

## Newsletter # 11

There is some debate about the role of the mediator. Is the mediator there to make the deal or allow the parties to make the deal? Underlying that is an interesting dynamic, which if ignored, can produce undesirable results, and possibly cause the deal to fail.

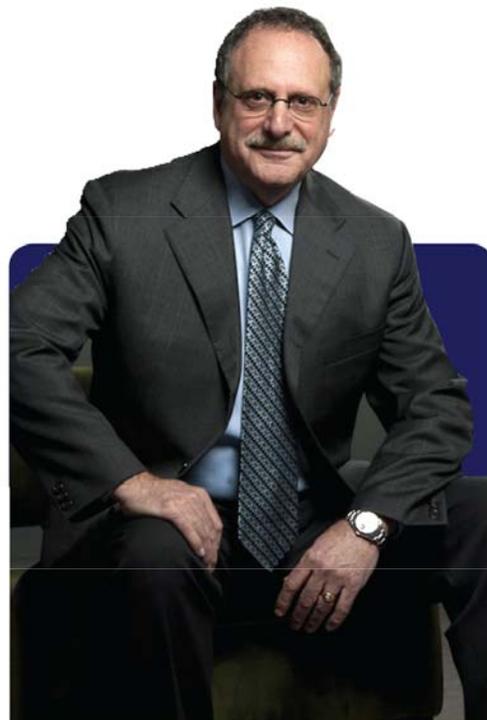
To begin with, the mediator is imbued with power by the very nature of the role. It can be assumed that the mediator has been chosen because he or she either possesses considerable knowledge of the subject matter of the dispute, has a particular skill set enabling him or her to help to resolve the matter, or hopefully both. That power gives the mediator great influence and suasion. That power can be misused.

If the only goal is to make a deal, and there is authority that that is the only job of the mediator, then an evaluative mediator can compel the parties to an agreement, even it is unfair to one or the other, which can occur if the parties, or one of them, are unrepresented, or if one party's counsel is much more powerful or more persuasive than the other.

On the other hand, if the goal is to make a deal that will stand the test of time, particularly in family law, where the parties will likely have to continue to interact, then the facilitative approach has much to comment it. With the facilitative approach, the mediator allows the parties to achieve a consensus. The thinking is that with such an approach parties are then invested in both the process and the result, and the deal is therefore more likely to last.

The only caveat is that evaluative produces quick and therefore cost-effective results, whereas the facilitative approach, by its nature, takes more time – hence more money.

When choosing a mediator ask lots of questions including questions about the approach to be taken, decide which approach best suits your needs, and then make an informed choice.



**HOWARD E. WARREN** is a lawyer and has been in the practice of family law and civil litigation since 1977. Howard studied mediation at Harvard, has been certified as a family law arbitrator, and can mediate/arbitrate any dispute. He serves as a Dispute Resolution Officer in the Newmarket Superior Court.

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Warren Mediation Group provides Alternative Dispute Resolution, Family Mediation/Arbitration, Estate Law Mediation/Arbitration, Commercial Mediation/Arbitration and other ADR services in the Greater Toronto Area, York, Simcoe, Peel and Durham Regions.