

# Sources of Conflict and Means of Resolution

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## INTRODUCTION

The mediator's role is to facilitate discussion and negotiation, to help the parties understand the nature of the problem, underlying interests and options. He must act fairly and make sure the parties are satisfied with the results.

The strategy to be used by a mediator in resolving conflict depends upon its source. Mediation covers all manner of issues and is not limited to those refined into legal interests.

The resolution of the problem must be one that the parties have either created themselves or, at least, believe in.

## WHEN NOT TO MEDIATE

Mediation should not be pursued where in truth the parties are uninterested in settlement, where there is insufficient knowledge of facts to settle dispute, although mediation may help parties learn what information they lack; where legal precedent must be set or public statement must be made; where an authoritative decision as to interpretation of contract or statute must be made.

## SOURCES OF CONFLICT

Conflicts may be economic, political, ethnic, national or gender based. They may be the result of misbehaviour, mistake, differences in concepts of right and wrong, differing value systems, misinformation, lack of information, poor communication or concepts of what is relevant or important, or they may be based on the relations of the parties.

## MEANS OF DISPUTE RESOLUTION

Whatever the causes, people and institutions find ways of resolving their conflicts. Some find a form of resolution in doing nothing. That is they try to avoid conflict by refusing to engage in it and walk away. This might take the form of denying that the problem exists. More likely, a decision will be made that the costs of resolving the disagreement may be greater than the effort to achieve success justifies.

Apart from a walk away the means of

dispute resolution can be summarised as rights based, power based or interest based.

## RIGHTS BASED

This is by far the most widely used form of dispute resolution, other than simply giving in. It is the attempt to vindicate one's rights. Thus when PARTY A believes that PARTY B has breached its contract, PARTY A will retain lawyers to vindicate its rights.

Adjudication in the most widely used sense of the word then, is the most frequently followed path. In this process one party will eventually emerge as the winner, its rights upheld and announced by a tribunal of competent jurisdiction while the other party loses the conflict.

## POWER BASED

The second widely used form of conflict resolution is based on the wielding of power by one party against another. This weapon may be political or economic and it may be "twin tracked" with the rights based adjudicative approach. There are any number of variations that spring to mind. For example the party possessing the greater share of economic power over its rival will use that power to defeat its adversary in litigation or arbitration. If the costs become too great to bear, the party least able to bear them may withdraw or accept a settlement far below what the case was thought to be worth. Observation teaches us that if one has the power he or she will use it to achieve his or her ends in conflict resolution as in all other endeavours.

## INTEREST BASED

In addition to solving conflicts through the use of power or rights adjudication which usually ends up in a win-lose outcome there is a growing emphasis on interest based resolution. It is this approach to ending conflict in which the parties try to break the impasse through negotiation often with the help of a mediator.

Interest based resolution does not focus

on which party is "right". All too often both parties are "right" depending upon how you ask the question or which value system you apply. Nor is the exercise of power relevant in getting beyond the dispute. The phrase "we have won the war now we need to win the peace" is one with which we are familiar. Instead through discussion the parties try to understand the nature of the problem they face, their individual interests to be preferred and the options available to solve the problem.

The solution will try to accommodate the interests of the parties in solving the problem. Where successful, the case will resolve in a win-win fashion. Rights and powers we can immediately recognise. Interests are easy to articulate but often difficult to uncover in a dispute. We know that interests are needs, desires, concerns or fears. They underlie the positions people adopt and the specific things people argue that they want.

## TAKING ACCOUNT OF ALL THREE BASES

Negotiations and mediation are not limited to pure interest based matters. They can include interests, rights and powers all at the same time. This is typically the case in mediations over political matters involving states such as the peace process in Northern Ireland. The discussions over the status of political boundaries, nationality and people must have had aspects of all three methods of resolution.

## CONCLUSION

Conflict comes out of emotions, misinformation, roles and values. Approaches to conflict involves defining rights, exercising power, discovering interests and walking away. Where there is an acknowledgement by the parties that they have a joint problem to be solved, the technique used by the mediator will be interest based to turn the parties away from the use of power, away from positional bargaining and towards joint problem solving based upon interests. Mutual satisfaction with the outcome is the goal.