

The "value" of mediating firm disputes

Much is written about the advantages of mediation, the likelihood of settlement and financial outcomes of mediation. Do settlements achieved in mediation have lasting value of more than a financial nature?

It was not possible to examine the ombuds mediation process in light of these questions. When I was appointed Ombudsperson in 1994, there was no history of ombuds mediations that involved B.C. lawyers. Today, four years later, there are mediated cases that demonstrate that settlements achieved via mediation have lasting value — in some cases financial, in others, personal.

For example, a legal employer and employee participated in ombuds mediation. Both parties had counsel during the process. After six hours in mediation, the legal employer achieved: an end to litigation that had been ongoing for several years; significant savings in legal costs (a lengthy hearing was avoided); the opportunity for partners to use hearing time to generate fees; increased goodwill; and confidentiality. The employee achieved closure and avoided the legal costs and frustration of an adversarial proceeding. Both parties left the mediation with a fully executed settlement agreement and their reputations intact.

The dollar value of the outcome to each party (and the taxpayers who keep the courts and tribunal offices functioning) can be measured in tens of thousands of dollars. Peace of mind and a good reputation are also of high value. In an era when lawyers are concerned about public image, the value of private resolution is immeasurable to the entire profession.

Is the financial outcome the only "value" that results from mediation? Or is there value in preserving our working relationships? Is there value in feeling good about ourselves and one another? Ombuds mediation can address these needs. This lawyer's account demonstrates how mediation changed, for the better, the lawyer's relationship with a partner and the firm. This account is in the lawyer's words and printed with permission:

Approximately a year and a half ago (my, how time flies), I was having an extremely difficult time with one of the partners in my firm. I am employed by a firm in which female associates are a minority. My firm can best be described as "conservative."

Every time a partner and I interacted, I felt intimidated, upset and nervous. I was reduced to tears on a few occasions (I am not a "crier"). Eventually, I informed the managing partner that I was never, ever going to work with the partner again. I stated to the managing partner that my

job was extremely important to me but that I would not sacrifice my dignity for any job. I felt interacting with this partner did that. It was at that point that the managing partner encouraged me, and the partner I was having difficulty with, to speak to you [in your capacity as Ombudsperson]. All of us had lengthy discussions with you.

Eventually, the partner, the managing partner and I agreed to mediation. You were the mediator. I must admit that all three of us were extremely skeptical about engaging in this process. I really doubted it would work, but I thought I should do what I could to at least demonstrate that I was not willing to give up immediately. I remember the three of us walking toward the location of the mediation together — kind of rolling our eyes about how this was probably going to be a silly process. All of us expected to be out of there within an hour or so with nothing much changed.

Well, we spent the day in mediation. It was intense and exhausting. We all worked very hard. We began to build back some of the trust in our relationship and were able to deal with some of the misunderstandings between us; there were many. The fact that we both saw the situation so differently surprised both of us. We then worked to find a way to proceed with how we would work together in the future.

You asked me to let you know how things turned out.

I admit that we never really followed the prescribed plan of working together so well. However, what I can say is that we work together often now; and we work together well. I am glad to have the opportunity to work with this partner and, although sometimes we are "short" with one another, the effects are totally different. I no longer feel threatened or upset. I feel as though I am interacting with him as anyone else in the firm would.

If someone told me that this would be the outcome of our relationship a year and a half ago, I never would have believed them. For that, I thank you.

This lawyer's experience speaks to the intangible "value" of self-esteem, dignity and acceptance. It is reassuring that the mediation process was, in this case, a catalyst for long-term change. From my point of view, that is the essence of "human rights" and of value to us all.

* * *