

REASONABLE IS LIKE BEAUTY – IT’S IN THE EYE OF THE BEHOLDER

“I’m being reasonable!” – “They’re not being reasonable!”

“If they made a reasonable offer, I would make a reasonable offer!”

Inevitably and frequently, the word “reasonable” comes up at every mediation. People are bound to view their own negotiation positions and movements as reasonable but frequently criticize the other side as being unreasonable. While the word’s definition is clear, its application is invariably subjective. As a mediator, my goal is to change the way people understand and use “reasonable” in the hope of facilitating better communications at mediation.

First, we need to look at the world more closely. Reason-able. With reason, there is intention and justification. Its Latin root, “rationabilis,” suggests that we need to think of the word as needing a rationale behind it.

In law, we see the word appear twice in section 3(1) of the *Occupiers’ Liability Act*: “An occupier of premises owes a duty to take such care as in all the circumstances of the case is **reasonable** to see that persons entering on the premises, and the property brought on the premises by those persons are **reasonably** safe while on the premises [emphasis added].” While the law may be written with the intention of making things clear, the very nature of the word breeds disagreement between disputants. I rarely see parties agree on an answer to the question.

Typical offers at mediation contain two parts: a monetary figure and a message. Naturally, parties are very mindful as to how they spend money as they negotiate in the direction of settlement. I believe negotiators should spend their words as carefully as they spend their money. The message component of an offer is where we typically find the popular term “reasonable”. Frequently, one side, the other side or both feel as though they are being reasonable while the other side is not reciprocating with reasonable demands, offers or positions. I encourage negotiators to “keep their eye on the prize,” spend their words carefully and take meaningful, purposeful steps in the direction of their target for resolution. While they must exercise caution if they believe that the other side will not reach the target or something in the vicinity of the target, thoughtful words and movement demonstrates reasonableness in action.

Ultimately, my suggestion to negotiators is to worry less about attaching the label of reasonable or unreasonable to their offers or the offers they receive; worry more about the money gap and substantive meaningful disagreements which are likely to make resolution very challenging or



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impossible. In my experience, the parties are unlikely to agree on many substantive topics of discussion at mediation, leading to the reasonable/unreasonable dichotomy, but are very likely to agree upon monetary terms for resolution.

After all, isn't doing what you can to reach a solution (on monetary terms) while agreeing to disagree on some other matters a completely reasonable proposition?

Logan Cooper joined the Cooper Mediation team in November, 2017 and now devotes 100% of her professional time to mediation. Contact Logan at: logan@coopermediation.ca or (416) 726-1344. Alternatively, you may view Logan's Online Calendar to book a mediation: <http://www.coopermediation.ca/logan-coopers-online-calendar/>.

"[Logan's] strengths are her obvious intelligence, ability and (dare I say it?) training..." - Senior Defence Counsel