



HOW TO INCREASE YOUR COMPANY RPM'S -THE ROLE OF THE MEDIATOR IN REDUCING WORKPLACE STRESS.

Despite the best efforts of HR professionals, cost cutting programs in both the public and private sector have dramatically increased the amount of stress that employees are subject to in the workplace. While much of the stress is attributed to increased workload, often the underlying reason is that the workplace “reengineering” effort (as these cost reduction programs are often euphemistically called) took little notice of the existing relationship structures in the organization. This failure to recognize and compensate for the disruptive effect on the organization’s informal structure has led to increased conflict between workers and between workers and their supervisors. One obvious, but overlooked solution to improve this state of affairs is to use a professional mediator to resolve these internal disputes before they become disruptive to the whole organization. The logic is simple. If a mediator can resolve complex, multi-faceted union and company disputes, it should be able to resolve less complex issues between, for example, two department heads or two employees. How this is accomplished and why professional mediation is fast gaining acceptance in resolving internal issues within large corporations is the subject of this article. It should come as no surprise that professional mediation works just as well resolving disputes between individuals within an organization, as it does in resolving disputes in major labour contracts. The reason it has been unhurried in gaining widespread acceptance is the result of a several factors, the most predominant of which is that it has always been difficult to quantify the resulting benefit of improved morale, reduced workplace stress and increased productivity that third-party dispute resolution creates. In fact, until recently, most senior business executives believed that stress and conflict within an organization was invariably beneficial. A good example of this would be Jack Welch’s management philosophy at General Electric. He believed that one in ten of the corporations’ employees should be fired on a regular and ongoing basis. As he related in his book “Straight from the Gut”, Welch would have senior managers so terrified of the annual employee rating process, that they would offer up the names of employees who had already retired or in some cases were deceased, in order to meet the imposed firing quotas. In light of revelations about corporate America, post Enron (which incidentally, also employed Welch’s “rank and yank” management philosophy), it seems that corporations are recognizing that inducing stress into the organization is not the path to prosperity. Instead, now recognizing the immediacy of the problems caused by workplace stress, employers have attempted to quickly assuage the problems by a variety of wellness programs, providing a plethora of benefits to treat the symptoms of stress. Although the jury is still out on the success of the wellness programs in boosting morale and improving productivity, it is abundantly clear that they are not having the expected result on reducing workplace stress. As global competition intensifies, employers now recognize workplace stress as one of the greatest issues facing their organizations today. The evidence of this is overwhelming. For example, short-term absences have more than doubled in the past three years. Surveys indicate that there is a general belief among

employers that stress in the work environment leads their employees to believe that they deserve more days off. The solution usually proposed in cases where short-term absence increases dramatically, is to track the time off more closely and insist on doctors' notes to validate the absence. Such solutions clearly do not address the underlying cause, but employers are facing such enormous costs burdens from stress related issues that they are desperately searching for the quick solution. The cost of workplace stress extends far beyond the increase in payroll for absenteeism, currently running about 4% of payroll. Employers are facing dramatic fee increases for short-term disability coverage of stress related illness. In addition to fees, short-term disability claims are particularly costly and disruptive for a business. Often there is no notice given by the affected employee. A phone call from home announces that the employee will be taking time off for some "stress related illness". Other than having a company doctor confirm with the employees' doctor that there is a valid diagnosis, the employer is left to scramble to find a replacement in short notice. The resulting effect on other employees' morale and the impact on customer or client relationships can be devastating. Stress also features predominantly in cases of constructive dismissal, where the cost of damages can run in the hundreds of thousands of dollars per employee. As explained below, a professional mediator cannot act as a "witness" in any litigation between the employer and the employee; but the fact that the company took concrete steps to address a particular conflict situation makes it difficult for an employee to successfully launch a frivolous claim. The usual refrain in these cases is "Management ignored my problems". Referring to the Supreme Court of Canada ruling in *Robichaud v. Canada (Treasury Board)*, [1987] 2 S.C.R. 84, Randall Echlin and Jennifer Fantini write in their legal text "Quitting for Good Reason, The law of Constructive Dismissal in Canada", the Court concluded that the basis of employer liability is statutory; that is, it arises from the operation of the CHRA, rather than being founded on the tort concept of vicarious liability. Finally, the Court concluded that, given the broad remedial nature of the legislation, the employer's conduct is irrelevant to the issue of liability, but may have important practical implications in respect of remedies. "[A]n employer who responds quickly and effectively to a complaint by instituting a scheme to remedy and prevent recurrence will not be liable to the same extent, if at all, as an employer who fails to adopt such steps."

Canadian business often looks to the United States to see what the future holds; the prognosis is not good. USA Today reports that "desk rage" is becoming all too common. In their recent poll, 42% of workers indicate their workplace is a place where yelling and verbal abuse take place. Another 14% report machinery or equipment has been damaged through workplace rage. The conundrum of workplace stress is that even if an employee's symptoms can be cured by stress leave, the employee upon return will be thrust into the same toxic environment that created the problem in the first place and the cycle will repeat itself.

The way to avoid this cycle is to introduce "workplace mediation" to resolve conflicts within the workplace and to reduce the related stress experienced by employees. Access to a professional mediator used to be reserved for large labour disputes within a company, often involving labour unions or organized workplaces. The success of mediation in these cases has led to its adoption in resolving conflict within a company, often simply a conflict between two or more employees or between an employee and

management. In some cases mediation can even extend to resolving disputes between employees and customers, suppliers and other outside agencies. Two things have made mediation of smaller individual disputes feasible. The first is an increase in the number of professional mediators available. Many of these mediators honed their skills in the court systems where mediation is now mandatory and are listed on the roster of Mediators in the Ontario Mandatory Mediation program in Toronto. The second factor is cost. For the usual mediator's fee, generally an hourly rate for perhaps one or two meetings, or a flat fee for the entire mediation of a particular workplace conflict, a productivity-robbing dispute can be given a lasting solution; a skilled employee on the verge of quitting can be persuaded to remain on the job; or a potentially costly firing (both for the employer, who has to provide a "severance package" and for the employee who bears the stigma) under the rubric of "personality conflict with other employees" can be avoided.

The mediation process, unlike EAP programs, is often driven by the employer referring participants to the mediator. Participants are usually identifiable by their repeat attendance at the HR door with complaints of stress, harassment and conflicts. By contrast, EAP programs are generally used when an employee directly approaches the EAP provider. Although the company pays for coverage for all its employees, often the percentage of employees using the EAP service is very small, 5 to 7% of the workforce. Therefore, unlike the EAP programs, the benefits of which are difficult to quantify, and thus difficult to justify to management and shareholders, giving employees access to professional third party mediation services is a benefit that actually pays for itself. The cost is directly related to a specific conflict and therefore not spent in preparation for an eventuality, which may never happen such as with EAP costs.

The mediator will adopt a strictly neutral position in resolving the dispute despite the fact that the company pays for the service. The mediator cannot breach the privacy of the process to the company, nor act as a witness in any subsequent legal proceedings. The mediation process itself is often conducted in a neutral setting away from the company's workplace. The time involved can range from one to a dozen hours with participants returning after one session to move on to resolution with new facts or a new perspective and understanding of the issues. In many cases, participants are not aware that their conduct is not only detrimental, but illegal or contrary to rapidly developing legislation involving workplace harassment, the duty to accommodate and so forth. Just communicating this information can often eradicate a situation, which could have escalated to a wrongful dismissal suit with the attendant complexity of complaints before the various human rights bodies. More positively, all the problems associated with workplace stress such as poor morale, low productivity, high absenteeism and high turnover can be reduced. When the value of these improvements is weighed against the out of pocket costs of mediation, (basically the third party mediators' fees and paid employee time for the mediation sessions), the decision to use professional mediation is usually clear-cut. The benefits conferred on the employees will include overall improved morale, reduced use of EAP counseling and a significant reduction in stress leave. For large corporations that collect data on absenteeism and stress induced disability leave, the savings can be quantified as cash flow benefits that flow directly to the bottom line. For smaller companies the benefits can be harder to quantify but can be enormous

relative to their size. Many smaller companies rely on the skills of one or two highly talented employees. The loss of just one or two staff due to unresolved workplace conflict could devastate a small fledgling corporation.

In considering whether or not to use the services of a professional mediator to resolve workplace disputes, corporations need to recognize that it is not in the same category of other employee benefits. There is in fact a trend away from constantly adding benefits to boost employee morale, if only employers could figure out how to wean employees away from an entitlement mentality. Employers are partly to blame for having created in the past boom decade a workplace expectation that a continuous supply of newer and better benefits are the order of the day. Professional mediation of workplace disputes is proposed as one of the few “benefits” that companies can provide to their workers that can provide a payback to the employer that is bigger than the costs. In today’s workplace it may be one of the few example of that mythical “win-win” situation that we all strive for in business and a chance to improve their “**RPM’s**”, an acronym for increased **R**eturn on investment in staff – **P**roductivity increases – **M**orale improvement.

*Catharine Allen, a mediator and arbitrator is the President of Toronto ADR Services. They are the architects of the successful "**HANG UP YOUR GLOVES FOR GOOD**" strategies on how and where to establish preventative policies to hold on to your profits! You can e-mail Toronto ADR Services at mediate@torontoadr.com or by phone at (416) 724-4449 for information regarding lunch and learn sessions, interest based conflict coaching and workplace mediation.*