



“Now That You Know What Mediation is, When Can You Use It?”

Over the past year you have heard many stories and read much about the economic and social benefits of mediation as the most up-to-date and valuable business tool in your kit, not reserved strictly for union workforces. And again, it is not restricted only to the judicial processes, meaning, mediation does not have to be mandatory and there are further costs savings connected to voluntary mediation directly between the parties.

In this era of global change, the relationships we develop in business are essential to future success. Historically, if you had a conflict with a supplier, client or employee you would end the relationship and resolve many outstanding issues in court. Today this simply is not the best solution. Substantial time and money goes into researching and negotiating with clients or suppliers and an even larger investment is made in the recruitment, training and retention of good employees. Originally, you had three choices; a court imposed solution, relentless compromise or a mutually beneficial arrangement. Although its become abundantly clear that through the mediation process you can improve and retain stakeholder relationships and increase efficiency in the workplace, the timing and application of this process is a variable you can also work with to your advantage. Mediation belongs in Canadian business as an avenue of first choice, rather than a tool of last resort.

In addition, it is no longer necessary to relegate mediation just for resolving high profile “glamorous” issues. It is now widely and economically available and can be used whenever the productivity and profitability of your business is threatened.

Particularly now, with our concerns over our economy, and restraints being placed on most business cost centers, business leaders a learning to retain more control over how disputes are managed through their legal channels. At what point in time a file is moved into mediation can also save considerable dollar amounts.

The most familiar process of taking a file into mediation is through the courts and Rule 24.1 commonly known as Mandatory Mediation. To get to this juncture, a statement of claim is issued through the assistance of your legal council and filed. A mediator is

chosen and a formal mediation is conducted. Now this somewhat simplified version of the events does not take into account the costs connected with the process to this point. You have retained your outside legal council or engaged your corporate council to go forward and write letters, make phone calls and ultimately if all else fails, file the necessary documentation to commence an action. All of this interaction comes at a cost of course.

There are reports that up to 90 % of disputes are resolved before even reaching the courtroom and yet the costs up to this point are still substantial enough to often deter some from commencing an action. If it costs you \$20,000 to reach a settlement of \$15,000 on an original amount of \$25,000 then you have to ask yourself, “what’s the point?” And what’s the alternative? Now through mediation, you can sit down with all the parties and commence meaningful negotiations to settle this case. To this point you have still incurred legal costs and time again is moving quickly further and further along. So just calculate the costs of initial meetings with council, file openings, letter writing, document review, phone calls, reviewing incoming correspondence etc etc and etc. Now, what’s the alternative to this route? Voluntary mediation.

Can you achieve the same results from voluntary mediation? Is there a dollar limit on the disputed amounts you are able to mediate? What precautions should be taken when approving a settlement offer?

One of the hurdles with voluntary mediation is that you have to get all the parties to the table. Your mediator can assist with this by approaching the other party to invite them to the table. The other party has to understand that there are cost savings by choosing to meet rather than having to obtain legal representation to defend them in this action.

Understanding that this mediation process is confidential and this process and the discussions in the process cannot be used in court against either party. Another hurdle is that the invited party may be concerned that the mediator has been “hired” by the first party and therefore not neutral. The mediator is not hired until both parties agree and both parties pay equally the fees for mediation. The only stipulation is that the mediator has not an ongoing relationship with the originating party. There is no limit on the dollar amount being mediated so mediation is financially savvy for any amount.

A wise process of voluntary mediation is to ensure that you are in a position and have the ability and authority to settle at the table. Know before hand what you will accept in settlement and what is not acceptable to you. Be prepared by having all relevant documents with you and are prepared to speak to your issues completely.

You can achieve the same results from voluntary mediation as in mandatory mediation and yet you can save more money and time by asking the other party to meet at the table. Your mediator will coach both parties on the best practices at the table. Your attitude must be to meet with the intention of resolving your dispute and finding perhaps a way of conducting business in future if that is something you want. Be open to options presented and be fair in your own negotiations.

The costs are so negligible that you have absolutely nothing to lose and much to gain by trying to work out a solution to your differences. At the end of the day, if your differences are not worked out, you do not forgo the availability or the right to the judicial system. Mediation is a tool that can be used at any point in a dispute and Mediation can be used as either a preventative or a restorative process.

How do you best decide whether you should move ahead with mediation or not? Speak to a qualified mediator; speak to your lawyer about your specific file. Look at all of your options. Consultations should always be free.

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