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Flying solo

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The wonderful world of dispute resolution

Flying solo

Marcel Alter

Well, here I am, I have decided to become a mediator based on my 30 years of experience as a solicitor, my training through Bond University and the belief in my ability to get people to see sense and reason.

A firm of solicitors takes my offer to mediate as the Court has ordered the parties to go to mediation. I am told it is just a debt collecting matter (their comment) and they have taken the liberty of organising the venue and a time. So far, so good! They even promised they would have all relevant papers to me well in advance of the mediation.

After a number of follow up calls to both parties, after which I ascertain that the other party is not at all keen on mediation and will be there at sufferance only, I get the pleadings, all 50 pages, the day before the scheduled mediation. No mediation statements, no summaries and certainly no advice as to who will actually attend.

I read the pleadings in detail and believe that I know the case as well as if I was handling it as a solicitor. I even take the trouble of looking up some points of law. I could make a judgment tomorrow but I have to remind myself that *I am not the judge* but a mediator.

The morning comes and off to the mediation I go, armed with my trusty pen (during the mediation I would have liked a sword), my chalk for the blackboard I was promised (although during the mediation I would rather have used it on the end of a billiard cue to poke and hit people across the head) and paper (to paper over the cracks).

When I get to the solicitor's office where the mediation is to be, there is no chalkboard, no white board, no butcher's paper and the mediation is to be conducted in the clerk's office, which seats two.

After some argument with the office manager the board room is made

available and a breakout room as well, although this is subject to whoever wants to use the photocopier.

This scenario is definitely not from the Bond Handbook!

The parties arrive and instead of four I was expecting, there are 11 — two barristers, three solicitors, the two parties and four relatives — and all are angry. I chase up the office manager for some extra chairs and a vague promise that at some time in the morning they might make some coffee available.

This is certainly not the friendly bantering parties of a Bond mediation!

So, with everybody around the table, I introduced myself, asked the parties' names and why they were there, and explained the rules and the procedures. Straight away one of the barristers interrupts me and tells me that they are only there on sufferance and will be leaving within the hour unless they get an offer. (Hey, I haven't even finished my introduction.)

'No worries,' I say. 'Isn't that what we are here for?' (His client smirks and gives the barrister a congratulatory pat-on-back — or at least that's how I feel).

In the meantime, the other barrister is talking to his instructing solicitor and here am I with the feeling that no one really cares what I am saying or doing. But at least it helps me settle. I do cut back my introduction.

I then invite the parties to start. MISTAKE! The two barristers and one of the relatives insist on being heard. Okay — *back to the basics* we go and I again explain the procedure and remind the parties why they are there (at the same time trying not to be angry about these ungrateful parties).

Finally we do get started. The facts take about two minutes and then the parties are into negotiating settlement. (Where are all the steps that Bond teaches we will go through?) Therefore it is time to really take charge and not be a laid back uninterested party.

So I go back to basics and *re-state the rules*, this time emphasising that I want to hear the parties and I want to be told what the matter is about. Counsel is annoyed but actually does do as I request and although there are some side comments, the parties actually do respect the rules.

After about two hours, the real issues do come out after some false starts. The issues are not actually about the debt recovery dispute that the court papers concentrated on. After the parties' legal advisers set the picture, the parties begin to speak, first to me and then to each other.

It emerges that they are cousins (not evident from the papers or the names). One took over the family business and the other has felt locked out and has started his own business supplying the same industry. It becomes apparent that they are not able to get away from each other as they are in the same close family group and had grown up together.

While there had always been rivalry and comparison between them by their families, trouble really started with their wives (this comes out in private) and their feelings that they needed to earn the respect of the senior members of the family, while at the same time providing their families with the same standard of living they were used to.

Settlement took longer than the one hour allotted by Counsel. The real *opportunity for settlement* only came when the relatives had to leave to pick up the children (from the same school) and the two cousins went for a walk around the block together.

So far I have not heard that the settlement broke down in any way, so somehow they sold the settlement to the various family members.

So what did I learn from my first mediation?

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- Review the materials provided for information only. Do not try to find a solution.
- The opening speech is as much for the mediator to calm his or her nerves as for the parties.
- The speech must *lay the ground rules* and the *mediator must*

be in control. Everyone else in the room has their own agenda.

- Don't be afraid to allow the steam to rise. Some interjections were in fact very helpful.
- Separate the gladiators from the spectators.
- Don't be afraid for the parties to talk to each other.

- Enjoy the combat — remember, the mediator does not have to live with the parties. ●

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