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Keynote speech by Martin Golder at the **Internationale IMA-Symposium Wirtschaftsmediation in Linz, Austria** June 16th 2016

Guten tag meine Damen und Herren.  
Good morning ladies and gentlemen and everyone else

First I would like to thank Sandra Thaler for giving to me the great honour of speaking to you all today. She saw me speak briefly in Berlin and decided that I might be appropriate here. I hope I can live up to her expectations.

Today I would like to tell some stories and take you on the journey that I am still on into the nature of conflict and the place of empathy in working with conflict. I will not only talk about the sorts of situations with which you are all undoubtedly familiar but also I will drift into metaphysics and the coming major shifts in our civilizations and cultures. I will however start with something about mediation in British Columbia in general. Also I am sure many of you would like to know about mediation in Canada. I can really only speak a little bit for British Columbia. As you know Canada is really big and Europe is a lot closer to Eastern Canada than we are in British Colombia.

I feel though that I am perhaps here as an imposter.

I say I am an imposter because my career was primarily as an architect in British Columbia Canada until one day I was putting an addition onto the back of a lawyer's house. She came out to me and said "You should be a mediator" I asked "What's that?" She told me that I had done such a good job mediating between her and her husband on the design of the addition that she recognized the skills. I then told her the architectural joke that custom housing design is 50% marriage counseling which of course is absolutely true. You don't want couples to argue for the next ten years over some feature that one wanted and one did not. So that Autumn I signed up for a mediation course just for my further education

and I went back and told her that I had signed up for a course in Mediation. She said “Which course?” And when I told her she said “I’m teaching it”.

It turned out that she was one of the top mediators in Victoria BC and she became my mentor for the next 10 years as I developed a sideline in conflict management and resolution alongside my architecture. One story she told me that she said made her a believer in the usefulness of mediation was about a mediation over a patent dispute. One party had left a company and started up another using information that they carried with them from the first company. The first company sued them for patent infringement. She said that when the mediation started the parties were very angry at each other and had a hard time even being polite. At the end of the mediation they left with a joint venture. Can you imagine how this might have ended if it had gone to court.

As mediators of course we capitalize on conflict.

Its management, resolution and mitigation is our fertile ground. Every project manager, landlord, and president knows this and is usually highly skilled in conflict management. Conflict can be destructive. But it also is creative. I would even suggest that all creativity has a root in conflict. How do we ride this fine line between the positive and negative views?

When participants or should I say customers walk into our offices they are mostly there because of a negative perception of conflict. However there are worlds where the participants recognize that conflict is a certainty and managed properly can be beneficial. They are likely to see the need for a professional conflict manager to be involved as early as possible. These are the sophisticated clients. For example: Big construction companies will often start a project with partnering workshops involving all the participants including the clients, the architects and engineers and the trades and subtrades where the certainty of conflict during the course of the project is discussed and various conflicts are modeled so that a conflict resolution process is designed before any real differences arise. There may also be an expectation that the resolution of some of these issues will lead to a better project.

So what are the processes, the secrets of mediation that are part of our Guild?

I am sure that you are all familiar with the seminal work by Fisher and Ury 'Getting to Yes'. The book is really the first text that we read. It is the story of the Harvard project amongst the coal miners strikes in America. Certainly before this work there was no formal process of mediation. In British Columbia mediation started to come into the dispute resolution field in the 1980's. Mediation was not taught at all in the schools. Lawyers were educated in tight adversarial tactics. Commercial and insurance conflicts obviously had discussions to try to avoid litigation. As the formal processes of mediation grew academically insurance companies especially started to use them. Insurance companies are risk adverse and they quickly found that mediation reduced their costs and payouts if they listened and settled quickly. Currently in British Columbia according to one experienced mediator that I interviewed before coming here this lesson has been forgotten and the process has changed to a more American Corporate model which doesn't involve much listening and leans to a dictatorial statement 'This is our offer, take it or take us to court.' This is backed up by as many lawyers as it takes to make sure that it never comes to court. A cynical and perhaps even immoral approach.

However the main model of mediation that is used in areas where it is appropriate is interest based mediation. This is now even taught in law schools. As I am sure that you know this process drills down into the positions that the parties enter the room with to find out what are the interests that drive those positions. When these interests are exposed it is common to find that both parties share some interests. Then on the basis of these agreed areas a new picture of the relationship can be constructed which includes the best alternatives.

There are other models of course such as the old judge who was in a mediation course some years ago when the Judiciary decided that judges should know more about mediation. He said 'Within 5 minutes of walking into the room you know what the solution is. The rest of the mediation is to drag the parties kicking and screaming to it'. And probably it is a very good solution as judges are very smart and have seen so many situations. However I would have a hard time calling this mediation.

In the mid '80s in BC when mediation was still really unknown most contracts were written with arbitration as the alternative to legal action. In fact when I became a mediator I also became an arbitrator because this is what people knew. When I was offered an arbitration I would give the participants a short course on mediation as an option and what its advantages were. Most people would then choose mediation. Now most contracts will have mediation as the first alternative to legal action. Acceptance amongst lawyers is high but definitely not universal. Most larger firms however will now have an Alternative Dispute Resolution section. Some of the old timers call it the crunchy granola section. They probably think that all the young lawyers in that section live on communes.

British Columbia also has an organization called MediateBC which has become in many ways the branch of government that organizes much about mediation. They hold a roster of mediators both Civil and family who can be drawn from their website. They also run the Court Mediation Program for smaller cases in which I worked and mentored for a number of years. This program is now being discontinued I hear in favour of some sort of on line system. We will see how that works out. Although EBay and Square Trade have an on line mediation system in which the early stages are run by algorithms. So your jobs may be in jeopardy.

There is a model called Med/Arb or Mediation/ Arbitration. In this model the parties mediate as much of the problem as they can and then go to Arbitration with what remains. This of course holds down the costs of the process because arbitration is more expensive than mediation. In some cases to hold down costs even further the parties may agree to having the mediator become the arbitrator. They have already worked with the mediator and have built up enough trust in the mediator that they are willing to let them arbitrate even though they will have heard a lot of evidence that is inadmissible when working with the law as an arbitrator must do. I was involved in a model like this to resolve some land border issues where I was to be the mediator and an experienced arbitrator sat in on all the mediation sessions and was to rule on any outstanding issues. This saved on starting an arbitration where all the evidence needed to be presented again within a legal

context.

I interviewed three experienced mediators before coming here to see what they had to say. Probably what they all agreed on was that the courts and legal system are completely inappropriate places for families. So there is a family mediation system which in many cases can keep families out of the adversarial dynamics of our legal system. Disputes between neighbours likewise is more suited to mediation. Mediation is now often compulsory in condominium and strata title disputes.

We are as I am sure you all realize entering a period of massive and rapid change. It is difficult to even anticipate what this is going to look like. Immigration, refugees, Climate Change, over use of resources, new energy systems, political shifts, the restructuring of economic systems are going to need a lot of your skills. It is probably fair to say that many of the patterns that have guided us may no longer work.

This applies to the legal system as much as any of our systems. The mediators I talked with had some agreement of where the system works and where it does not. As one of them said. 'If the legal system is designed to work for the multinational corporate sector then it works. If it is designed to work for Civil Society then it is Broken'. She actually used much stronger language for 'broken'. There is virtually no point in any citizen trying to use the courts to redress an injustice. It is just too expensive. And if your opponent is a corporation then they can use their legal department to stonewall anything. So perhaps if the courts are no longer any use to the average citizenry then parallel systems will spring up. Religions have parallel systems. Professional associations have parallel systems. Communities sometimes provide mediation services. I think the bottom line here is that whatever ways we devise to solve and manage conflict in our communities is evolving and mediation based on ethical behaviour is a very positive model. However as my friend said 'It may not be appropriate when one party is a psychopathic pariah with a high conflict appetite and no interest in settling'.

So what can we do with them. They might make lawyers rich and they might bring the legal system to a standstill. This largely is what is happening.

So I am going to shift now to my own experience and research into conflict and the skills of mediation that might have some application in this new system.

When I was studying mediation all the text books from Fisher and Ury 40 years ago to Bill Eddy today talk of empathy as a central skill. The ability to actually be there with the participants in the mental space that brought them to this conflict. I must confess that this ability of empathy eluded me for many years. I would be in a mediation and as I was listening to someone's story I would be thinking 'Get a life buddy and stop whining' at the same time I might say to him "That must have been a really difficult time for you."

I had a complete disconnect between what I was thinking and what I was saying. However the participant would respond with "Yes it was a difficult time" just as if they really thought that I was empathizing with them. My mentor at this time suggested that I write a book called 'Mechanical Empathy'. The amazing thing was that it worked well. By and large most people are so wrapped up in their own conflict that they do not even recognize the artifice that I and perhaps some of you practice every day. As professionals we need to do our job every day and some days we just are not into it so we act. (Fortunately my secret weapon is that I have a degree in acting that I received by accident in the 70's as I studied Shakespeare's famous lines "All the world's a stage and all the men and women merely players".)

Whilst I found that my mechanical empathy worked well in mediation I could not help thinking that perhaps real empathy might work even better if I could somehow learn how to feel it. I joked that my empathy had been surgically removed in British boarding school. And there is a lot of truth to that. I decided to go on a quest to discover what this empathy is that all the mediation text books talked about. Do you either have it or not? Can it be learned? How useful is it really?

Through a series of life changing circumstances in the '90s I found myself trekking in the Himalaya for three months during which time I

did a 10 day Vipasana meditation course in Kathmandu and hung out with a brilliant Guru in Rishikesh for two weeks. He was a follower of Ghandi and had as a teenager spent time in jail with him. All these experiences went to the core of my being and although at the time I didn't know it they had moved my consciousness into new territory.

Some years later I was in a mediation which had not settled and the participants were leaving. I stopped them and gave them a little talk in which I complimented them on the work that they had done in the mediation. I wanted them to know that they had all done good honest work towards a solution. They had not quite made it but I wanted them to go away feeling good about the process that they had been involved in. They paused for quite a few silent seconds before returning to the table and settling. I was amazed. What had happened? What sudden shift had made them settle? As I analysed it later it was all in the little talk I had given at the end. I started experimenting with giving little encouraging talks and had some great results. I actually had one period where every mediation settled where before I was at about 66%. I was so amazed that I decided that I should pass on this information to my fellow mediators. I wrote a short paper and submitted it to a Conflict Resolution Conference in Winnipeg. I travelled to Winnipeg and presented it as a short workshop. It was quite well received so I turned it into a one day course which I have given to lawyers and mediators in British Columbia. The original conference submission was called Magic in Mediation. I had some pushback on the word Magic. People it seemed were not ready for Magic although this is what it seemed like to me. I changed the name to Journey to Empathy because the course is really based on my personal journey to find Empathy and the impact that has had on me and on the mediations that I do.

The content of the course is an introduction to Vipasana and metta meditation. Vipasana teaches the skill of focused attention and intention. Metta is known in English as the loving kindness meditation. I am sure many of you are familiar with it. It is a five stage meditation with a mantra in each stage. The first stage mantra is 'May I be free of suffering, may I be free of enmity, (enmity is like hostility or unfriendliness) may I be Happy. The second stage is the same sentiments towards a friend, May you be free of suffering, may you be without enmity, may you be happy, The third stage is towards a neutral

person who you may not even know. May he/she be without suffering, may he/she be without enmity, may he/she be happy. The fourth stage which for some people is the most difficult is to project these same intentions towards someone who you do not like or who is giving you trouble. May they be without suffering, may they be without enmity, may they be happy. The fifth stage is to project these intentions out to all sentient beings. May all beings be without suffering, may all beings be without enmity, may all beings be happy. I sometimes add a sixth level for our planet earth.

So for those who are into hard nosed business and legal conflict this might all seem to be somewhat irrelevant. However the credentials of these ways of dealing with our lives is many thousands of years old and current research in many respected universities is providing the scientific proof that our culture demands.

So now we will have little introduction to these meditations. The first time I did a short talk like this instead of the full day course I thought that I would not do the actual experiential piece however several people who had done the full course encouraged me to at least include a few minutes so that people could have the experience of meditation however short. So I encourage you now to prepare. Of course it goes without saying that all your devices are switched off. And now get comfortable, sit up straight. Don't put too much pressure of your chair back. Feet flat on the floor. Hands resting on your lap. Eyes closed.

*(Vipasana and Metta practice. 10 min)*

After the group has had a taste of both Vipasana and metta meditation they are sent off in pairs to come up with a conflict that they can role play. This takes about 5 minutes and they come back with some great conflicts. Then two participants will role play their conflict whilst the rest of the class watch and listen in the role of the mediator. The mediator is only allowed to say something when it is not only a kind statement but also equally kind to both parties at the same time. When a mediator gets this right it can completely shift the mediation in a moment. The participants are hurled into a realization of their common humanity as participants in some cosmic Shakespearian play which is

their conflict. It is quite amazing to see the transformation that can occur in an instant.

Getting it right is where the empathy comes in. This is mostly achieved by listening. And when I say listening I mean it in a very active and focused sense. And it is the meditation that increases this skill.

Listening without thinking about what you might say or do next. Listening without looking for solutions. Listening without thinking that this is just like a previous case. Just listen. That's the whole story. Just listen. Shut up and listen. Keep your opinions to yourself and just listen. As you get better at it, it gradually becomes a habit. Gradually you even truly understand what you hear. Gradually as you really begin to hear, respect grows for the person talking. This can be difficult at times especially if someone is shouting and using abusive language. However in the act of listening the talker (or shouter) is calmed.

As you really listen you move to where the person is. This is the definition of empathy. A very deep understanding of what is going on for them.

If you are lawyers and judges and mediators you will have many tried and true techniques that work for you. You will have seen similar conflicts that settled in certain ways. It is difficult to leave all this experience aside and just listen. Some of you will undoubtedly think that it is wasteful of your experience. You have been hired because of your experience and many clients and clients' lawyers expect to see that experience on display. I have received some criticism for this technique from a top commercial mediator who felt that it was too 'Hippie', too soft, that legal personnel would not respect it. All of this has some truth but research is supporting this approach. Research at Stanford, Gronningen, Zurich and other places has shown that meditation actually changes the structure of the brain quite quickly. Empathy can be learned and it can be embedded into the brain. It also has shown that the application of empathy and compassion in conflict situations yields better more lasting solutions for all the participants. In international conflicts it has been shown that empathy based citizen groups are a crucial component alongside diplomatic negotiators.

You may have come across Bill Eddy who teaches on High Conflict Personalities. He famously talks of EAR statements. EAR stands for Empathy, Attention and Respect. In dealing with High Conflict Personalities it is very effective to show them a high level of empathy. This can be difficult as they are probably exhibiting very obnoxious behaviour. But if you really focus (Vipasana training) on their communication and give them the attention that they seek and let them know that you understand what they are saying and respect them for saying it, it can transform their presence into something more manageable.

A year or two ago I attended Compassion week at Stanford in San Francisco. It was week of 4 conferences and a two day retreat all around empathy and compassion. The first two days was all about the science. It was a series of presentations by PhD types on their research with fMRI machines and genetic coding into the physiology of compassion and empathy. It turns out for instance that two weeks of a meditation program of an hour a day can physically change the brain in ways that can be seen with an fMRI. The first Phd in Empathy that I met had been in London at the Empathy and Compassion in Society conference in 2012. I never even knew such a thing even existed. A Phd in Empathy. Olga Klimicki was a specialist in brain plasticity. And here I was two years later hearing that you can actually see the physical changes to the lobes associated with empathy in two weeks of meditation.

There was also an epigeneticist who presented a picture of DNA strands that were severely broken. He said that when you see DNA damaged like this it is normally a chemical such as cocaine or benzene that might cause it. This break however was caused by loneliness. What's more it was reversible. Remove the loneliness and the break starts to quickly heal. Astounding stuff.

I should say something about the difference between Empathy and Compassion. Empathy is that ability to experience and understand the emotional state of another. This is a useful skill for a mediator but realize that if their emotional state is negative and pain, empathy will cause you to feel these too. Compassion on the other hand is a projection of goodwill and positive feelings towards another which will make both them and you feel better.

There was also a two day conference on applied compassion in business and public administration. The Compassionate cities movement had a number of mayors from different cities who talked of the success of having a conscious compassionate lens in policy development. A CEO talked of approving empathy and compassion training in his company without much thought that it was that significant. It was not expensive and people liked it. A year later the employee satisfaction was up. The customer satisfaction was up and profits were up. The last weekend had a two day retreat where the techniques of learning compassion and empathy were demonstrated. Meditation and various empathic exercises were demonstrated and practiced.

So to recap. Just as the text books said Empathy is a very powerful tool in solving conflict situations. And to increase empathy in mediators the use of meditation is effective. And if you can reach a point where you can feel deep empathy for all the participants and then project good metta towards all the participants the space that you create will have seemingly magical qualities. If when you make an intervention it is seen as equally kind to all the participants then transformation can occur. It is however not easy.

Thank you very much