The Power of Apology in Mediation

An understanding of the subtleties of apology-giving is often part of a successful mediation.

Carl Schneider (references at end of article) writes that, to be a genuine apology, the apologiser must

1. Acknowledge the evidence of what was done
2. Be visibly and genuinely sorrowful
3. Be defenceless

"Joan I am truly sorry that that I excluded you from meetings and thereby caused you so much hurt and humiliation among your colleagues".

Others claim that this is an insufficient apology. They want the apologiser to also

4. Seek to restore the relationship
5. Commit that the incident will never happen again
6. Offer restitution

Point 4 about restoration of the relationship is critical to mediation.

Inexperienced mediators often miss vital signals during mediation. One of these signals is the potential compliment and the other is the potential apology. Both can lead to breakthrough opportunities to rebuild relationships.

Potential Compliment

The potential compliment can be a guarded comment such as “he is Ok as a manager” or “she’s too nice for her own good”. Experienced mediators will seize on these half-compliments and probe with such questions as:

“You seem to be saying that you think that John is a good manager. Can you tell John in what way you think that he is a capable manager?”

And

“You believe that Susan is a nice person. Can you tell Susan about those aspects of her behaviour that you admire for their niceness”.

Everybody appreciates hearing nice things said about them and tend to warm towards the speaker of such compliments. This can significantly improve the chances of a successful outcome to the mediation process.
Potential Apology

Similarly mediators who are aware of the power of apology can detect a potential apology and bring it out into the open (\(M\) represents the mediator speaking).

“I suppose that I regret that Ciara got hurt”. The mediator will follow up to try to get the half-expressed apology to become a full apology.

\(M\) “You seem to be saying to Ciara that you regret that she got hurt. Can you tell Ciara more about your regret?”

“Yes well Ciara was working for me and another manager and I suppose we were using Ciara to attack each other. I’m sorry that I involved Ciara in this because I should not have done so.”

The mediator will now try to get Ciara to acknowledge this apology

\(M\) “So Ciara, Sean is saying that he is sorry that he got you involved in a dispute with a co-manager and that he should not have done so. How do you feel about his apology and are you grateful to him for giving it?”

The mediator has cleverly tried to do three things:-

1. Get Sean to make his semi-apology more full and more specific
2. Get Ciara to hear and acknowledge his apology
3. Get Ciara to praise Sean for making the apology

In this way Sean and Ciara are coming closer together and lessening the conflict tension between them.

So what exactly is apology and why do many in society have difficulty offering it? An apology is to acknowledge injury and express regret without defence. I would add ‘bear responsibility’ as a fourth essential element of an apology. It can also be described as begging for forgiveness but in terms of mediation the first definition is the better one i.e.

- Acknowledge injury – you were called unpleasant names
- Accept responsibility – I should not have let that happen
- Express regret – I am very sorry that it happened
- Avoid defence – I was under pressure at that time

So a genuine apology could be “\textit{I am very sorry for the hurt I caused you by ignoring your opinion at meetings}”. It contains the four essentials of acknowledging the injury, taking responsibility, being regretful and not trying to defend the action.

Many apologies fall down because one of these four elements of apology is missing. For example

“I am very sorry if you feel you were hurt because I ignored your opinion at meetings” - does not accept responsibility but deflects it
“I am very sorry for the hurt I caused you by ignoring your opinion at meetings but it was because you spoke so quietly” – contains a defence

“I accept that I ignored your opinion at meetings and this will not happen again” does not express regret

“I understand that you are upset and apologise unreservedly” does not acknowledge the injury

Mediators have to be on guard to ascertain whether the apology was genuine and may have to probe further to convert an incomplete apology into a full one.

To take an example where the apology is given but is incomplete. The mediator (M) might ask

M “You acknowledge that you ignored her opinion at meetings and have committed that you will not do so again. That is good. Perhaps you can explain how she might have felt about the fact that you ignored her opinions? “Well I suppose I’m sorry that I let it happen” The mediator will realise that the full apology is still being withheld and will continue to probe
M “So are you telling her that you are sorry for what you did and that you understand the effect that this action had upon her and can you say this directly to her?” “Yes I am sorry for ignoring you and can now understand how hurt you were”.

You can probably describe the role of the mediator at this time as attempting to tease out the full apology.

Resistance to Apologising

Obviously everybody has their pride and having to apologise is a humiliating thing to have to do. Hence the tendency to withhold an apology or to offer a half-baked one. An apology is also a role reversal. When you hurt someone, you had the power. When you apologise to that person you are giving them the power (they can accept or refuse your apology).

The major resistance to apology comes from the legal system in Britain, the USA and Ireland. That system is adversarial and is built upon

One guilty party and one innocent party
A winner and a loser
A denial of guilt rather than offering an apology

McEwen and Milburn describe this as a system which “highlights goals of victory, vindication and restitution”.

Common sense dictates that if you hurt another person, you should apologise to them for what you did. But the lawyer will advise you never to offer an apology because it could be construed as an admission of guilt and leave you liable. The lawyer sees his or her role as defending a naïve client – even in cases where it is indefensible or in cases where an apology would dramatically reduce the tension and possibly also the costs.

So people are often constrained by law from doing what they think is the morally correct thing to do. It is seen in the way the Catholic Church, the HSE and many other organisations, which know that they are guilty, are legally prevented from making the apology that would go such a long way to healing the hurt that was inflicted.

The ridiculousness of the system is summarised in John Rothchild’s quote where a company or person “announces concrete steps to ensure that whatever they haven’t admitted to doing will never happen again”.

What the legal system needs to learn is the importance of the apology. An employee of a council in Ireland took a bullying case against his manager and eventually the council agreed to pay him a large monetary sum instead of the case going to court. The employee agreed but on condition that he would receive a fulsome apology. The council refused and the case went to court. There, the employee was paid a larger monetary sum than previously agreed and also received his apology. The legal system in Ireland needs to find a way to enable an apology to be given without it opening a Pandora’s Box of additional claims.

In defence of the legal system, many judges are now arguing for mediation in cases where legal issues are not in dispute. In addition, all solicitors in Ireland must advise clients that mediation is an alternative option to litigation.

Mediation obviously comes into its own in that it can accommodate compliments and apologies and utilise them to improve relationships between the disputants.

**Apologising**

Apologising does not undo the damage. If a person has been cut in the face, apologising will not undo the cut. But it can undo the mental anguish associated with the cut. Words of apology that are genuinely felt and meant, that acknowledge the evidence of what was done and which do not attempt a defence can enable closure. Without such closure, the mental scar may remain.

To offer an apology is a humbling process and makes the giver vulnerable to the other party. Thus in many mediation cases, an apology may remain unsaid until the mediator coaxes it into existence.

Even at the pre-meetings, where the mediator meets each party separately, the mediator should be alert for a potential apology. The words of the apology
can be discussed at the pre-meeting and maybe reworded to make them more acceptable. In caucus mediation, the mediator may have to go to and fro between both parties massaging and negotiating the wording until both parties are accepting of the giving and receiving of the apology.

Neither party can afford to feel trapped by the mediator into issuing or accepting an apology in which they do not believe. But at the same time, it can be necessary to eke out the words of apology. In the example below the mediator tries to flesh out the apology:-

“Look I was in a bad mood that day and that is all there is to it”
M “So something had gone wrong in your life to affect your mood that day?”
“Yes it had”
M “And was it that incident in your life that led to you shouting at Lorraine that day?”
“Yes I suppose it was”
M “And can you understand the emotion Lorraine must have felt when you shouted at her?”
“Yea – I probably can understand it”
M “Do you feel that you could offer an apology to Lorraine for that incident?”
“Yes”
M “Would you like to look at Lorraine and offer that apology now?”
“Lorraine I’m sorry for shouting at you that day – it was not really your fault”
M “And can you also appreciate her feelings from being shouted at?”
“Yes Lorraine I should not have shouted at you and I’m sorry for the upset that I caused you”
M “Lorraine – would you like to respond positively to the apology you have just received?”

Trust

Many mediations are dealing with a breakdown of trust. An apology that is sincere and unreserved can start the process of restoring trust. As Kastor writes “The past is not erased but the present is changed”.

In mediation there will be missed opportunities when the mediator misses the clue to an opportunity for praise or an opportunity for an apology.

Divorce mediation often requires both the praise and the apology. For example

M “So am I right in hearing that you are suggesting that he was a good husband up to the time he commenced the affair?”
“Yes”
M “Can you tell us in what way he was a good husband up to that time?”
“Well he was great with the kids and did the dirty jobs in the house and praised me a lot for my accomplishments”
M “How do you feel about what Pauline is saying about your being a good husband up to the time of the incident?”
“Yes I appreciate her saying it because she has never said it before”
M “So you are saying that you appreciate her praising your role as a husband up to the time of the incident”
“Yes I do”
M “Now Joe can you appreciate the hurt that Pauline felt when she learned about your affair?”
“I suppose I can but her coldness contributed to my having the affair”
M “When you say you can appreciate the hurt you caused to Pauline, can you describe what you mean?”
“Well I guess that she must have been very embarrassed and possibly very lonely”
M “And do you feel that you can now look at Pauline and apologise to her for the embarrassment and loneliness and hurt that your actions caused her at that time?”
“Look Pauline I am sorry for your hurt and your embarrassment and it was never something I set out to do to you”
M “Pauline – You have heard Joe apologise to you for your hurt and embarrassment and loneliness. Do you feel that you can acknowledge his apology?”
“Joe you have apologised and have taken a load off my mind”

Summary

An apology cannot undo the damage that has been done. And yet it kind of does just that. It can undo a lot of the mental anguish that is associated with broken relationships.

The apology must be genuine, must acknowledge the evidence of what has been done and must avoid offering any defence. An apology so offered can contribute greatly to a restoration of relationships.

Note

This article was written by Tony Bourke in August 2010 and takes much of its content from Carl Schneider’s article – referenced below.
All quotes from named contributors are fully referenced in Carl’s article. Any additional content is the work of the author.
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Reference

‘What It Means To Be Sorry: The Power Of Apology In Mediation’ by Carl D Schneider. First published in the Mediation Quarterly, Vol. 17, Number 3 (Spring 2000)