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My talk will look at both real case work examples and some personal observations on the practical elements to be considered in the use of interpreters in mediation.

Few would argue that using interpreters in any communication between parties is not easy and in the mediation area there are extra dimensions to be considered. Commercial mediation at its core is based on facilitated negotiation which means parties introduce a third party neutral to try to assist them move towards settlement often from a deadlocked or highly emotional situation. The further introduction of any new party/actor of any kind to mediation has to be handled with great care whether or not their role is to be passive or interactive.

Interpreters it is submitted are in effect 4th (or 5th if both parties bring interpreters) parties to the mediation and not only are they new parties, they will be conduits of that most important component of element of mediation i.e. communication. So in a two party mediation where one party brings an interpreter this will result in a triangular shaped communication tree during the mediation. Most mediators will have been trained and gained experience in the use of sophisticated communication skills which rarely include learning how to handle or manage the inclusion of an interpreter.

There are many threshold issues that need to be decided in setting up a commercial mediation such as the choice of mediator, venue, participation list and timetable. However when parties do not share the same mother tongue and need an interpreter additional issues need to be discussed including the choice of a “pivot” language, type of interpretation, the interpreter and how the interpreter will fit into the mediation process.

The interpreter/extra actor at the table will be handed a lot of “power” to influence the dialogue and even potentially the outcome of the mediation. Simply meeting the interpreter on the morning of the mediation, for example, is not a good idea because just as the mediator needs to build rapport and trust with all parties they also need to fully exercise their relationship skills with the interpreter. In a best case scenario all mediators try to meet with the parties beforehand to begin the process of building trust and working out process issues. Ideally having the interpreter included in these meetings is very important in order that they begin to get an understanding of the subject matter, get to know the mediator and learn about the type mediation process perhaps for the very first time.

It will also look at the problems that can arise with interpreters during mediation, for instance, how to deal with cases of interpreters being too passive and/or getting too involved with the conversation thus disrupting the flow of open communication between the speaker and the mediator which can then distort the communication with the party on the other side. There is always the danger that the interpreter can become part of the problem rather than the solution.

Interpreter selection is seldom something mediators have the opportunity to influence but this can impact on the whole process. The use of family or staff members for instance acting as interpreters instead of professionals is something that mediators must develop a strategy for either in pre- mediation planning or on the day if there is no forewarning about the interpreter’s identity. If the mediator is bilingual often a fine line must be kept between intervening in the interpreter’s role and assisting the parties by employing the mediator’s own bilingual skills. Therefore just as the nationality of the mediator can be important to parties in terms of neutrality so too can the issue of the languages a mediator is fluent in and how this is perceived.

Even if the parties choose not to settle the dispute on the mediation day as long as they believe the process was run professionally and the mediator was effective they will give a favourable review of mediation when canvassed afterwards. So how interpreters and mediators work together can be the difference between success and failure for the mediation process.