



better conversations
better outcomes

Mediation as a Continuum: from Preparation through to the Aftermath – why sticking at it really matters

With John Sturrock

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An Introduction



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Our Topics

- Preparation to maximise the prospect of a resolution
- Cooperation among advisers and experts
- Making best use of the opening two hours on the mediation day
- Perseverance and patience at the end of the day
- Persistence even if a resolution is not achieved on the day



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“Before anything else, preparation
is the key to success”

Alexander Graham Bell



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“Success depends upon previous preparation, and without such preparation there is sure to be failure.”

Confucious



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Topic 1

Preparation to maximise the prospect of a resolution

- getting started from the first contact
- communications and coaching
- joint/individual summaries – what? why? how?
- risk analyses / cost projections / decision trees
- location/venue
- cultures
- process design
- what is it *really* about? what lies under the surface?
- preparation questionnaire



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Preparation Questions

- What do you really need to achieve out of this today?
- If you achieved this, what would that mean for you?
- What do you need to do today to achieve this?
- What do you need to say to the other party to help to achieve this?
- What do you need to hear from the other party which would help you achieve this?
- What are your main concerns at this stage?
- What do you think are the other party's main concerns at this stage?
- Where might misunderstandings have arisen in the past?
- What do you think that the other party really needs out of this?



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Further Questions

- What are the areas of common ground between the parties?
- What are the realistic options for sorting this out?
- If you are going to work together in the future, what needs to be done?
- If you are not going to work together in the future, what needs to be done?
- If you can't find a mutually acceptable solution, what will happen?
- What will be the consequences for you if this is not resolved?
- What do you think will be the consequences for the other party?
- Reflecting on these questions, what would be an outcome with which you can live?



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Topic 2

Cooperation among advisers and experts

- Ill feeling between clients will often influence counsel
- Sure signs of trouble
 - little or no contact
 - intemperate correspondence
 - premediation offers
 - inability to agree housekeeping
 - worse, little agreement on process
 - surprises on the day
- Fertile areas of cooperation
 - premediation
 - position paper
 - at the table
 - drafting



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Topic 3

Making best use of the opening two hours on the mediation day

- meeting parties privately
- breakfast
- meetings with principals / advisers
- managing presentation of information
- coaching
- objective? achieving understanding / building confidence



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Topic 4

Perseverance and patience

It's a process... not an event

- start mediating within the litigation
- agree early on process and late on substance
- build the relationship before building cooperation
- timing in mediation is organic not forensic

Inoculate early and often

- 80/20
- mediation cadence/rights of passage
- credits (am) / debits (pm)
- ...the extra mile....
- breaking deadlock?
- drafting/word-smithing



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Topic 5

Persistence even if a resolution is not achieved on the day

follow up – when? with who? how?
mediator suggestions?
speak to others? eg ultimate decision-makers
within the price?

end well!
thanks, acknowledgement, appreciation, learning for the future?



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“He who learns but does not think, is lost!
He who thinks but does not learn is in
great danger.”

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What Have We Learned?

- What will make a difference to your practice?
- What one thing will you do differently tomorrow? and Why?
- How can you make better use of mediation?
- Write down three points to take away.....

