

Using your emotional intelligence to advantage in mediation

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Peter Adler¹ uses a metaphor about surfing to demonstrate how the more we know, the more aware we become of how little we know and how much more we need to know.

He describes four stages of skill development- unconscious incompetence, conscious incompetence, conscious competence and unconscious competence and applies it to the challenge of riding waves. As he notes, the metaphor and the pathway to mastery apply to most things in life.

Lawyers have crossed the great divide from courtroom advocacy to mediation advocacy with enthusiasm and in some cases real sensitivity to the demands of the new forum. There is however a further wave to ride. It's a subtle and sometimes difficult one for lawyers, trained in rational, logical and linear ways of thinking. It involves putting your emotional intelligence to work and operating on an emotionally astute as well as rational dimension.

The concept of emotional intelligence² and its value is not new. What is relatively new is its increasing traction in the world of business and conflict resolution where previously rationality, power and strategic gamesmanship held sway.

Emotional intelligence is the partner of rationality. What we now know about decision making is that "in the dance of feeling and thought the emotional faculty guides our moment to moment decisions, working hand in hand with the rational mind, enabling- or- disabling thought itself. Likewise, the thinking brain plays an executive role in our emotions- except in those moments when emotions surge out of control and the emotional brain runs rampant"³. So ignore emotion at your peril.

In the mediation context, using emotional intelligence means making connection with your negotiating partner (and we mean partner, no longer the opponent of old), anticipating how emotion will influence decision making and managing the emotional energy within the room. It is this energy which can be harnessed and used and which will ultimately be the most influential factor in determining whether a resolution is achieved and the quality of it. The skills required for effective management of this dynamic are multi layered and multi textured but there are some fundamental strategies to guide our journey through this new frontier.

In this article we identify some of the fundamental strategies for using emotional intelligence and creating a platform for emotional engagement in conflict resolution processes. Indeed, these strategies can be applied wherever there are people to people interactions.

Identify the likely emotions

Lawyers are skilled at developing a rational argument, sourcing evidence and gathering “proof” for the case. An increasing number of lawyers also recognize and acknowledge that participants will arrive at the negotiation or mediation table in an emotional state, with emotions ranging from hope to curiosity to frustration to fear. The list is endless.

To use Adler’s analogy, some negotiators do this instinctively (unconsciously competent), others work hard at working it out (consciously competent), some would rather ignore the “problem” and focus solely on the rational (consciously incompetent) and others still, don’t realize the importance of the emotional dynamic (unconsciously incompetent).

Why should lawyers bother to achieve mastery in the murky realm of emotion? The answer is simple. Emotion is the fuel that fires conflict and people make decisions emotionally. As Bryan⁴ notes in her article *The New Lawyer and the Triumph of Soft Skills* “Although business mediation generally purports to be about financial issues, these issues play out against the backdrop of business politics, power struggles, ego and challenging personalities. Emotion plays a part in every conflict”. Any rational argument purely provides the necessary justification for their decision which people will share with their colleagues, friends and family but its how you have satisfied them emotionally that really counts.

So it’s critical to pay attention to key emotions that parties will bring into the room. Ask questions in advance of the negotiation and read between the lines of correspondence. The underlying emotions will not necessarily be openly revealed. The skill is to peel back the layers of positional justification until you understand what is really at stake (the key concerns) and why (the emotions behind them).

All this will help you set the scene, build up your persuasive case and mentally prepare you for different scenarios that you may face once the mediation starts.

Use them strategically

Once you have identified the likely emotions you can then use emotions purposefully to plan your approach and help get you to where you want to go in the mediation. In other words, plan the emotional experience you want to take the other party on. This involves thinking about what you will say to engage them, practicing it as you might a difficult cross examination, gathering the evidence you need, and strategizing about the behaviours (body language and demeanour) you will need to exhibit to be credible.

It may sound obvious but we’ve seen many people say they’re sorry or that they are enthusiastic about an idea without making eye contact and with a totally deadpan face. Sentiment does not sell if the behaviour doesn’t support it.

An emotional experience may look like this. You may want to empathise with them (I understand that it's been tough), then provoke them (if things don't change we ...), enthuse them (you have a real opportunity to ...) and finally reassure (I'm confident we can achieve this because...). At all times what you say needs to be supported with evidence and matching behaviours. The experience needs to be finely tailored to the situation.

Acknowledge upfront

Your opening is a powerful opportunity to create connection and engagement with all the parties. Don't let emotions be the elephant in the room. Acknowledge them at the outset. When you specifically address the emotional energy driving the conflict, you enable the other party to move forward. Otherwise you may find yourself wasting valuable time with your negotiating partner constantly trying to go back over old ground. In fact, a point that is made repeatedly is a clear signal that the emotion lying behind it has not been addressed. If, for example, you know that a trigger point for them is the failure of past negotiations, address this early on with an expression of regret, an explanation or a sharing of the sentiment to defuse the likely emotion.

A good approach is to acknowledge emotions up front. For example:

I appreciate that this has been a *frustrating* process

I understand that you feel *angry*

We are keen to find a solution that's *fair*

Making connections through acknowledgements right from the start indicates your willingness to treat the negotiation as a collaborative process and will transform the atmosphere in the room. When people feel heard and understood at some level, they feel valued and involved and a more collaborative atmosphere results.

When you end your opening with a clear reference to your aspirations for the mediation, this will engender in all participants a strong sense of what the goal is and how they can help achieve it.

Create new wiring

Once the scene has been set and the emotional frame summarized, it is important to constantly move towards solutions. Neuroscientists tell us that the more you allow people to continue to focus on their problems the more embedded their thinking becomes and the more entrenched they are in their position⁵. So question and facilitate new options. What else could we do? How else could we do x? Any other ideas?

Manage in the moment

Conflict resolution is a highly charged environment and even in the most congenial negotiation, strong emotions can surface throughout. Some negotiators will use them deliberately to put you off your stride, annoy you, and/or try to get you to concede.

One strategy for dealing with this, is to identify the emotion driving the behaviour and attribute it to the other person before you react. They own it, not you. This helps you to stay in control and avoid taking things personally. You can then decide whether it suits you to ignore them, address the behavior directly or let them carry on awhile and address it later. A behaviour can be challenged in a number of ways. Some examples include:

By asking a question (...why does that approach upset you?..)

Using humour (...perhaps we shouldn't go down that path...)

Or naming the behavior and then looking for a solution....(let's not get sarcastic, what we need to do is.....)

Essentially this is an example of a psychotherapist Dr Robert Resnick's⁶ very simple formula in action.

$$E + R = O$$

In essence, every outcome you experience is a result of how you respond to a situation or an event. For many of us, these responses are habitual. However, if you can stop and think about the outcome you want and **then** choose a response consciously, you tend to get a better result.

At the table being tuned into the nuances of what is said (and not said), the body language, tone and overall demeanour will assist you to keep track of the emotional pulse.

Build trust

Trust is not handed to you on a platter. It starts with the opening and continues to build or wane depending on what you say and do. It is important to develop in conflict resolution because with it comes openness and in turn the opportunity for a collaborative outcome.

David Maister⁷ talks about trust being an equation, where **trust equals credibility** (the words/evidence we use to back our position) **plus reliability** (do our actions match what we say) **plus intimacy** (emotional connection); all **divided by our self orientation** (how often we talk about our situation versus theirs). The more we talk about I, we, us the less trust we build. Congruence between our talk and actions is essential if trust is to grow.

Emotional connection is typically achieved by 'matching and mirroring'. It's reassuring that Professor Alex Pentland⁸ at MIT (Massachusetts Institute of Technology) has recently confirmed what many have known for years; that 'Mimicry' - the reciprocation of nods, smiles and interjections during conversation - is critical in building emotional connection. He showed that this contributed to increased success in salary negotiations of 20-30%.

So focusing on matching and mirroring other parties and ensuring that your actions match the emotions you are trying to create will assist you to maintain and build trust.

Conclusion

There is now strong support for making an emotional connection. Expressing our deeper humanity or simply saying “I am sorry” makes a huge difference in conflict resolution. We know this intuitively but we forget it when we are in conflict situations which can be highly charged because it’s easier and safer to focus on being rational.

What we’ve attempted to do in this article is to share some thinking on how you can be proactive in this important dimension of conflict resolution. By actively getting emotions out in the open and working with them to ensure the parties are emotionally engaged, people are more willing to work collaboratively to find solutions and ultimately more committed to the outcome.

While our focus has been on mediation, these strategies can equally be applied to your roles as leaders, team members, client relationship managers, mums and dads.

About the Authors

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¹ Unintentional Excellence: An Exploration of Mastery and Incompetence in Bowling and Hoffman ed. Bringing Peace into the Room 2003, 57

² Daniel Goleman Emotional Intelligence 1996

³ Ibid, 28

⁴ <http://www.cpadr.org/Default.aspx=tabid=-45&mid=381&article=42>

⁵ David Rock, Quite Leadership, Six Steps to Transforming Performance at Work, 2006

⁶ Jack Cranfield, The Success Principles, How to get from where you are to where you want to be, 2005

⁷ Maister, Green and Galford, The Trusted Advisor, 2008

⁸ Professor Alex Pentland, Honest Signals, 2008