

The Art of the Simple in Mediation

I have no idea what I will do when I go to mediate a matter. After 30 years of practice the only thing I know is that the parties are stuck and if they have lawyers, the lawyers are stuck.

I don't have a toolbox of skills, insightful questions, or any theory that I bring to the room. I have no desire to change people, to teach cooperation or to understand their emotions or their so-called bias. I don't look for patterns, create hypotheses and I don't try to predict or control what will happen.

As a mediator, I am no hero. I don't seek to help, find a solution or solve the parties' problem. I am a blank canvas. I have no answers.

The only thing I bring to the mediation is the following question- "*what is going on here*"? I pinched this phrase from the economists John Kay and Mervyn King's book "radical uncertainty".

Mediation is just a venue, a room. It's where people get close to each other. Simple.

I just help get the interaction going and then get out of the way. Things happen during interactions. Something will emerge. I improvise. It's a multi-dimensional experience. It's noisy, messy and imperfect but they are the ingredients for change.

This human interaction does pose a cultural challenge for the dehumanised legal profession.

Drawing from the language of Sonia Blignaut*, I keep the boundaries between the parties not clearly defined. I hold the parties' positions lightly and allow an exchange across those boundaries. It allows unpredictable and novel changes to emerge. It is the opposite of the command-and-control evaluative mediator stance.

It is really just about flow - having the confidence of going with the flow (Adrian Bejan's Constructal law).

The thing about flow is it has to be easy. I see my role as a mediator is to help them make it easy. I do this by humanising the parties and their positions through my own human connection both individually and jointly. I treat the conflict lightly and with confidence that they can settle. I am like a sports coach telling the team- come on guys you can do this.

It's not that I am inactive. I hold the space in the room and apply Angela Merkel's dictum of being like a tight rope walker, only thinking about the next step. I look for what is possible (Stuart Kauffman's The Adjacent Possible) and allow something unexpected to emerge (Murray Gell Mann).

Keeping it light and simple is the antidote to the infinite complexity of the dispute and the extraordinary amount of energy required to sustain it.

I am just a simple mediator.

* *Seven implications of seeing organisations as complex systems* | by Sonia Blignaut | *Agile & Change*.