

'Getting to Agreement' Newsletter

Mutual Gain Through Understanding

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Collaboration ... extends beyond communication, cooperation and coordination – it is a tool for bringing diversity of expertise and resources for problem-solving, creating new programs, developing new initiatives and completing projects.

WEBSITE NEWS

For the latest news on collaboration & dispute resolution issues see our **Articles/Media** page under **Resources**. These are updated regularly from around the world so bookmark this page if you want the latest stories. Web link: <http://www.collaborateaustralia.com.au/media.php>

New Download now available:
'Public Arena Dispute Resolution: Establishing the Case for Transformative Facilitation Paper' – Web link: <http://www.collaborateaustralia.com.au/downloads.php>

Focus on: Collaboration

According to Barbara Gray, author of the highly regarded book *Collaborating: Finding Common Ground for Multiparty Problems*, 'Collaboration is a process through which parties who see different aspects of a problem can constructively explore their differences and search for solutions that go beyond their own limited vision of what is possible. Collaboration is based on the simple adages that "two heads are better than one" and that one by itself is simply not good enough! Those parties with an interest in the problem are termed stakeholders. Stakeholders include all individuals, groups, or organizations that are directly influenced by actions others take to solve the problem. The object of collaboration is to create a richer, more comprehensive appreciation of the problem among the stakeholders than any one of them could construct alone.'

However, taking a broader view, collaboration is a way of **not only resolving conflict** but just as importantly, to **advancing shared visions** where parties recognize the potential advantages of an opportunity to work together for mutual gain. e.g. Where parties have a shared interest in solving a problem that they are not able to address on their own or working on a project that requires the expertise of others to come to fruition.

The concept of collaboration (from its Latin roots 'com' and 'laborare' meaning "to work together") extends beyond communication, co-operation and coordination – it is a tool for bringing diversity of expertise and resources for problem-solving, creating programs, developing new initiatives and completing projects. Parties come together because each needs the others to advance their individual interests. **Collaboration offers transformative potential for positive change** and is an under-utilised tool for individuals, organisations, governments and communities to improve relationships and outcomes in almost every aspect of life.

Collaborate Australia helps people learn how to work together more effectively by stimulating new thinking, providing expertise to facilitate meaningful communication and building shared commitment to achieve mutually beneficial goals. Contact us for more information on how we may assist in your collaborative solutions.



Problem Solving Quote:

"No problem can stand the assault of sustained thinking." - Voltaire

This dispute was 'ripe' for mediation because both parties were committed to resolving the issue. There were different interests but common ground.



Pathways to Connection

Great connections start with what we think and feel about people who are different from us.

Clarify your intention. Knowing what you want to accomplish in the communication ahead of time focuses your attention and guides your interaction with the other person in a constructive direction.

Notice your own reactions. Sometimes our most limiting beliefs and attitudes live below the surface until they are provoked. When emotional triggers kick in or we find ourselves labelling or stereotyping others, it's time to check what's going on inside us to determine whether our responses help or get in the way.

Search for similarities. Common ground brings us together. Finding shared experiences or preferences helps us to connect.

Use cues. Picking up on the subtle and not-so-subtle signals others send is a matter of using our eyes and ears.

Experiment and adjust. Great connections rely on continually trying something new, noticing the response, and adjusting based on feedback. Midcourse correction is the rule, not the exception.

The Art of Connecting by Claire Raines & Lara Ewing (2006) p 69-70

Case Study: Lessons Learned

A case involving a home building repair was **resolved through mediation** and reveals a **number of lessons** that can be learned by parties to any dispute.

A couple in Brisbane bought a relatively new home which was still under the builder's warranty period. Soon after purchasing their home, the roof started leaking on the middle level. They approached the builder who made a minor repair which subsequently did not fix the problem. Other leaks in different areas on this level appeared at various times. Due to the drought, there were often long periods of time that elapsed before heavy rain tested the 'repair' and the couple became aware over and over that the builder's efforts to fix the issue were not permanent solutions. As the repairs were costing the builder money he was more interested in building new houses on which he could make a profit. It was also not in his interest to expedite a resolution if the warranty ran out before he had to affect potentially costly repairs.

Due to the frequency of contact, the couple *put all communications in writing* to the builder hoping he would take written complaints more seriously. Whilst the parties remained on good speaking terms, after nearly three years had elapsed, the builder did not appear to take the issue seriously and began fobbing the homeowners off. The pressure was then on. The warranty period was drawing to an end and the couple had endured years of ongoing water damage to internal fittings and furniture requiring insurance claims and no closure on the issue. They wanted to sell their home but the roof was still leaking (even during an inspection) which was extremely stressful. They realised they needed to *seek help elsewhere*.

The couple subsequently contacted the Building Services Authority in Queensland and submitted a formal complaint in writing with copies of all communications with the builder. Whilst the BSA issued a formal warning to the builder to resolve the issue (and was a protection for the couple under the warranty), the dispute was potentially going to take up to nine months to process before the BSA could force the builder to rectify the problem. This was not satisfactory for the couple who felt disempowered and wanted to sell, but felt morally obligated to have the major repair rectified first.

They *sought opinions* from other leak specialists and builders and in their fact finding, learned the source of the problem was the failure of the waterproof membrane on the floor above which was an external deck. Replacement of this membrane would be costly but a permanent solution. The couple got quotes for new waterproofing, approached the builder through mediation and were able to agree to a financial settlement split between the builder and his sub-contractor, which allowed the owners to take control and have the repair completed by their own contractor within 10 days of the mediation.

This dispute was **'ripe' for mediation** because both parties were committed to resolving the issue. **There were different interests but common ground:**

The owners wanted to:

- be confident there would be no more leaks causing damage;
- take control of having the repairs completely promptly;
- not be reliant on the builder any longer;
- sell quickly and remove the stress;
- have no future relationship with the builder.

The builder wanted to:

- fix the defect at the lowest possible cost;
- resolve the dispute quickly as he was aware there had been previous complaints to the BSA by other customers, affecting his public record;

Case Study: Lessons Learned (Cont'd from Page 2)

The builder wanted to:

- avoid taking time off other income-earning jobs for a major repair;
- avoid future stressful contact with the owners.

The low cost of mediation and fast resolution (within an hour) allowed both parties to find a mutually beneficial solution and move forward with their lives without future contact with each other.

Lessons learned:

1. **Fact finding – research thoroughly.** Don't underestimate the incentive all parties have to find solutions and generate options when they have a lot at stake. Find out if the party you are dealing with is a member of, or is governed by, a regulatory body or has a company dispute resolution process. (In this case, formally contacting the BSA to lodge a written complaint that would stay on the builder's public record provided enough motivation for the builder to come to the table and reach agreement.)
2. **Get a second (or third) opinion.** Not only is this an empowering exercise, but third party opinion and credibility provides information, leverage and helps generate options on which to build your case. Qualified parties can provide valuable insights, experience and knowledge that can arm you with the confidence to negotiate an outcome in a particular direction. (In this case, leak specialists and other builders provided the owners with knowledge of the type of repair work that would permanently solve the problem and an accurate cost estimate that formed the basis for a negotiated settlement.)
3. **Keep good records of all communications.** Maintain a diary with brief dates, times and summarised notes of key points early on and a file with any correspondence. As a dispute worsens, emotional stress may make it hard to recall what happened even a short time ago. If the issue escalates and the matter can't be negotiated successfully on your own, documented communications will be essential in mediation or court. (In this case, communications were faxed between the parties.)
4. **Decide if you want an ongoing relationship with the other party/ies.** This may change your strategy. Most people are willing to make concessions if they want to maintain a future mutually beneficial relationship, but if this is not the case, then you may choose different alternatives which will affect the outcome. e.g. a negotiated financial settlement of the matter. (In this case, both parties no longer wanted to pursue a future business-consumer relationship and with the warranty period over, this would not be necessary.)
5. **Be reasonable and 'give' something to the other party.** It takes two to tango and even when multiple parties are involved, someone has to wear the 'hat of reason.' If one party wants everything *their* way, negotiations will be short-lived and the likelihood of a successful outcome reduced. Try to understand what the other party's interests are so you can work collaboratively to reach agreement. (In this case, the homeowners took the initiative and time to obtain quotes for repairs which saved the builder the hassle of having to organise the repair work through his sub-contractor, but gave the owners control over the quality of work and a new long-term warranty. It also gave the parties a figure to start negotiating on. The sub-contractor who had done the initial waterproofing work was prepared to contribute to the financial settlement due to the failure of their product.)
6. **Give the other party a way out.** If direct contact is too confrontational, offer the other party an alternative way to communicate their intentions e.g. via a third party. (In this case, when the relationship deteriorated, emotions became heated which made face-to-face communications difficult between the builder and owners. Intervention by a third party mediator diffused 'toxic statements,' facilitated meaningful conversations and generated options which resulted in a mutually beneficial agreement being negotiated.)

Communication Quote:

"When dealing with people, remember you are not dealing with creatures of *logic*, but creatures of *emotion*."

– Dale Carnegie



How to say Sorry¹

- 1. Recognise and acknowledge that a violation has occurred;
- 2. Determine the nature of the violation —that is, what 'caused' it—and admit that one has caused the event;
- 3. Admit that the act was destructive;
- 4. Accept responsibility for the effect of one's actions;
- 5. Offer some form of forgiveness, atonement, or action designed to undo the violation and rebuild the trust.

1 Lindsfold, S. (1978). "Trust development, the GRIT proposal, and the affects of conciliatory acts on conflict and cooperation." Psychological Bulletin 85:



RECOMMENDED READING



'How to Disagree Without Being Disagreeable' – Getting your point across with the gentle art of verbal self-defense by Suzette Haden Elgin (1997) John Wiley & Sons.

An excellent guide to disarming hostile language and delivering necessary negative messages of your own without sacrificing your dignity or principles! This book provides simple, practical examples and alternatives to adversarial language and behaviour; highlights how to improve active listening skills and provides tools to use in everyday situations.

Communication Focus: Listening



Some of the most popular pages on our website are those on **Communication Strategies**, particularly the **listening skills**.

"The most basic of all human needs is the need to understand and be understood. The best way to understand people is to listen to them." — Ralph Nichols

Failure to listen and understand what is being said is miscommunication. Listening is not the same as *hearing*. The sound of words reach the eardrum, but much of the time the hearer does not translate it into a message to be understood by the brain. Much is being said about the importance of communication, but most of the emphasis is on the effectiveness of the *speaker* in reaching the listener. Greater attention should be focused on a person's ability to listen to others, to comprehend as much as possible, not just facts, but intent and emotional overtones as well.

Key elements of active listening that help you ensure you hear the other person, and they know you are hearing and understanding what they are saying are:

1. **Pay close attention.** Give the speaker your undivided attention. Acknowledge the message. Recognize non-verbal clues to their message.
 - o Look directly at the speaker and maintain eye contact.
 - o Avoid distracting thoughts or mentally preparing your response!
 - o Avoid distractions from environmental factors.
 - o "Listen" to and visually "read" the speaker's body language.
2. **Demonstrate you are listening.**
 - o Nod occasionally to show your interest.
 - o Use your own body language and gestures to convey your attention.
 - o Smile and use other facial expressions.
 - o Make sure your posture is open and inviting.
 - o Encourage the speaker to continue with small verbal comments like 'yes', and 'uh huh.'
3. **Provide feedback.** What we hear can be distorted by our personal assumptions, judgments, and beliefs. To *understand* what is being said, you need to reflect the message back and ask questions.
 - o Paraphrase. "What I'm hearing is..." and "So what you mean is..." and "If I understand you correctly..."
 - o Ask questions to clarify particular points. "What do you mean when you say...?" "Is this what you mean?"
 - o Summarise the speaker's comments as needed.
4. **Postpone judgment.** Interrupting frustrates the speaker, shows a lack of respect, and limits full understanding of the message.
 - o Allow the speaker to finish.
 - o Don't interrupt with counterarguments.
5. **Respond Appropriately.** Active listening is a model for respect and understanding. You are gaining information and perspective.
 - o Be sincere, open, and honest in your response.
 - o Assert your opinions respectfully.
 - o Treat the other person as he or she would want to be treated.

'Listening provides empowerment. As a listener, you don't have to "do" anything, "fix" anything, or "change" anything. When people are "heard," they will "do", "fix" and/or "change" things for themselves.' – Carol McCall, The Empowerment of Listening

Q & A



Can you explain what active listening is? – Roz C, Brisbane

Active or Reflective Listening is the most valuable listening skill and focuses attention on the speaker. In active listening we are showing genuine interest in understanding what *the other person* is thinking, feeling, wanting or saying. We check our understanding *before we respond with our own reply*. We *restate or paraphrase* our understanding of their message and reflect it back to the sender to verify. This feedback process distinguishes active listening, makes it effective and facilitates mutual understanding.



Communication Quote:

"We have two ears and one mouth so that we can LISTEN twice as much as we speak." - Epictetus



**Collaborate
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