Mediation, Negotiation and Communication Skills – Recommended Reading

“Getting to Yes – Negotiating an Agreement Without Giving In”
bby Fisher and Ury,
(Updated, Random House Business Books 2012)

This book is a staple for all mediators.

It is all about the wisdom and utility of bargaining over interests and not positions.

Arguing over positions produces unwise outcomes, is inefficient and also endangers an ongoing relationship.

In principled bargaining, however: the participants are joint problem solvers; and the goal is a wise outcome reached efficiently and with good will; an outcome that fulfills the parties’ interests.

A simple yet effective example: 2 chefs arguing over a lemon.

They agree to split the lemon in half. If they had communicated effectively, they would have realised that one wanted the lemon for the juice and the other for the rind – and they each could have negotiated the use of the entire lemon.

Successful outcomes through principled bargaining are best achieved when the parties focus on separate and common interests, rather than positions; and generate and ultimately agree on options for resolution, by:
exploring interests and options for achieving them through effective communication

considering how the other party sees it – and taking that into account when considering the options for resolving the problem

avoid having a bottom line – are open to alternatives that achieve their interests

The value of communication:

The purpose of negotiating is to serve your interests. The chances of that happening increase when you communicate those interests, because:

- The other side may not know what your interests are; and you may not know theirs.
- Your assumptions may be wrong.
- One or both of you may be focusing on past grievances instead of on future concerns. Or you may not even be listening to each other.
- If you want the other side to take your interests into account, explain to them what those interests are.
- You will satisfy your interests better if you talk about where you would like to go, rather than where you have come from. Instead of arguing with the other side about alleged past rights or breaches, talk about what you want to have happen in the future – and WHY – that is, based on your interests.
- Negotiating hard for your interests does not mean being closed to the other side’s point of view. Quite the contrary. You can hardly expect the other side to listen to your interests and discuss the options you suggest if you don’t take their interests into account and show yourself to be open to their suggestions.
- Successful negotiation requires being both firm AND open.

And so, principled (as opposed to positional) bargaining is the clever way.
Paul Randolph opens his insightful book by observing that

“conflict takes place in a diverse world – a world of ethnic, national, geographical, cultural, economic, social, religious and legal differences. This presents a daunting challenge to those who deal with conflict, whether in its avoidance, management or resolution.”

Yet all human beings .. share a vast majority of identical characteristics and qualities. There are many commonalities that demonstrate the extent to which we are all alike, and are therefore a key to understanding our behavior in conflict.

For example, all those in conflict have the following in common. They:

- must both contend with time and temporality;
- experience the anxiety and distress of uncertainty;
- are each driven by self-esteem;
- together have a need for interpersonal relationships;
- each create values by which they feel they must live; and
- all enjoy freedom of choice albeit exercised with responsibility.

It is these human traits which, though shared, can nevertheless create psychological blockages to the resolution of disputes.

“Many disputes are a result of people feeling that no one is listening; that they have no proper voice, and they simply have not been heard. Consequently, the only option that invariably appears available to them is to enter into ‘dispute mode’.

“Whether it is a consumer making a complaint, neighbours arguing over a party wall, a corporate entity negotiating in respect of a broken contract, or a political entity manoeuvring for recognition – if any of them believe they are deprived of a voice, or if given a voice, one to which they feel no one is listening, they will find themselves in a conflict situation and may resort to the traditional means of resolution: litigation or war.”
“The magical power of mediation lies in the ability of the mediator to allow parties to feel truly heard. In many instances, the party at the mediation table will experience for the very first time in his or her life, the true nature and value of really being listened to.

“A party who feels heard can rarely sustain that anger for any length of time: the concentrated listening skills of the mediator will defuse the anger. The party in dispute who feels he or she has been undervalued, taken for granted, or ignored will blissfully appreciate the fact that, at last, the mediator is respecting them and taking them seriously.

There can be no greater catalyst to the creation of trust and rapport than to allow a person to feel thoroughly and empathically heard.”

As a 20 year litigator-turned-mediator and indeed personally in every-day life: I believe firmly in the power and healing effect of enabling each party to feel properly listened to and heard. I’ve witnessed it time and time again and I believe truly that it works.

Paul Randolph’s provides an insightful yet “back to basics” common-sense approach to understanding conflict and what is required to achieve that crucial attitude shift so that the problems may be resolved. Randolph’s book is highly recommended for any “mediator” – ie any of us in life who are called upon to assist or intervene in, negotiate or manage conflict.

A clear insight into the shared attributes and a comprehension of the behavioural strategies adopted by those in dispute are invaluable to a mediator and to those involved in managing or resolving conflict.

By identifying and recognising them, a mediator can consider how best to work with them, so as to bring about a material change in attitude and secure that all-important shift in perceptions and expectations as to the outcome of the dispute.

A mediator’s communication skills are important in building trust and establishing rapport, but they are vital in allowing each party to feel properly listened to and heard.

This book offers a clear and practical insight into effective communication, with relatable examples of the theory in practice across all aspects of personal and professional life:

partners and friends, families, diplomatic and business negotiations, organisations and institutions, and disputes and conflicts of any nature.

The author summarises his book as follows:

“NVC helps us connect with each other and ourselves in a way that allows natural compassion to flourish. It guides us to reframe the way we express ourselves and listen to others by focusing our consciousness on four areas: what we are observing, feeling, and needing, and what we are requesting to enrich our lives.

NVC fosters deep listening, respect, empathy and engenders a mutual desire to give from the heart.

Some people use NVC to respond compassionately to themselves, some to create greater depth in their personal relationships, and still others to build effective relationships at work or in the political arena. Worldwide, NVC is used to mediate disputes and conflicts at all levels”. (p.12)