among those of us who are mediating matters that aren't about "negotiating agreement without giving in" as the title goes. *The Promise of Mediation*, *Insight Mediation*, *Transformative Mediation*, *Narrative Mediation*, *Solution-Focused Conflict Management* are examples of practices that reflected further development of the thinking in our field and the realization that many parties come to facilitated discussions to mend, improve, and strengthen the relationship between them and the other person.

None of what is said here is new to those of you who practise mediation. But over time, many of us incorporated other principles into our practices to do more than facilitate settlement of issues in dispute. We recognized that the other needs parties express—just as strong, if not stronger than those relating to the content of the dispute—had to do with the breakdown of the relationships not only in family, neighbourhood, workplace, estates and other conflicts that are interpersonal in nature, but also in many commercial and civil disputes. As other methodologies evolved in the ADR

field these types of considerations informed what was included in training and our practices, and this evolution and my own experiences lead me to consider some other aspects of mediation to do with preparing people to actively and effectively engage in the process.

Purpose of Pre-Mediation Work

Not all mediators conduct pre-mediation meetings, and there are some that subscribe to the view that meeting privately prior to (and even during) mediation may bias the mediator about one of the parties or issues in dispute¹. Some other commentators have expressed concerns about the possibility of violating confidentiality and abuse of power². In the many training programs I took when I started in the field, limited time was devoted to what pre-mediation entails and ways to prepare parties to participate in the process. Undoubtedly, our practices vary in this regard. Certainly, we learned that pre-mediation meetings give the mediator the opportunity to assess parties' suitability and even whether to bring the parties together



**CINNIE NOBLE, LL.B., LL.M. (DR),
C.MED**

Cinnie Noble is a Chartered Mediator and Professional Certified Coach, and pioneer of conflict management coaching. She and her international team train mediators and others worldwide in her unique CINERGY® Model. Cinnie is the author of *Conflict Mastery: Questions to Guide You* and *Conflict Management Coaching: The CINERGY™ Model* Bio: <https://cinerogycoaching.com/about-cinerogy/cinnie-noble/www.cinerogycoaching.com>

at the beginning. Pre-mediation meetings also give the parties a chance to give free expression to their emotions and ask questions about the process. We also learned, of course, the type of procedural and logistical information to be shared with clients prior to the first joint session.

In a small research study I conducted 6 years ago on this topic, I asked mediators what their pre-mediation practices were, how this part of the process had changed since they started their practices (if it had), and what they saw as the rationale for the change, if any.

Experience and increased awareness about what the practitioners determined would be more helpful for the parties (and themselves) resulted in changes for all I interviewed. For instance, I heard about such changes as extending the time spent with each party from 20–30 minutes to up to 75 minutes with each party (initially providing process information and then, adding more elements). I read and heard about mediators who increasingly provide parties with tips regarding listening, com-

munication and negotiation skills—in written form and/or verbally and give general advice on ways to participate most effectively. I heard from many practitioners that they were incorporating more written preparatory questions for parties in which they focus on many of the elements of mediation to be discussed during the process.

These interviews and the growing literature on pre-mediation meetings demonstrated a shift in how many mediators prepare parties to participate more actively in the process and the outcomes they observed as a consequence of doing so. To name a few, the practitioners who extended their time and included more information giving and gathering spoke about the importance of developing a rapport with the parties, and gaining an understanding about what concerns might preclude effective participation. They noticed that by doing so, people who expressed the types of worries they had about engaging with the other person appeared less anxious and more confident when the mediation occurred. Others articu-

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lated that pre-mediation meetings serve to get parties focused on identifying what is most important to them and what they need to do, ask, say during joint sessions to feel the process has been successful for them. Others talked about how the individual sessions before mediation helped parties to get into a problem-solving mind-set and better able to engage in the process and concentrate on the possible outcomes for moving ahead rather than dwelling on what happened.

Regardless of how skilled we are at managing the range of concerns the parties might have when they enter into the process, many come with anxieties, questions and fears that have the potential for interfering with their ability to effectively engage in mediation. The most common rationale practitioners identified for the changes they had made over time have to do with this and a basic recognition that most people are actually ill-prepared to participate and in fact, many feel resistant to sitting across from the other person and speaking their truth. This is consistent with my findings and my experience and resulted in taking a different approach in my own practice.

A Coaching-Approach to Mediation Preparedness

In the late 90's I became a certified coach and developed a model for coaching people on a one-on-one basis to strengthen their conflict competence and gain confidence to more effectively engage in their interpersonal disputes. The International Coaching Federation (www.coachingfederation.org) defines coaching as "partnering with clients in a thought-provoking and creative process that inspires them to maximize their personal and professional potential." Applying this definition to conflict management coaching then, one of the premises is to maximize clients' potential to engage in conflict. In my one-on-one coaching practice it was evident that part of my role entails making conflict a better experience for my clients and I began to consider how this role might also apply in my mediation practice - with whatever else the parties need and want from the process. It is inherently about creating a safe place and space.

In my coach training and subsequent studies, an important topic, which was increasingly being raised in the conflict management field, focused on the brain and what happens when we are "triggered." At these times, the amygdala (two small regions in the brain that help regulate emotion) is "hijacked" due to the emotions that occur in reaction to the negative stimulus and the ability to think is compromised. Helping people shift this reaction to be able to use their "executive function" in the pre-frontal cortex to reflect, increase awareness, be creative, problem-solve and make decisions is key in both coaching and dispute resolution practices when working with people engaged in conflict.

My studies and research resulted in developing ways to facilitate a shift from peoples' emotional reactions to their interpersonal disputes to a place where they are able to re-

flect before responding. That shift, of course, is not one that is easily made especially when it comes to interpersonal disputes and long term conflicts in which values and identities have been threatened. Based on my research, among other things related to neuroscience principles, I developed a methodology for facilitating that shift for my individual coaching clients and I wondered how coaching would apply to my mediation practice.

Before developing what a pre-mediation process would look like, I met individually with people who had engaged in mediations relating to interpersonal disputes and asked whether or not they settled. The four questions I asked parties were: Looking back, what more, if anything, might have been helpful by way of preparation for the mediation? And what was the nature of your concerns before you participated? What about during? How about afterwards?

I will focus on the responses that are most pertinent to the topic at hand. Many people expressed fears³ about participating in the process and how they and the other person were going to interact. Most people also said, in retrospect, that they would have liked to have been better prepared to deliver tough messages, to receive less reactively the other's upset and blame and to respond more effectively. Many were still agonizing about what they said and didn't say. There were many wish-lists in this regard such as "I knew that is what she was going to say and I wish I had prepared for how to respond" "I wish I had had the nerve to say...." "I wished I had apologized. I wanted to but couldn't find the words..." "I wished I was prepared to say what I have wanted to for a very long time" and so on. Again, it was a small sample but, the responses to my questions were consistent.

I reminded myself, and it is important to keep in mind, in relational conflicts (and other disputes really), parties typically have a good idea of what the other person is going to say in the mediation based on having heard it in an altercation between them. Or, it might be by way of a written complaint or, by a boss or someone else within the organization, like a human resources employee, who has conveyed the information. Because they knew generally what to expect, most people anticipated what was going to be said and figured that the other person would, too. As a consequence, being prepared to respond more effectively, and communicate their experience and needs with more clarity and calm than they had during their altercation were common "wishes." Many stated they also wanted to understand better where the other person was coming from, saying they were unable to hear, understand, take in etc. what was said.

A Pre-Mediation Model

Using my research, I developed a method for conducting a pre-mediation process based on each person's specific fears and concerns about how the interaction will go, the reactions

they want to regulate, the messages they want to convey and the responses they hope to make. If they want to instead or, in addition prepare for other concerns or consider the risks and opportunities relating to settlement options or anything else that worries them then, that's the focus of the sessions.

The model is a flexible, multi-faceted process based on what the parties bring. It includes:

1. sending the parties a short summary of what mediation is and is not and a questionnaire that asks the parties to share what they are hoping to achieve regarding the relationship and issues in dispute, what they are most concerned about, and for what they want to be most prepared. Sometimes there are more questions depending on what information I already have; and
2. holding 3 (and sometimes more) sessions with each party for an hour at a time. This usually occurs over 2–3 weeks.

The first session is initially a getting to know one another meeting that includes a review of the answers to the questions and responding to process type questions. Obtaining the client's goals for our time together is also done in the first session including ascertaining what success would be for them. Each then analyzes the dispute based on The (Not So) Merry Go Round of Conflict⁴ which requires them to step back and gain different perspectives on the conflict between them and the other person. This analysis begins the process of developing mutuality – by considering not only their own perspective but also, how they view the other person's "come from." There are times the latter analysis is moved to the second session. The content of the next two sessions is according to each person's objectives for what they want to be most prepared.


Essentially, parties work on setting their intentions about how they want to be and interact. They might practice certain sentences and requests they are finding hard to articulate based on considering what and how they want to communicate and how they want to be heard and received. They contemplate and practice various ways of responding to what they

expect the other will say. They might list the possible options for settling things and the pros and cons of each for them and the other person. Essentially, they consider what will make the process a successful one for them - whether or not they settle.

I am clear with the parties from the start that I am there to support each with respect to that for which they want to be most prepared in order to make the process and experience as productive as possible. I do not teach, train, provide advice or opinions, or make suggestions. Rather, the coach-approach is strictly about tapping into parties' own resources so that they are best able to gain the confidence and clarity needed to participate.

What I have found by follow-up evaluations and conversations is that parties who engage in this sort of format express relief that they were well-prepared to engage in the process, that they felt more confident and calmer than they expected to, that they would use such a process again, and that they have learned some things about themselves that they are applying in other situations.


Summary

Over the years, I have been part of conversations in which mediators are looking at the processes they might want to add to their growing tool box for conflict management specialists. Some are considering what else may improve the conflict experience for disputing parties and what other ways might be helpful for people to reach settlements or at least reconcile their differences. There will be many more conversations and one of them will be about pre-mediation coaching. I welcome our ongoing discussions. 

- 1 For example Christopher W. Moore "The Caucus: Private Meetings That Promote Settlement" *Mediation Quarterly* 16 (Summer 1987) 87-101; Gregoria Billikopf-Encina, "Contributions of Caucusing and Pre-Caucusing to Mediation" *Group Facilitation: A Research and Application Journal* 4 (Spring 2022) and Joyce Odidison, *Getting Ready for Mediation: A Pre-mediation Concept* (Winnipeg: Interpersonal Wellness Services 2004, 2013)
- 2 For example Christopher W. Moore *The Mediation Process: Practical Strategies for Resolving Conflict* (San Francisco: Josse- Bass, 2003); Joan Blades, "Mediation: An Old Art Revitalized" *Mediation Quarterly* 16 (March 1984) 15-19
- 3 Cinnie Noble, "The Fear Factor and Conflict" <https://www.mediate.com/articles/NobleC12.cfm>
- 4 From the book *Conflict Management Coaching: The CINERGY Model* p. 51 2012, by Cinnie Noble

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