

Mediators Should Not Be Mad Scientists: The Chemistry of Mediation



LOGAN COOPER

As smoke billows up from the laboratory where vials of brightly coloured chemicals bubble, with a devilish cackle, the Mad Scientist boasts: “It’s alive! It’s alive! Muah ha ha!” We don’t yet know what kind of monstrosity has been born from his careless and risky experimentation, but it’s a safe bet that there will be trouble ahead.

The idea of the Mad Scientist has been around since Mary Shelley’s *Frankenstein*. But our fears of science run amok make it just as powerful today as it was more than 200 years ago. Without caution and care, our hubris can lead to unintended consequences.

I like to think of productive and successful mediations as having good chemistry and mediators being like highly trained chemists. When chemicals and elements are properly mixed and balanced, they can create some very useful products and compounds. Similarly, a good mediator will be able to read the room, the facts and evidence and the issues and personalities and know how to facilitate a desired solution out of what could otherwise be a volatile or explosive mix.

There is no single approach that will work for everyone, every time. However, if you are willing to work with your mediator to design a process that addresses the unique specifics of the case, you’ll have much more help in developing the good chemistry needed to get desired results.

Here are some things to consider:

Temperature control. The mediator has many roles, but one is to set the table and control the tone of the day. Your mediator should be able to dial down the heat, or light a fire under someone if necessary.

Storing elements. There are some people that can be in the same room together and others that simply cannot. Your mediator should inquire about the types of personalities at the mediation. If they do not, and you suspect there's potential for an explosive reaction, let them know that some elements come with special instructions.

Mixing elements. With a good understanding of the elements at the table, consider how they all should be mixed together. If opening comments are only likely to drive people further apart or if you think the time could be better spent in caucus, consider eliminating openings made by parties across the table. If there are personality conflicts between parties, consider disposing of the plenary session entirely. Another option is to have the mediator deliver all of the opening comments ordinarily delivered by counsel for the parties in a benign or neutral fashion.

Amounts. Too much or too little will spoil a shared solution that needs to be mutually agreeable. A mediator should gain insight into the issues, facts and figures each party is working with to ensure a reasonable balance is possible.

Safety precautions. Inevitably, there are times when the mediator may have to use a fire extinguisher if the chemicals begin to combust. If sparks are put out early enough, a session can be put back on track.

Your mediator should be alive to all of the elements and be able to adapt the process to the specific needs of the parties. Work with them to design a process that will help produce the desired solution, and avoid a much bigger problem!

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