

# Tips on Effective Communication During Mediation

Preparation is one of the key elements for a successful mediation. Part of the preparation involves becoming familiar with how the mediation process works and reviewing with your lawyer issues such as your expectations; the strengths and weaknesses of your case and the other side's case; the costs and risks of proceeding to trial; and possible settlement scenarios. An equally important part of preparing for mediation involves understanding the appropriate demeanor which should be displayed throughout the mediation. Here is a list of tips on how to communicate (listen and speak) effectively during mediation. These tools will help to keep the mediation focused and productive, while enhancing your power to persuade the other side of the merits of your perspective.

## EFFECTIVE LISTENING

In arguments, we often listen to rebut. Effective communication involves listening in order to understand what the speaker is trying to say.

Why is it essential to become effective listeners to resolve conflict?

- ? It convinces the other side of your good faith and constructive intentions.
- ? You might “hear” valuable information which changes your view of the matter.
- ? It increases the likelihood that the other side will listen and try to understand you.
- ? It reduces defensiveness and resistance and can create a place for “change” to happen (such as bringing everyone closer to a reasonable middle ground or coming up with creative solutions which satisfy both of your concerns).

How can we listen with understanding? Here’s a list of elements of good listening:

### 1. ATTENTION

Give the speaker your full uninterrupted attention. This can be accomplished in two ways. First, put aside your own views, opinions, and critical judgments for the time being. Try to see the situation from the other person’s point of view, even if you don’t agree with the person. Second, use your body to say, “I’m listening”. Be aware of your facial expression, body posture, tone of voice and eye movements. Make frequent eye contact; keep your body oriented toward the speaker; and nod your head to show you are listening and to encourage the speaker to say more. Don’t sift through papers, cross your arms in judgment, or make faces at your lawyer or the mediator when you hear something you believe is false or exaggerated.

## 2. PARAPHRASING AND SUMMARIZING

Restate or summarize what the speaker has said in your own words. This confirms to the speaker that you have listened and understood what was said. Describe both the content and feelings of the communication in a fair and objective manner. Do not judge, evaluate, or try to give the speaker solutions. Some examples of how you might begin are : “What I hear you say is.....” “So you feel very angry about....” After restating, ask the speaker if your summary is accurate and complete. This allows the speaker to clear up any misunderstandings and to elaborate on what is important to him or her.

## 3. ASK CLARIFYING QUESTIONS

You may wish to ask the speaker questions to obtain more information or to clarify and better understand the speaker’s perspective. It is important to ask open-ended questions, that is, questions which cannot be answered with only a “yes” or a “no,” for example: “Tell me more about....” “Can you give an example...” Remember to use a non-threatening tone of voice and to avoid framing a question as a demand or accusation (as lawyers frequently do when cross-examining witnesses) as this will make the speaker feel attacked and respond defensively--and he or she will stop listening.

## EFFECTIVE SPEAKING

Just as using effective listening skills can improve communication and understanding, so can “effective speaking.” You probably have had the experience of saying something that you thought was very clear and then finding out that your message was interpreted in an entirely different way from what you intended.

Why is it essential to become effective speakers to resolve conflict?

- ? You can increase your control over whether your message is received the way you want it to be.
- ? You will keep the discussion more focused and productive, and decrease the likelihood of escalating the conflict or creating an impasse.
- ? You will be more effective at persuading the other side of the merits of your views.

Here are some tips on how you can be a more effective speaker:

## 1. FOCUS ON THE PROBLEM, NOT THE PERSON

You've probably heard the popular saying, "Be hard on the problem, soft on the people." Throughout the mediation, try to keep the focus on the problems or issues at hand rather than on assigning blame or finding fault with the other.

## 2. SPEAK FROM YOUR OWN PERSPECTIVE

In other words, describe your own values, thoughts, feelings and actions instead of putting words in the other person's mouth: "I feel... I believe... I think..." instead of "You broke our agreement". Avoid both telling the other person what you think his or her intentions are: "You're deliberately hiding information" and describing the other person's personality: "You're just a..." Instead, talk about how you are affected by the person's behaviour.

## 3. SPEAK DIRECTLY TO THE OTHER PERSON

You are trying to persuade the other party and not the mediator, therefore speak directly to him or her.

## 4. BE SPECIFIC

Describe particular behaviour rather than making generalizations. Avoid using words like "always" and "never." Give concrete examples to illustrate your point of view.

## 5. BUILD FOR THE FUTURE

Talk about a problem in terms of what you want to see happen in the future or how a situation or working relationship can be improved, rather than arguing about the past.

## 6. FOCUS ON COMMON INTERESTS, NOT POSITIONS

A "position" is a solution to a problem, often stated as a fixed demand. For example, "I want \$75,000.00 for my interest in the business" is positional. Interests are a person's underlying values, concerns, needs, fears, and hopes. The interests behind the above statement might be stated as: "It is important to me to receive \$75,000.00 for my interest because that was the amount of my initial investment and it will cost me at least that much to start another business."

Most people tend to assume that because the other side's positions are opposed to ours, then their interests must also be opposed. In fact, some of the most powerful interests are basic human needs such as security, recognition, economic well-being, and control over one's life. Look for and point out areas of agreement or shared values, concerns, needs, interests, and hopes. Then try to frame your own positions in a way that highlights their advantages for everyone concerned by identifying the common interests which are served.

## **7. CREATE OPTIONS FOR MUTUAL GAIN**

Incorporate the other person's perspectives into your own to create shared solutions. This means developing options which take into account both of your interests. Invent multiple options before evaluating them or making a decision.

## **...AND FINALLY, FOSTER AN ATMOSPHERE OF COOPERATION AND COLLABORATION**

Trials are about past wrongs, fault-finding, and establishing who's right and who's wrong. Mediations are about understanding, discovering, inventing, and future focused agreements. To maximize your chances of coming to a resolution at mediation, it is important to foster a spirit of co-operation and collaboration, rather than competition. State your desire to resolve the issues between you co-operatively and reiterate this intention during the mediation, particularly if emotions are high or you feel you are reaching an impasse. Above all, be flexible and open-minded--listen to and consider other points of view and strive to invent options which are mutually satisfying!