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*“Thinking about Using Insight Mediation in Family Owned Business Disputes”*

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I will begin by talking about the nature of family-owned businesses highlighting some of the complications that exist due to the relationships of family that do not exist in non-family-run businesses. I will follow this with a story that I think best answers the question *“why think about using Insight mediation in family-owned business disputes”*, and then describe some of the aspects of Insight mediation that make it a good choice for dealing with these kinds of disputes.

In researching family-owned businesses, I was surprised to learn that most of the GNP and most of the employment in Canada and the United States reside in family businesses<sup>1</sup>. I was not surprised to find that many of the articles talked about the complexities and difficulties that are unique to family businesses. One of the most obvious is the dynamic created by the fact that those involved have two distinct roles – one as business partner and the other as family member; roles that are at the same time very professional and very personal. This dynamic generates unique challenges, not the least of which is that it is not easy to fire your Dad or your brother! Problems within the family, such as divorce, ailing health and financial troubles can create difficult political allegiances that give rise to conflicts and cause emotions to run high, both within the business and within the family. An absence of clear policies and business norms for family members, as well as a lack of outside opinions and diversity also lend themselves to increased conflict. A further complexity occurs when older family members become closed to change and try to preserve the status quo resulting in the business becoming overly conservative. Quite often people choose to go into business for themselves because they do not want to work for someone else. Over time, and with success, it is rare to find anyone in the family business working alone. Unfortunately for some businesses, it is discovered that working *with* family members can be even more difficult than working *for* someone else!

One of the biggest challenges in family owned businesses involves succession. Many authors talked about the political divisions and conflicts caused by there not being a plan for handing the power to the next generation. Let me tell you a

story of what can happen to a family when succession planning becomes a business conflict that is not handled well.

### *A House Divided: The McCain Story*

This is the story of the McCain family one of the most prominent and successful families ever to come out of New Brunswick<sup>2</sup>. It is not my story, but one told by Paul Waldie in a book called *The House Divided*. No doubt there are multiple sides to this story and I am only re-telling one. Nonetheless, I think it helps to situate my talk.

McCain Foods was founded in 1956 by two of four brothers, Wallace and Harrison McCain. Today McCain Foods is a food empire that stretches across Canada and through more than 40 countries; McCain French Fries are sold worldwide from Tokyo to Toronto and Auckland to Alaska. It has more than 12,000 employees, and a fortune said to be worth more than 2.3 billion dollars.

In the early nineties, Harrison and Wallace, then co-chief executive officers of McCain Foods became embroiled in a dispute over succession. The brothers could not agree on how to involve their sons and nephews in the company, nor who would succeed them as chief executive officers. Over the next four years the company was involved in two lawsuits and two hostile take-over bids initiated by Wallace, including eight months of wrenching private arbitration, leaving the family in a pit of anger, jealousy and open warfare. Wallace and his sons were on one side, while Harrison, their older brother and the remaining family members were on the other side. McCain Foods had 23 shareholders at the time – all family members related to one of the original four brothers.

At stake for Wallace was a vote that would essentially demote him to a figurehead position and cut him out of the company, a company he helped to found and had worked at for 40 years. Up until then, the brothers had been able to avoid conflicts and power struggles that had crushed many family businesses due to relationships that had been cultivated since childhood. But, when Wallace was forced to choose between his brother and his son over succession those lifelong relationships were severed and he became alienated from the rest of the McCain family.

In 1994 the family of shareholders held a vote on the removal of Wallace McCain as co-chief executive of McCain Foods - a vote that formally severed one of the most successful business relationships in Canadian history. Instead of using the power that helped them to build McCain Foods, it had been turned toward destroying a family legacy 150 years in the making!

Sadly, the McCain family story is not unique. There are many stories of family businesses and families that have been crushed by issues like succession, or by their inability to effectively manage the dual roles of family member and business partner<sup>3</sup>. These stories cry out for better ways to deal with the complexities of the interactions that are part of family businesses. Mediation is clearly one of these options.

While the use of mediation in family owned business is not new, it does appear that this option is not well known, nor used as often as it could be. Symposiums such as this are important for raising awareness about the benefits of non-adjudicative options to deal with commercial disputes, especially when retaining relationships is important.

But advancing mediation per se is not what I want to focus on today. What I would like to talk about is the idea that Insight mediation, a learning-based approach to dealing with conflict that has been successfully used in workplace, family, community and other interpersonal disputes, has enormous potential for dealing with disputes that involve the dual complexity of being both about family and about business.

So, let me take the time remaining to describe Insight mediation and what I think it offers to situations of conflicts within family-owned businesses. After listening, you may even conclude that it has promise in other commercial disputes.

### *Insight Mediation*

A key aspect that differentiates Insight mediation from other mediation approaches is that mediation is first and foremost a process of learning; through learning change can occur. Privileging learning over problem-solving significantly changes the role and goal of the mediator. Because Insight mediators know that conflicts can only be solved when parties are free to “learn”; facilitating learning is

their primary role. Jack Mezirow<sup>4</sup>, a leader in the field of transformative learning, and Bernard Lonergan<sup>5</sup>, the philosopher used to help articulate Insight mediation, both say that the desire to understand the meaning of our experience is a defining condition of being human; being human is about wanting to know. This explains why so often we act on our own interpretations and not always on the judgments or advice of others even when doing so is not in our best interest.

It is this strong desire that we all have to know that produces the curiosity an Insight mediator hopes to release through the mediation dialogue. Dialogue provides the means to generate new insights and new interpretive frameworks that can bring about change. New insights not only lend themselves to seeing things differently, they can also lead to questioning the learning system through which the conflict was produced in the first place. In Insight mediation we call this type of shift in understanding an *inverse insight*<sup>6</sup>. Other mediators talk about a similar experience as the “magic of mediation”. Mezirow refers to this shift to a new way of seeing the world as *transformative learning*. Argyris and Schon<sup>7</sup>, in their work on learning organizations, call it double-loop learning and press upon us the importance of exploring underlying assumptions that can alter governing variables and shift the way in which consequences are framed. Other learning and change theorists<sup>8</sup> distinguish between first-order change that does not challenge the established context of an organization from second-order change that does call into question the existing culture or organizational paradigm when deciding to do something different.

What is distinct about Insight mediation is the extent of “noticing” given to the *kind* and the *quality* of the learning occurring between conflicting parties. Insight mediators are very attentive to whether or not new insights are emerging, or, whether parties are becoming more defensive and entrenched. They are intentional about discovering whether one party’s interpretation accurately reflects the other’s intent because they know that each other’s actions are linked to these interpretations. Often this strategy helps parties to make sense of what before made little or no sense. It can also lead to discovering that the other’s intent was not only misinterpreted, but was actually quite acceptable. Exploring parties’ interpretations enables the parties to de-link incorrect interpretations, and replace them with more accurate and less threatening knowledge. Deepening on threats-to-cares helps parties determine if their cares must *necessarily* be a threat to the other. It also helps with finding different ways of

interacting that allow each other's cares to co-exist without threat. Deepening involves the mediator noticing if the parties' communication patterns are reinforcing, or changing, existing threat narratives and defend/attack patterns of interaction. They also routinely ask parties to talk about what they expected the other person would be doing differently if they were not trying to cause harm. And, they ask parties to talk about how the other person's action would need to change for them to no longer feel the need to defend themselves. These elicitive strategies uncover expected and normative patterns of interaction.

Let me clarify a very important point here. The Insight strategies that I have been talking about, while done with intention, do not imply that an Insight mediator is leading or directing the conversation; he or she is not. Instead they "follow" the parties as they tell their story about what matters to them and about their experience of threat. Through deepening work the mediator helps generate new insights about the dynamics of the parties' interactions; insights that often change both the speaker and the listener. In Insight mediation, not leading the parties is known as "responsive intentionality". Noticing and enhancing the quality of learning can bring about transformative or double-loop learning, and even second order change – that is what makes Insight mediation so powerful.

Perhaps by now you noticed that the Insight approach defines conflict differently than other mediation approaches. Rather than viewing conflict as arising from the perception of incompatible goals, needs or interests, the Insight approach views conflict as emerging from an interpretive experience of threats-to-cares. Cares include all that we have come to value over time, and they exist at different and hierarchical levels. At the lowest level are *personal desires* such as interests, needs and goals. Personal desires are superseded by *expected patterns of interaction*, which in a family business dispute might include what it means to be a good or not so good brother, parent, business partner, chief executive officer, shareholder, customer, and so forth. At the highest level of cares are the *criteria we use to judge* what ought, or ought not, to be in the world around us.

Insight mediators are trained on how to facilitate insight into the value-based interpretations that underlie the conflict dynamic paying particular attention to higher level cares given that they are more powerful motivators than lower level ones. It is a given, then, that the dynamic of family relations and business

systems would be explored long before any attempts to negotiate decision-making would occur.

Understanding conflict as relational leads to a further distinguishing feature of the Insight approach; that a good deal of attention is paid to the parties' *patterns of interaction*, especially their "defend" responses. The theory behind this is linked to our definition of conflict - conflict emerges from an experience of threat-to-cares. When we feel threatened our "flight or fight" instinct to defend ourselves kicks in. Defend responses create the experience to others of being "attacked", an experience that prompts from them a fight or flight response, which in turn feels like an attack to the other, and so the conflict spirals. These defend/experience attack/defend patterns of interaction need to change for learning to occur. This is why Insight mediators direct their curiosity toward helping parties gain insights that change these defend patterns of interaction. Reducing threats helps parties to engage in a different type of dialogue - one that allows them to turn their minds to discovering new ways of interacting that can bring about change.

Another important theoretical underpinning of the Insight approach is that it draws from an interpretive view of communication that posits human action as a response to meaning-making. For this reason, Insight mediators, not unlike other mediators, ask elicitive questions about interpretation: *What did you just hear her say about the reason for her actions and decisions? What meaning did you take from his refusal to open discussions on the topic again? What did you make of the situation between the two shareholders and your father? What was your interpretation when the files went missing?* Insight mediators would follow these queries by asking the original speaker to verify if what the other heard was in fact what was meant. For instance they may ask, *how does what he just said fit with your intentions? Is there anything you want to say or add to her interpretation of your intent?*

What is different with Insight mediators because their practice is embedded in an interpretive view of communication is that they explore the meaning-making" of the listener to a much greater extent than ensuring the "intent" of the speaker is clear. This is important for a number of reasons. As long as I am convinced that you are out to harm me, I will not open my mind to consider anything that you have to say – I am closed to learning because I am certain. In long-standing

relationships such as those of family, there is lots of “evidence” to prove me right. I am in a position of “knower” and there is no reason for me to be curious about you; in fact, doing so might put me at risk. Talking may be going on, but learning is blocked. Insight mediation is about helping learning to once more occur.

An interpretive view of communication and conflict is helpful because it explains human action as a *response* to something as well as an *intention* to do something. It highlights the interactive nature of conflict, and supports the practice of exploring what a person’s actions are in response to. Conflict is not only about individual interests or needs, it is about the patterns of interaction happening in the present that are linked to experiences of the past and to those anticipated in the future.

Given that meaning-making is internal, it is not surprising that so many messages are misunderstood. A basic assumption in Insight mediation is that conflicting parties’ interpretations of each others’ intent are often wrong. Cognitive psychology explains this phenomenon. It says this happens because meaning-making is generated from unique cognitive maps and mental schemas that have been formed through past experiences and from environmental factors such as culture, background, training, social status, gender, and so forth. These maps act on us as organizing principles that then form our habits, reflexive actions, values and worldviews; principles that influence both how and what we know, and how we act. To recognize the power of mental schemas or cognitive maps we only need to recall a time when we were in the midst of someone else’s conflict, and after listening to each side, went away shaking our heads about whether they were even in the same conflict their stories were so different!

One other very important point that I want to make about the Insight approach has to do with emotion. First and foremost, emotion is not understood as a condition within which reasoning takes place, but rather as *constitutive* of the reasoning process parties use to make sense of their worlds. For this reason, Insight mediators undertake a holistic approach that invites emotion into the mediation room rather than attempting to “put a lid on it”. In addition to a heightened sense of noticing emotional responses, Insight mediators ask elicitive questions that help parties to identify and sometimes reappraise their emotional experience.

Let me bring this talk to a close by leaving you with a few final thoughts on what I think is important to take away from this presentation on the unique nature of family owned business disputes and an approach to mediation that puts learning and interaction at the fore of its activities.

### *Conclusion*

I expect we all would agree that any business has its share of problems that, if left unresolved, will destroy it. Family businesses have a set of unique problems embedded in longstanding and deep threats that may have little or nothing to do with the business, but that could seriously hurt it. The ability to deal with these threats is necessary to ensuring longevity and productivity. Insight mediation is a good option for dealing with family businesses embroiled in conflict for the following three reasons.

First, Insight mediators see their role as helping parties in conflict understand themselves and each other differently; doing so requires helping them regain their curiosity to learn. Defining conflict as an experience of threat-to-cares leads Insight mediators to be very intentional about helping parties gain insight into their own experience of threat, as well as into the patterns of interaction that the threat is creating. It is hard for parties to do this on their own because they rarely question the interpretive frames from which they are operating. Helping parties examine threats to what they care about, the meaning-making that led to their experience of threat and the ensuing pattern of interaction giving rise to the conflict is what Insight mediators do. This is what makes Insight mediation such a transformative process.

Second, the strategies that Insight mediators use to help parties gain new insights that can change patterns of interaction may not seem all that different from other mediation practices. Partly this is true; many of our tools are the same, but our use of them is quite different. Since we draw from an interpretive philosophy of human action where individuals are social and conflict is relational, dynamic and emergent, it is only to be expected that our actions would differ from practitioners whose model of practice is based on rationale actor and rational choice theories and an individualist philosophy of action, which posits that humans are largely motivated by self-interest. Interpretive theory teaches Insight mediators that conflict emerges from meaning-making that has as much, if not more, to do with interpretation than intent. Furthermore, values and the



emotions they elicit are accepted as always being a part of conflict, so they are integral parts of the conflict dialogue. When mediating family business disputes Insight mediators would be attentive to the dynamics playing out within the family and the business, as well as curious about the interpretations creating these dynamics. Their skills and strategies would be used to help parties change the “defend/experience attack/defend” patterns of interaction that have been blocking their curiosity to learn more about the situation and about each other. Releasing blocked channels of curiosity opens the door to dialogues that can lead to resolution and quite possibly to transformative and second order change.

Thirdly, and in closing, family participation as managers and owners of a business presents unique problems because the dynamics of the family system and the dynamics of the business systems are often not in balance. For this reason these types of businesses can develop unique cultures and procedures as they grow and mature. While good communication is essential, it is not always sufficient for bringing about change. What is needed is the type of dialogue that provides an opportunity for individuals to question their organizing and learning systems. In this way the conflict dynamics and negative patterns of interaction producing threats can be changed before engaging in business negotiations and decision-making. We are certainly excited by the possibility that Insight mediation has the potential to facilitate needed dialogues while keeping relationships, and businesses, intact. I look forward to talking about this with you.

*For further information on the Insight approach please contact:*

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<sup>1</sup> Dennis Dwyer, *This Business of Family* (revised edition). Ste-Anne-de-Bellevue, Quebec: Shoreline, 2009

<sup>2</sup> Paul Waldie, *A House Divided: The Untold Story of the McCain Family*. Toronto: Viking, 1996

<sup>3</sup> Dennis Dwyer wrote about 56 family businesses situated in several cultures and ranging in size from huge conglomerates to ‘mom and pop’ establishments. His stories are insightful entrées into the problems of family businesses and their successes and failures in dealing with their conflicts. These stories can be found in *This Business of Family* first published in 2001 and revised in 2009.

<sup>4</sup> See, J. Mezirow and Associates, *Fostering Critical Reflection in Adulthood: A Guide to Transformative and Emancipatory Learning*. San Francisco: Jossey-Bass, 1990.

<sup>5</sup> See, B. Lonergan, *Collected Works of Bernard Lonergan*. Vol. 3, *Insight: A Study of Human Understanding*. 1957. Toronto: University of Toronto Press, 1992.

<sup>6</sup> See Melchin and Picard, *Transforming Conflict through Insight*. University of Toronto Press, 2008

<sup>7</sup> See, Argyris, C., & Schön, D. *Organizational learning: A theory of action perspective*, Reading, Mass: Addison Wesley, 1978 and *Organizational learning II: Theory, method and practice*, Reading, Mass: Addison Wesley, 1996

<sup>8</sup> For instance, see G. Bateson, *Mind and Nature: A Necessary Unity*. Dutton, 1979; and W. Bergquist, *The Modern Organization: Mastering the Art of Irreversible Change*. San Francisco: Jossey-Bass, 1993