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Brodies' Mediation Seminar

How to prepare effectively for and represent a client in mediation

Tuesday, 10 March 2015

Welcome!

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1. Preparation for mediation

What needs to be done:

purpose, real needs, risk analysis, BATNAS/WATNAS,
multi-faceted matrix, other side's shoes – concerns, needs, options, alternatives,
common ground? mutual interests?

– and how to maximise the impact of your preparation:

language, communication, documents, summaries, set the tone,
be and keep client informed

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2. Engaging with the other solicitor

- Before and during the mediation day:

  Keep in touch, take initiative, work together, joint summaries?
  - see them as partners, openness usually works

- How to get them to participate at all?

  understand their situation, their clients, AARREE, explain benefits, interests not positions

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3. Effective representation

- What is good advocacy in mediation?

  purpose, clarity, precision, non-adversarial, dis-passion, preparation, acknowledgment of risk, two sides, respect, courtesy

- Whether to do it with or without counsel

  Pros? Cons?

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4. Making best use of the opening two hours on the day

- Initial meetings
- Breakfast / informal gathering
- Client/client meeting
- Solicitor/solicitor meeting
- Opening presentations?
- Exchange of information
- Use of visuals
- Taking stock
- Combination of private and plenary – different combinations of meetings

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5. Engaging with the mediator

- What works and what doesn't?
- Do you need to influence the mediator? If so, how?
- What do you tell him or her?
- *Key: openness, judgment, trust, professionalism, courage, independence*

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6. What if the other side's lawyer appears less than competent – or difficult?

"My incompetence will become the basis of your appeal."

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7. Use of experts?

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8. (Apparent) Impasse?

- Concessions?
- Bottom lines?
- Big picture – balconies and precipices
- BATNAS / WATNAS
- Risk analysis – decision trees?
- Multiple factors

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9. Handling difficult situations

- Personality clashes
- Decision-makers not present
- Other side making threats
- Tensions within the team
- Voices outside the room
- Cultural, ethical and gender issues, etc

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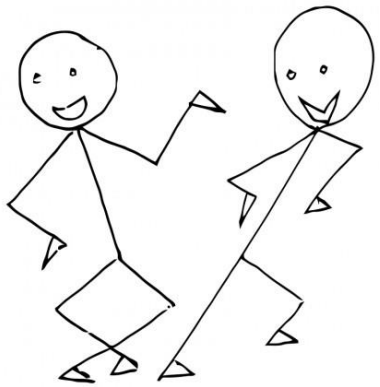
10. Making and receiving offers

The dance……



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11. Persevere, be patient….

"Patience, persistence and perspiration make an unbeatable combination for success"

Napoleon Hill

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12. Drafting the resolution agreement

What to think about:

- *Prepare in advance*
- *Think of all the angles*
- *Don't leave till the end*
- *Draft like any other contract*
- *Take time*
- *Work collaboratively*
- *Don't nit-pick*

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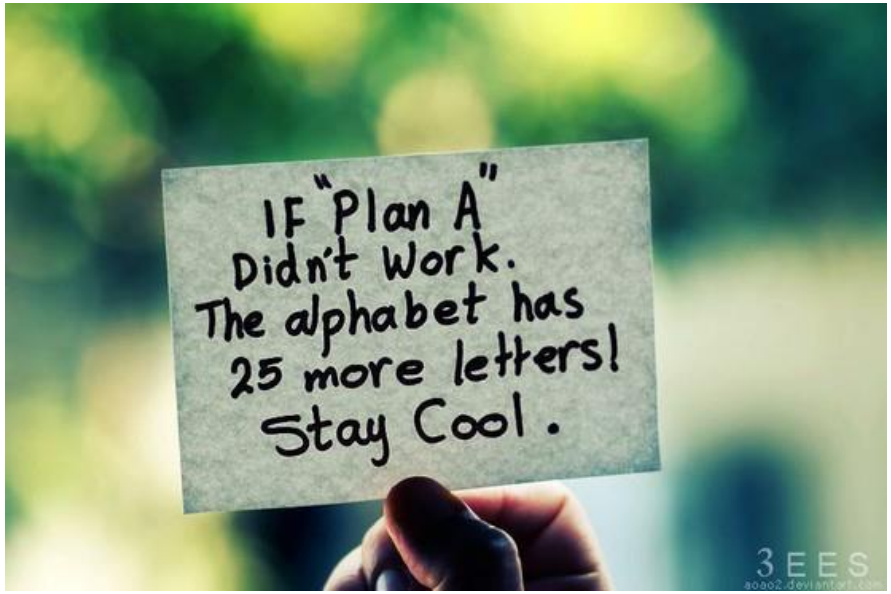
13. If there is no resolution….

Don't give up… persevere



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Further Resources

- Core Newsletter
- A Mediator's Log
- Blog
- Resources page
- www.core-solutions.com

Thank you for welcoming me!

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