

# Article

## What Roles Do Forgiveness and Reconciliation Play in Corporate Mediation?

The Relevance of Forgiveness in The Work of Mediators in the Field of Corporate Mediation

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### 1 Introduction

The terms forgiveness and reconciliation are not the most frequently used words at the corporate mediation table. However, having been a conflict advisor and mediator for the last 17 years in both corporate and criminal cases, I know that the phenomena of forgiveness and reconciliation exist in all domains. Forgiveness can be found in everyday life, in small gestures and words. While researching this article, I spoke to three corporate mediators<sup>1</sup> to find out what forgiveness and reconciliation look like in their fields of work, and it turns out that they might indeed be more present than one might think.

Why would one talk about forgiveness or reconciliation during a corporate mediation? Basically, because agreements are more sustainable and are more just when the outcomes arise from acceptance and accountability. In addition, when companies want to live by their own formulated values and the rules of corporate governance, it might even become an obligation for them to take responsibility, to make apologies or to accept an unwelcome truth. So how can this be an element of a mediation, and what exactly are we talking about?

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1. The mediators I have spoken to deal with all kinds of business conflicts: cooperation conflicts, dismissals, shareholders' disputes, problems in partnerships, conflicts in hospitals and boards, issues with or within the administration, etc.

I will begin with a personal view of what forgiveness means, based on many years of work and self-examination. Forgiveness is a way of dealing with the truth, pain and imperfection of human life and, while doing so, empathising with it, relating to it and detaching from it. It is a way of accepting the unacceptable, but instead of agreeing to disagree, it is a gentle force that helps to relieve and renew – for example, by granting yourself and another the right to be imperfect.

We all have our own personal stories that set an important basis for the kind of mediator we have become, as well as questioning whether our mediations could be about forgiveness or not. This article is an invitation to the reader to do research in their own practice and in their life in order to answer the question 'what roles do forgiveness and reconciliation play, and what do they look like at my own mediation table?'

### 2 Corporate Forgiveness in Practice

Does forgiveness play a role in our corporate practices? At first sight, Nelleke van Thiel, business mediator at ReulingSchutte, in Amsterdam, has her doubts. But a week later, after giving this topic some more thought, she says, 'Make room for everything that is considered not to be professional. I don't condemn emotions or certain unprofessional questions or remarks. It is all allowed, in fact, it is those elements that make space for rapprochement and forgiveness.' According to Van Thiel, it is all about the little things that appear to be

irrelevant for the mediation or for reaching an agreement. For example, it is about the way people approach each other on the job or about assumptions that are made about a person or their experiences (making assumptions about a person's nature or taking them for granted). Van Thiel explains that a mediator does not always have to solve those personal aspects or have to make the other party acknowledge those aspects.

In my role, I merely help people address all the issues. I take everything that is brought to the table very seriously and in that way, I normalize it. By doing so, I demonstrate to both parties that it is not necessary to make a drama out of it,

says Van Thiel.

Sometimes, even mentioning emotions can be awkward during a corporate mediation. Van Thiel says: 'By calling it thoughts, you can make it more acceptable and accessible to bring it to the table.' In her view, there is no actual difference between thoughts and emotions. If the other party shows discomfort when talking about emotions, for example by laughing, Van Thiel does not condemn that either. 'Apparently, I first have [to] pay attention to that[;] otherwise, there will not be enough space to continue the discussion about the emotions.' By neutralising a dissonance such as what emerges from negative thoughts or emotions, a burden can be relieved, and, by doing so, Van Thiel is creating space for something new. Van Thiel notices the actual impact it has during her mediations. To her, a reconciliation means accepting the truth as it presents itself and finding new strength to rebuild trust.

This is not about (transactional) forgiveness in terms of apology, remorse and granting forgiveness in return.<sup>2</sup> The steps Van Thiel describes are those that some writers in this field, such as Desmond Tutu<sup>3</sup> and Dr. Fred Luskin,<sup>4</sup> see as being vital in the forgiveness process. This process always starts with being aware of the grief and naming it. Luskin is of the opinion that forgiveness is primarily a process of reconciling with the truth, rather than with the other.

Forgiveness does not necessarily mean reconciliation with the person that hurt you, or condoning their action. What you are after is to find peace, taking the life experience less personally, and changing your grievance story.

The grievance story refers to the view you have chosen to take in relation to a certain experience in your life. In a sense, by inviting a party to step into his grief, the mediator is facilitating a step towards forgiveness.

2. E.g. Nussbaum M.C. (AmbolAnthos, 2016). *Anger and Forgiveness: Resentment, Generosity, Justice*, p. 74 (in which she refers to the definition of transactional forgiveness given by Charles Griswold).
3. *The Book of Forgiving*, D.M. Tutu and M.A. Tutu (2014).
4. Writer of the book *Forgive for Good*. For the 9 steps to forgiveness, Stanford Forgiveness Projects, refer to <https://learningtoforgive.com/9-steps/>.

### 3 Discovering What Really Matters

Eileen Barker has been a business mediator since 1991, is currently associated with the law firm of Monty White LLP in California and is an internationally recognised forgiveness coach and teacher who has also worked closely with Fred Luskin and Kenneth Cloke (discussed later). She always explains to her clients that there are many aspects to resolving conflict and that the financial aspect is just one of them. 'Parties and lawyers usually don't want to talk about personal things,' says Barker. 'However, the mediator has to be able to ask the parties, "How has this affected you and what really matters to you?"'

Barker regards conflict as a way of looking at the core of what is really going on for each person beneath the surface.

I recently worked with a woman whose employment had been terminated 35 years before, in a very harsh way. The trauma was still there for her. The message from that history was, in her perception: 'I don't fit in and I don't belong.' That was the emotional wound that she was still holding on to. Imagine if that wound had been surfaced and addressed at the time? This is what is possible in mediation and it permits a much greater degree of resolution with a much better outcome.

Barker stresses the importance of a good dismissal and emotional resolution. The goodwill created by a just termination is a major benefit for a company.

Lots of people are still angry about having their employment terminated. Just imagine there is somebody out there that really hates your company and this person will carry their anger and grief along with them for decades, creating more conflict and sometimes even violence.

Barker teaches lawyers and mediators how to incorporate forgiveness in their work. One of her students told her that she used her techniques<sup>5</sup> when an employer appeared to have irrationally rejected a seemingly good settlement offer. So she sought a meeting with him separately and asked him why he was taking this story personally and how this story compared to his assumptions about the situation. The employer said that he felt that he had really messed up and that he was feeling stupid. The whole thing, the lawsuit and everything else, was a result of his own failure, he said. Once all of this came to the surface, he accepted the offer and the case was settled.

5. The steps described in the Forgiveness workbook, a step-by-step guide, by Eileen Barker. Available at <https://thepathofforgiveness.com/wp-content/uploads/2018/02/ForgivenessWorkbook.pdf>, last accessed 31 May 2021.

Resolving the emotional aspect does not have to entail long, separate sessions, Barker explains.

I was mediating a termination of employment involving a claim for alleged discrimination because of pregnancy. The employee sued her boss and he was furious that she didn't just tell him that she was angry, but rather filed a law suit.

At the mediation, with lawyers present, the employer said that he just wanted a chance to talk to the employee about what had happened. Barker suggested a private meeting with the parties and took them to a private room. The employer just said how angry he was, and the employee explained why she sued him. 'It only took less than half an hour. The parties exchanged apologies and then went back and quickly negotiated a financial settlement with the help of their lawyers.'

Barker's advice to mediators is to let parties know that forgiveness is available.

Put forgiveness on the menu of choices at the beginning of the mediation. It is not about punishing but about reaching an understanding, about being heard, acknowledged and about being accountable. It is about obtaining a form of justice and achieving true resolution of the conflict.

Eileen Barker is the author of the *Forgiveness Workbook*,<sup>6</sup> in which she describes a way of looking at the grievance story and exploring the question of how you can zoom into an underlying wound that was most likely already there. This process is, in essence, what her student followed in her session with the employer, as just described.

## 4 Exploring What Lies Beneath Conflict?

Just like Van Thiel and Barker, Mirjam Duyser started out as an attorney. For many reasons, such as the limitations of the law system and the experience that a lot of conflicts were not really solved, she became a business mediator in 2003 and the founder of Kern Mediation in The Hague. When talking about forgiveness and reconciliation, she refers to Kenneth Cloke and the levels of resolution he describes in his work: 1. stop the fight, 2. settle the issues, 3. resolve the underlying reasons and interests, 4. forgive the other person and ourselves, 5. reconcile with the opponent and renew the relationship.<sup>7</sup>

Duyser tells me that her focus as a business mediator is on what underlies the stories and the content: the emotions and the interests. That is where the problem is. Working with a focus on what lies underneath and

bringing this to the table in appropriate, acceptable business language mostly leads to a better mutual understanding and recognition. It creates an entirely different landscape and a much better climate for negotiation. It leads to better relationships and richer, more creative solutions, also on the business content. Duyser tells me that most business conflicts in her practice are solved on levels 3, 4 and 5. It is a matter of finding out on which level parties want or need (or are able) to solve their problem. Sometimes, making it to level 2, reaching a compromise, is what is needed and represents the maximum of what is possible.

Forgiveness and reconciliation are not often expressed explicitly, says Duyser. It is more about how people become aware of their feelings of anger, grief and fear of loss. By acknowledging these feelings, people can let go of them. At that stage, acceptance comes in: acceptance of the situation, of oneself or of the other person. The 'intention invention' (assuming bad intentions on the other side) then diminishes. Trust grows by doing, not so much by talking. I see people viewing the other with new eyes. They start to grant the other something; you could call it goodwill.

I work a lot with cooperation problems, mostly on a strategic and board level. The problem is present at the table: the interaction between the people. I love to work with that. It is so rewarding when people become aware of their dynamics, what their own contribution is and how to change that in a fruitful way. It is about recognition. No one is guilty, but everyone is responsible. I just ended a mediation in a corporate cooperation conflict where the two parties involved started to see these dynamics clearly, started acting upon it and began to see each other in a new way. Working together became fun. Of their own free will, they said 'sorry' for their behavior and the unintended hurt they had caused each other. It ended with a promotion, one becoming the right hand of the other[,] and a joyful and fruitful work relationship. To me this is about recognition, forgiveness and reconciliation. More so through behavior than by words.

What also helps me in reaching that deeper level of understanding of yourself and the other, in finding recognition and acceptance, says Duyser, is to approach a conflict, not just in terms of a problem between people, but also as an expression of a system: an organization, a cooperation, a partnership, a team. I am aware of the context of the issue and I work with that. In which way are the people at the table a reflection of issues in their context? Lawyers are also part of the context. I have no problem with lawyers attending the mediation[,] on the contrary, if they become part of the mediation and become aware of what is underneath and what is at stake for the parties involved, their role in the process is mostly helpful in creating a better climate and finding better solutions.

6. See note 5 and [www.thepathofforgiveness.com](http://www.thepathofforgiveness.com).

7. E.g. Cloke K. (2004). Journeys into the Heart of Conflict. *Pepperdine Dispute Resolution Law Journal*, 4(2), p. 22.

In business conflicts, parties tend to dive into the content pretty quickly, mostly because they feel somewhat embarrassed being in a mediation instead of having solved the problems themselves. Sometimes parties feel reluctant to address the underlying issues. Talking about content and solutions is more comfortable. When Duyser notices this tendency, she literally hits the brakes. Negotiating a solution when the underlying issues are not yet addressed is frustrating and quite fruitless.

I recently had a mediation with three parties on a big project. There was no real problem, they seemed to have solved it right away, all three of them agreed. Then I shared my experience as a mediator in business conflicts and what happens when parties are not addressing the underlying issues and how that would probably affect their negotiation process and outcome, if any. By talking about it in their language, I explained that addressing emotions is, in fact, very functional and a precondition for fruitful negotiations. It is nothing soft, it is not therapy, it is just about clearing the air in order to find a solution for everyone. And then the stories and emotions came – not just a little bit. There was a lot of hurt, disappointment, anger, even feelings of betrayal. After working with this in the first session for a while, things became more fluid again. The people involved became more relaxed and more open and there was a better understanding of each other's interests. There was a lot at stake for all of them. In the second meeting, they reached a very creative solution, including valuation and division of shares, properties and clients. To me this is also an example of forgiveness and reconciliation: we have done our best, we have no bad intentions as we can see now; it is what it is, we take our losses, we all accept and build a new road to the future[,] which is accessible for all of us.

it is safe to become accountable, to accept apologies and to create a space for achieving sustainable solutions to their conflicts. This may also open a pathway to possible reconciliation.

## 5 Conclusion

Van Thiel, Barker and Duyser are three very different mediators who have their own individual styles and approaches. As to whether forgiveness and reconciliation play a role in their business mediations, one thing is certain: they do. Forgiveness is about making space for emotions and dealing with it, making peace with it. It can come into play by taking a neutral stand and by making time for everything that comes up during a mediation, addressing emotions and interactions, diving deeper into personal wounds, with or without lawyers, and focusing on the bigger context, the system that is the basis of the conflict. When you look at the bigger picture, a conflict often appears to have been unavoidable. It is in this setting that forgiveness and reconciliation can come in, even during a corporate mediation. In my view, it is not just a possibility to put forgiveness on the menu but an actual necessity for parties to learn that