The Power of Apology in Family Mediation

By Elizabeth A. Hyde

The “Promise of Mediation”, the title of Bush and Folger’s often quoted book, captures the essence of mediation in the family law context. For those of us coming from a litigation oriented practice, the process of mediation continues to both amaze and inspire. The potential for an outcome where the parties at the very least communicate openly with each other is one that is particularly important in the context of family conflict. Where the preservation of relationships is of the utmost importance, mediation offers an alternative to the often destructive process that litigation provides to separating spouses. As one now involved in ADR, there is much healing to be done in the context of mediation. When parties are stuck for reasons the mediator may not understand, it is often that a real apology has never been received by the party that perceives they have been wronged. If true reconciliation is to be achieved, or at a minimum, if the parties can leave feeling they can communicate at even a functional level for the sake of their children, then a discussion around apology is something the mediator needs to keep front and centre and be ready to introduce at the opportune time.

Apologies in 20th century North America have generally been looked upon as a sign of weakness and failure. We have been socialized from a very young age that the usual sequence of events following bad behaviour involves getting caught by an adult, marched over to the wronged individual, and told to “say you are sorry” to the victim. Rarely was there a discussion about why you were apologizing, how the victim felt, the elements of a true apology or the value it could hold for both the victim and the offender. Most of us grow up with the notion that those who apologize are weak and embarrassing and have less perceived authority than those who do not engage in apologetic behaviour. Research in this area suggests the opposite; that leaders who apologize are actually viewed more positively, and that
apologies have a variety of positive effects from forgiveness, restoring trust, reducing aggression, enhancing future relationships and promoting general well being. More importantly for the family mediation context, evidence suggests that apologies influence the reconciliation and forgiveness process. Further, there exists a relationship between forgiveness and psychological and physiological benefits, relationship well-being and possibly even physical health. This is the true promise of mediation.

The core elements of an apology are acknowledgement, affect and vulnerability. Acknowledgement, the first step in a successful apology, is the recognition by the offending party that an injury has occurred that damages the bonds between the offending and the offended party. The offender must acknowledge that a norm has been violated; that they understand what implications that violation has in the broader context and in particular, what impact it has on the offended party. Affect addresses the notion of the empty or hollow apology which so often is associated with a badly executed apology. In a successful apology, the offending party must be visibly affected by what they have done. A good apology must provide an explanation for why the offence was committed in the first place and, some would argue, a reassurance that the behaviour will not be repeated. The apologizer has to feel the pain of the victim and express genuine regret for their transgression. In addition, an apology should be the result of some introspection on the part of the offender. Finally, the apology must place the offender in a position of vulnerability by offering the apology without defence. In this way, the balance of power shifts as the apology may not be accepted. One of the most common causes of a failed apology is the offenders’ pride, fear and shame at having to acknowledge they made a mistake and that they have failed to live up to the shared values of sensitivity, thoughtfulness, faithfulness, fairness and honesty.

There are many reasons an individual may consider apologizing, not all of them altruistic. Apologies can be motivated by the desire to salvage or restore a relationship; by purely empathic concerns that one has caused suffering to another; to relieve a guilty conscience; or in extreme circumstances, to escape punishment. Regardless of the motive, all apologies can work if there is an exchange of shame and power between the offender and the offended. In acknowledging their shame, the offender gives the offended; the one whose self concept has been injured, the power to forgive. The apologizer puts herself in the weaker position and risks that her apology may not
be accepted. It is clear that if the goal is to move forward in any relationship, an apology is an important part of the process.

In research done examining personality correlates of the disposition to apologize, those prone to apologize are characterized by a strong orientation towards others, humility, empathy, a positive self-image mindset of acceptance and a belief in the possibility of self improvement. Apology proclivity requires psychological health (capacity for empathy, appropriate regulation of guilt, concern for the plight of others) where as negative correlates of the disposition to apologize include several attributes of self-focus i.e. narcissism attributes that may impede ones inclination to apologize. Those who cannot look outside of themselves will apologize by saying “I am sorry you are upset with me” rather than “I am sorry I hurt you”. The difference is subtle but powerful. Unless both parties involved in a conflict reach beyond his or her self-centred world, a successful resolution of the conflict may be impossible. While clients will inevitably fall in to all of the categories outlined above, it is the role of the mediator to allow both parties to see the value an apology will bring to the mediation process.

The goal of mediation in general is to resolve conflicts so that each party feels they have achieved their goals in the process. Depending on the nature of the conflict, the continuance of an ongoing relationship may, or may not, be of significance. In the case of separating couples, it is often of primary importance particularly when there are children involved or when parties have a shared history of family and friends that will remain intertwined for years to come. Because of this, one of the objectives of a mediator is to attempt to move the parties to the point of forgiveness and reconciliation. Reconciliation in this context is not in the sense of restoring the parties’ relationship as intimate partners, but ensuring they can both move forward once the mediation process has ended. An apology is often a key factor in moving the parties towards this goal.

Mediation is the process whereby two people involved in a dispute negotiate with the assistance of a third party. This intervention is done with an impartial, neutral third party who has no decision making power but is there to assist disputing parties to voluntarily reach their own mutually acceptable settlement. While there are numerous forms of mediation, the
mediator’s role in all cases is to help guide clients to find their own solutions and thus satisfy needs on all sides.

The use of apologies in mediation should be viewed not as a discrete event, but as part of the process whereby apologizing becomes embedded in the very nature of the mediation. While parties often come to mediation at different stages along a continuum, they generally follow a similar path. The mediator’s role in this context is to help the parties simplify the complex issues to a degree that enables participants to envision a way forward. Apology can play an important part in navigating this path by allowing parties to exchange words that enable closure.

While clients may intuitively know that an apology may provide the best opportunity for a successful resolution of their conflict, they often need help to get there. Formulating an apology is foreign to many and for some, may be something they have never considered doing. As outlined above, few of us have a solid understanding of the elements necessary for a successful apology and the damage that can be caused by an unsuccessfully delivered apology. When assessing whether an apology is appropriate during mediation, the mediator needs to be cognizant of the research on personality traits, gender and culture and how they will integrate each of these factors in to their discussions. More importantly, in today’s multicultural society, one has to be particularly sensitive if the two parties are from different cultural backgrounds.

Although an apology can only originate with the parties, the power of an apology in mediation is so effective; it has been recommend that mediators suggest an apology even when neither party has discussed the idea. The mediator may do this by focusing the parties on the possibility or opportunity of giving recognition by bringing up the idea of an apology during caucus. This ensures that the wrongdoer does not feel shamed in to apologizing and is free to explain to the mediator his/her rejection of an apology. The mediator can also assist the wrong doer in understanding that it is possible to be sorry for the effects of their behaviour even if the harm was inflicted unintentionally. The act of apology often involves such vulnerability that the client may have to be coached with the words he or she is to speak, or in the alternative, the mediator may actually have to make the apology for wrong doer by way of reframing. In this way, the client simply indicates their assent, but the apology has been made. While this may be the only way in which an apology is solicited in certain circumstances, mediators need to be wary of this method as injured parties may not be moved to forgiveness when the words of
remorse come from a third party. In addition, because the temptation to follow an apology with the words “but” is great, mediators need to discuss the mechanics of an apology in detail so the potential damage of an apology followed by excuse is minimized.

In the context of family mediation, a properly executed apology can be nothing short of transformational. As a family law mediator, I have one ground rule that I review with clients at the beginning of the first mediation session. Whoever is speaking must be allowed to finish. I tell my clients this not because I have any expectations that they will not interrupt each other often, but to point out that mediation is often the only time when people can speak to each other and be “heard”. This is their opportunity to have their feelings acknowledged and, it is often the only time that they can actually speak to each other without the discussion spiralling out of control.

One way to facilitate a positive outcome is to speak to the parties about how the mediation is not a time to challenge each other but a time to understand and be understood and that if they have any clarifying questions, to ask them during the mediation. Part of the discussion around this understanding is how apologies are vital to this process and may help move both parties forward and facilitate a resolution.

One of a mediator’s greatest strengths is opening the lines of communication between parties. Often times disputing parties have not listened to each other before as they are formulating their response while the other person talks. When a mediator requires each participant to avoid interruption while the other explains their views, parties start to listen to each other for the first time. It is the mediator’s role to listen attentively so that she hears how and when an apologetic gesture is appropriate. By assisting parties to develop new channels of communication, the barriers of hurt are removed sufficiently to allow an apology to be successful.

Mediation can create the space for the expression of emotion. This will be the key to fostering apology and forgiveness. Through guided discussion, the parties begin to clarify their own values and motivations and begin to clearly articulate what they want and need from the mediation process. At this point, parties begin to develop a path for moving forward. Trust is often at the core of disputes between separating spouses. Evidence suggests that trust recovery can be facilitated by promises of future trustworthiness and apologies for prior trust violations. As trust, or lack thereof, can be a significant barrier to parties’ finding a resolution to an issue, or even speaking at all, apology takes on an even greater significance in the context of family
mediation. When offered with integrity and in a timely manner, an apology can be a critically important moment in mediation. Mediation for separating couples offers an opportunity for clients to acknowledge they have acted in ways to create injury and are sorry for the damage done to their marriage and their spouse. In this way they are acknowledging the relationship is over but that they would like to close the door gently.

Apology; a simple concept to some, but the key to resolving debilitating conflict to others. Mediation offers a forum for couples in conflict to explore opportunities that will allow them to settle their disputes in a manner not afforded to them in litigation. With the aid of a skilled mediator, couples can explore settlement options through open and honest dialogue. When communication is positive, both parties are able to visualize a path for the future that results in forgiveness and reconciliation. Apology is often a pivotal component in this journey and one that mediators need to consider throughout the mediation process. There are few other ADR processes that lend themselves to the discussion of apology as well as mediation. While the act of apologizing must contain the identified elements of a successful apology, mediators can guide clients through this progression if they have an understanding of their role and a solid grounding in the theory of apology. Apology is not simply the speech act that we engaged in as children, but a thoughtful, reflective and sincere exchange of power between the wrong doer and the wronged. Only then will separating couples be able to leave their relationship on equal and mutually respectful grounds.

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