

Understanding and Approaching Multiparty Mediation

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'Negotiated approaches to consensus building are both deceptively simple and extraordinarily complex' (Susskind & Cruikshank 1987:11)

1. Introduction – scope of the paper

Multi-party mediation is what it says on the tin – more than two people involved in a conflict or negotiation employing mediation. They range from international disputes to varying interest groups in a salary and conditions negotiation. It follows that both the issues and the dynamics are more complex as a consequence of the number of parties concerned. A mediator or mediation team have many factors to consider in framing an effective approach to the mediation. This paper will attempt to briefly sketch these issues and outline an approach to multiparty mediation. The work of Susskind and Cruikshank will be drawn on as the primary source while being augmented by other contributors to the field such as Moore, Levine, Schutte and Bercovitch. I will also draw on my own experience of multiparty mediation and propose a first draft of what I will term a *12 Phase Multiparty Mediation Model*©.

2. Elements in a multiparty mediation

Moore in his volume on the mediation process (Moore, 2003) discusses the strategies that can assist in a multiparty mediation. I will explore the most relevant of these for this short paper.

2.1 Negotiation Teams – It is to be hoped that a mediator will be engaged before any final arrangements are made to the make-up of the teams representing the parties, although as Moore rightly points out, the mediator must work with whoever turns up. If the mediator has some role in assisting with the make up of the team - it is not around choosing the individuals but rather advising on criteria and protocols that may assist the most constructive team selection. The mediator needs to be able to assess the respective teams individually and collectively in terms of the dynamic that will pertain and the processes that may be employed. Each team will have its own dynamic that the mediator needs to carefully reflect upon – who will, to quote Moore, act as 'stabilizer, non-stabilizers and quasi-mediators' (Moore 2003:429). How a team makes its own decisions, how it relates to its constituency, how it communicates with other parties and the mediator are all crucial factors that significantly influence the way, the process, that the mediator employs to make progress. At times it may be necessary for the mediator – or part of the mediation team – to offer mediation within the team itself or between the team and its constituency. Care has to be taken at all times to protect the values of transparency and independence in this regard.

2.2 Types of Negotiation – there are many variants in the negotiation process – three will be illustrated here – ***bilateral bargaining***: the two spokespersons officially communicating consensus positions or an hierarchical position being enunciated; ***Unilateral bargaining*** – a member of each team who have common interests and open to exploring areas for progress. This can be privately or publically engaged in with the explicit or implicit approval of the respective teams; ***Unilateral vested interest bargaining*** – often covert deals being reached for the particular gain of individual team members. Mediators need to

be alert to all the many forms of discussions that may be occurring – to aid the positive and inhibit the negative.

2.3 Spokesperson Models – this is a common approach taken by parties in mediation. There are a variety of issues that the mediation needs to attend to – *does the spokesperson have the confidence of their group? do they have the competence to carry out the role? What support will they need from you? What standing do they have with the other parties? What are the limits of the role of the spokesperson and are these limits clear to all concerned?* It will be wise of the mediator to spend some individual time with the spokespersons to address these questions.

2.4 Negotiation Approaches – the role of the mediator will of course vary with each context. It cannot be stressed enough that great care has to be taken in framing the mediation process in each situation. Time spent at, what I term, this *diagnosis and design* phase will potentially save great swathes of time over the course of the mediation. Moore outlines some of the possible formats, approaches a mediator can choose from – they are briefly summarised here:

Formal forums for across the table negotiations among spokespersons, teams or multiple individuals – suitable for opening sessions, setting positions, allowing statements to be made for internal and external consumption. Not suitable for deep examination of the issues or creative exploration of options.

Informal conciliatory bargaining – informal communication between parties to explore options.

Caucuses – where the parties sort out their own positions throughout the course of a mediation.

Mixed-team or mixed interest working group – allows for in-depth work on specific issues or interests. The mandate needs to be clear for this approach and a clear communication protocol established to ensure the team or group do not overshoot their authority.

Sidebars – where the leaders or ‘principals’ or other key personnel have a no audience meeting to explore progress and build rapport.

Small group to large – a movement dynamic between the large group to provide the boundaries of an issue and a small group to work the detail of a proposal.

Sequential small group negotiations – in some cultures there is a dislike of large group negotiation and the confrontational environment that can result. In this approach, a series of small group meetings are arranged to address issues in a progressive manner.

Separate forums and activities to build relationship – these can be key to preparing the relational ground for meaningful discussion, involving social interaction, shared activities such as walks.

Informal issue exploration and option generation forums – this approach allows for options to be explored in a non-committal context. The formal gatherings often inhibit this form of exploration. This informal work can be carried out by individuals or small groups.

The role of the mediator is to be a facilitator of the most judicious deployment from the above suite of approaches. Underlying these approaches are a number of key factors – the competence of the mediation team, the ability to ‘read’ a situation, the flexibility required to change mid-stream the approach, the integrity to hold truth, transparency and independence throughout the process.

2.5 Teams with Constituents – complex multiparty mediations often have the added dimension of constituencies, as Moore states:

Members of negotiating teams often do not make the final decision in a dispute. Teams are frequently responsible to other parties who have not been present at negotiations. (Moore 2003: 438)

There are two primary forms of constituency – **bureaucratic constituency**: often a governmental or hierarchal organisation where the team have to revert to an authority for approval of an agreement – this can allow the team seek out some further concession to get the authority on board and also has the potential weakness of stalling an agreement. **Horizontal constituency** – where there is a greater spread of the authority among members, parties, voters...In this form a clear ratification protocol is essential so as to enable approval rather than a fractioning of the constituency.

3. Towards an effective agreement

Susskind and Cruikshank have identified four key characteristics of a good negotiated settlement – fairness, efficiency, wisdom and stability. These act as useful reference points for the mediation in a multiparty context – with the mediator constantly reviewing progress according to these characteristics.

Fairness – it is essential that the all elements of the process of mediation be seen to be fair, from the invitation to mediate to the reviewing of the implementation of any eventual agreement. Susskind and Cruikshank make a somewhat controversial statement when they say:

In our view, it is more important that an agreement be perceived to as fair by the parties involved than by an independent analyst who applies an abstract decision rule. If the involved parties think a given process has been fair, they are more likely to abide by its outcome; if they do not, they will seek to undermine it. (Susskind & Cruikshank,1987 25).

My own view is that neat and all as that appears, it is also crucial that an agreement is *in fact* fair as perception alone may not be enough to withstand the test of application and sustainability. The danger for a mediator is to settle for the parties perceiving an agreement to be fair and not continuing a process to ground, as it were, that fairness in truth.

Efficiency – simply put, this is the best possible outcome for all the parties in most reasonable amount of time. The astute mediator is able to spot what are often termed ‘elegant trade-offs’ where parties can agree elements that are of low value to one party and high to another or where both sides place low value on an issue so therefore it can be quickly resolved or well positioned as an ‘early win’ to build confidence in the overall process. An important element in the area of efficiency is the identification of interests and needs – real negotiation and mediation will not occur without these surfacing. The danger with efficiency is that it is tempting to go for the efficient, ‘bow-tied’ solution at the expense of fairness, as Susskind and Cruikshank comment, ‘...the goal of efficiency, therefore, cannot be considered in isolation. Indeed at times, it should be secondary.’ (ibid, 27)

Wisdom – is about finding the best agreement that will in hindsight be proven as optimal. The challenge for the mediator is to encourage the parties to share that goal, to move from entrenched positions to optimal outcomes. Susskind and Cruikshank talk of the danger of what they term, ‘advocacy science’ – the shoring up of the position of a party to the mediation of their own position and the rubbishing of the other parties’ position. This entrenches positions rather than opens up dialogue and mutual searching for optimal outcomes.

Stability – perhaps the true ‘holy grail’ of mediation – reaching an agreement that not just manages the moment, dissipates the crisis but transforms the future in a sustainable way.

...stability is a key attribute of a good settlement. An agreement that is perceived as fair, is reached efficiently, and seems technically wise is nevertheless unsatisfactory if it does not endure. (ibid, 31)

The mediator is faced with the challenge to take the long view of the process in the midst of the necessary attention to every detail of the mediation. This long view and the commitment to the optimal stability possible in a mediation is a necessary discipline for the mediator.

4. Multiparty mediation – reflections

The above is but the briefest of summaries of the field of multiparty mediation. As complex as the people and parties are to a mediation, so equally complex and sophisticated must be the approach that a mediator adopts in response. Arising out of my own experience, training and reading in this area - I wish to propose a tentative model of multiparty mediation – it is necessarily an overview framework rather than a detailed map for every context. There are two fundamental dimensions running through, in my view, the whole mediation experience – relational and process. Both are key and competence is required in both. I have proposed twelve core phases to be attended to in the mediation process. I have also highlighted the key questions and issues for the mediation team in addressing each of these phases in the mediation. It is a work in progress but in a form that gathers the learning to date and remains open to development in every way – it is published elsewhere and is a source document for the work in multiparty mediation that the Mediation Foundation of Ireland engages in – and is available by download from the Foundation’s website.

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