 Institute for Divorce  
Financial Analysts

**Understanding Conflict and the Role of Financial Planners in  
Resolving Conflict in ADR**

**Brendley R. Mustard, Moe Hannah LLP**  
800, 635 - 8 Avenue S.W.  
Calgary, Alberta T2P 3M3  
Tel: 403-613-9654

2016 IDFA Workshop:  
**Canadian Series**  
October 19-21, 2016 | Calgary, AB

---

---

---

---

---

---




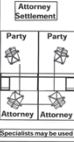

---

---


---

---

**Conflict Resolution Options**

<p><b>Kitchen Table</b></p>  <p>Party Party</p> <p>Attorney Attorney</p>	<p><b>Mediation</b></p>  <p>Party Party</p> <p>Mediator</p> <p>Attorney Attorney</p> <p>Specialists: Mediator, Coach, Other Specialists, &amp; Financial Professionals</p>	<p><b>Collaborative Practice</b></p>  <p>Parties</p> <p>Attorneys</p> <p>Specialists: Mediator, Coach, Other Specialists, &amp; Financial Professionals</p>	<p><b>Attorney Settlement</b></p>  <p>Party Party</p> <p>Attorney Attorney</p> <p>Specialists may be used.</p>	<p><b>Court</b></p>  <p>JUDGE</p> <p>Party Attorney Party</p> <p>Specialists may be used.</p>
--	--	---	--	---

Collaborative Law Institute MN 2007

 Institute for Divorce  
Financial Analysts

---

---

---

---

---

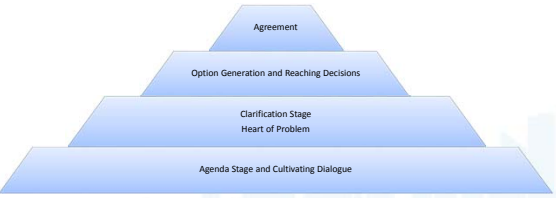
---

---

---

---

---




Agreement

Option Generation and Reaching Decisions

Clarification Stage  
Heart of Problem

Agenda Stage and Cultivating Dialogue

 Institute for Divorce  
Financial Analysts

---

---

---

---

---

---

---

---

---

---

### Interactive Engagement in Conflict

- Help data management and clarify understanding
- Overcomes Reactive Devaluation
- Overcomes the tension between role of counsel and role of interest based negotiator.
- Manage the process/ Helps Build Trust
- Helps Challenge Attributions
- Manage power imbalances
- Overcomes Entrapment
- Overcomes Anchoring Assumptions
- Helps develop objective criteria




---

---

---

---

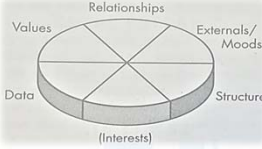
---

---


---

---

### Circle of Conflict



Source: Gary T. Fuotang, *The Conflict Resolution Toolbox, Models & Maps for Analyzing, Diagnosing and Resolving Conflict* (Mississauga: Wiley, 2009): 30




---

---

---

---

---

---

---

---

### Interest: Why I want what I want

- The underlying reason
- Desires , values and hopes
- Each party has multiple interests
- Interests can be overlapping and things parties both share
- Both parents want to be to maintain a positive parenting relationship
- Both parents want closure
- Both want economic certainty and predictability
- Or Interests can be competing in that meeting one party's interest will not meet the others.




---

---

---

---

---



---

---

---

**Interests**

- Can be substantive:
  - The outcome at the lowest price
  - Want to be able to support myself financially



---

---

---

---

---

---

---

---

**Interests**

- Can be process based:
  - Want process transparent
  - Want process to involve right people
  - Is negotiation process fair
  - Look for objective standard



---

---

---

---



---

---

---

---

- **Reactive Devaluation:**
- A compromise proposal or offer is rated negatively by other party. When compared with offer from neutral third party offers rated significantly higher.
- Who makes the offer can matter. Trusted person gets more positive response



---

---

---

---

---

---

---

---

**Overcome Tensions**

- Role of counsel and role of interest based negotiator



Institute for Divorce  
Financial Analysts

---

---

---

---

---


---

---

---

- Entrapment

A force that prevents the disputants from pulling back once they have invested heavily in outcome



Institute for Divorce  
Financial Analysts

---

---

---

---


---

---

---

---

**Helps Build Trust**



Institute for Divorce  
Financial Analysts

---

---

---

---

---


---

---

---

**Procedural Trust v. Intrinsic Based Trust**

- The trust we place in a structure or process we are involved in, as opposed to an individual.
- In conflict often people have little to no trust with each other, but instead place their trust in the ADR process itself.
- One must deal with mistrust respectfully sensitively and indirectly. Acceptance of mistrust is a start. When we can accept that mistrust exists without expectation it will diminish – it paradoxically facilitates trust building.




---

---

---

---

---

---

---

---

**Procedural Trust v. Intrinsic Based Trust cont.**

- Dispute Resolution Traits: Neutral must be able to demonstrate patience, tolerance and understanding.
- Neutral must facilitate a problem solving atmosphere when tensions and emotions between the parties can be high. Language may affect discussions: work together, mutual benefit, assistance
- Eliciting cooperation: The goal is to develop an ambiance of attitude and cooperation. It optimizes the spouse's readiness to attend and listen.




---

---

---

---

---

---


---

---

**Attributions:**

**Situational Attribution:**

- Situational attributions occur when person associates cause of conflict with circumstances. In these types of attributions there is low level of blame. The event is caused by circumstances such as a lack of skill, the person acted in their best capacity, the person is little to blame, there intentions were good, and there actions are not aimed at the individual.




---

---

---

---

---



---

---

---

### Intrinsic Nature Attribution

- These attributions attribute the cause to the nature of the person. The cause of the behavior is attributed to the person's innate character or their person rather than an intentional action. The harm may be simply intentional but instead may be a result of the person's intrinsic quality.



---

---

---

---

---



---

---

---

### Fundamental Attribution Error

- In conflict, the *fundamental attribution error*, is for individuals to tend to "...over attribute behavior to a person's fundamental character or disposition, and under attribute behavior to external circumstance



---

---

---

---

---

---

---

---

## Manage Power Imbalances



---

---

---

---

---



---

---

---

**Zero Sum Thinking**

- Any outcome to one party must necessarily come at the expense of the other
- Imagine children fighting over slice of pie



---

---

---

---

---



---

---

---

**Anchoring Assumptions**

- To make a single issue or condition consciously or unconsciously the basis for considering any possible change
- Unlikely to consider any possible options for resolution until anchoring assumption is questioned



---

---

---

---

---


---

---

---

**Judgement Overconfidence**

- A third party who has built a relationship of trust with both sides is often able to correct such misperceptions



---

---

---

---

---



---

---

---

**Legal Issues**

- *White Burgess Langille Inman v Abbott and Haliburton Co*, 2015 SCC 23: "the duty owed by an expert witness to the court: the expert must be fair, objective and non-partisan"



---

---

---

---

---


---

---

---

**Impartial, Independent, and Unbiased**

- From *White Burgess Langille Inman*:
  - "The expert's opinion must be **impartial** in the sense that it reflects an objective assessment of the questions at hand. It must be independent in the sense that it is the product of the expert's independent judgment, uninfluenced by who has retained him or her or the outcome of the litigation. It must be unbiased in the sense that it does not unfairly favour one party's position over another. The acid test is whether the expert's opinion would not change regardless of which party retained him or her."



---

---

---

---

---

---

---

---