



VALERIE EDWARDS
MEDIATION BULLETIN

Managing the “Hard-Nosed” Entrepreneur

It is an interesting paradox in mediation that the clients one would least expect need an empathetic approach in private caucus are sometimes most in need of it.

As litigators, you have all encountered clients – often in owner-operated businesses – who declare at the outset of a file, “I’d rather pay you than pay them”. Clients who are not only successful, but who can sometimes have a self-aggrandizing view of the reasons for their success. Clients who, when you tell them they have problems with their case, go on the offensive and accuse you of being soft, or not being on their side, or are perhaps just not suited to handle their file. They know better than you do. Sometimes these clients pay their bills by return mail; at times, they talk big, but string you along for your fees. Either way, they often are so full of righteous indignation that it can be very hard to get through to them.

How often have you thought, when picking a mediator: “I need a really tough mediator who will beat my client about the head and make him (or her) see reason”?

Contrast that to a situation where you act against plaintiffs in wrongful dismissal cases or personal injury cases, and you believe their emotions are getting in the way of a settlement. Haven’t you thought a mediator with good people skills who can *relate* to the plaintiff would be most effective?

In my experience as a mediator, it is usually only institutional clients, or representatives of large companies, who are open to a clinical “matter of fact” merits-based evaluation of their case. For almost everyone else, including (and perhaps especially) the entrepreneur, a more nuanced approach is required.

Particularly ornery entrepreneurs need to believe

that the mediator understands their business, and understands what makes them tick. How did they get where they are? What hurdles did they have to overcome? What’s the key to their success? What’s going on in the business right now? The answers to these questions should spark a thought process for the mediator. How is the party’s resistance to settlement *inconsistent* with the qualities that have driven success in the past? How would this entrepreneur define his or her “higher self” in a business context? How can the mediator speak to *that* person?

Lawyers often develop very close relationships with their business clients, and a level of trust that ultimately prevails over the client’s knee-jerk response to a particular grievance. Mediators likewise need to gain these parties’ trust. Telling them they have a poor or problematic case – without *first* gaining trust – will often backfire. How one “packages” the message is likewise critical. As a mediator, there is a delicate balancing act between acknowledging that your client is right to *feel* as he does about the lawsuit; giving an honest (and where appropriate, forceful) assessment of the merits; and positioning the business case for settlement from your client’s unique perspective.

The problem of course is that the mediator has very little time to gain insight into the *contextual* mindset of the entrepreneur, so it is tempting to focus instead (and only) on his or her specific attitude towards *this* litigation. That in my view is a mistake, and can just have everyone going in circles. It is surprising how much the mediator can learn very quickly if only the right questions are asked. And sometimes showing the party that you know the right questions will generate trust, make him or her more receptive to hearing the mediator’s views on the merits, and more willing to settle as a result. ♦



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Organized Advocacy

Specific Expertise

- Alternative dispute resolution (listed in the 7th edition of Best Lawyers in Canada)
- Commercial disputes, including commercial tort claims
- Shareholder and partnership disputes
- Real estate and mortgage disputes
- Damages quantification, including business loss claims, business and share valuations, and real property valuations
- Employment litigation, including departing employee lawsuits
- Class proceedings
- Claims against directors and officers
- Professional liability claims involving lawyers, realtors, brokers and accountants
- Insurance law and insurance coverage disputes

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