

Welcome

Welcome to the first issue of Common Ground, a resource on win-win conflict resolution for the busy professional. This is a time of major change in the field of dispute resolution. Common Ground is a vehicle for you to get information about negotiation and conflict resolution strategies that work in the real world - the world we work in and live in every day.

During my sixteen years in law practice I saw that our dispute resolution system through the courts was not the appropriate method to resolve many situations. Sometimes it seemed to be "brain surgery with a hatchet". My search for conflict resolution techniques led me to the Justice Institute in British Columbia and a variety of other training programs. As part of my mediation practice I provide training for people who want to learn to negotiate more effectively for themselves and their clients and people who need the skills to mediate.

Let me know what you think about this first issue. Are there topics you would like to see in future issues? Case examples you would like to let others know about - or on which you would like ideas? Anyone you know who would like to receive Common Ground? I'm always interested in your comments and questions - by phone, fax or e-mail.

And of course, I'm always interested in receiving referrals for mediation or arbitration. I will be pleased to consult with you about whether a particular situation is appropriate for either mediation or arbitration or other dispute resolution techniques. There is no charge for the initial consultation.

Ontario Mandatory Mediation – The Rule in Brief

Starting January 4, 1999 mandatory mediation began officially in Ontario. This affects you directly if you are involved in litigation under case management in Toronto or Ottawa. For litigation in other parts of the province it will not affect cases until it is rolled out to that jurisdiction. There are areas where a voluntary court-connected mediation program is being started, modelled on the approach under the Rule. For example a non-mandatory mediation program is planned to start in Waterloo Region early in 1999.

Timing:

In those two jurisdictions Rule 24.1 of the Rules of Practice requires the plaintiff to file with the mediation co-ordinator a notice stating the mediator's name and date of the mediation session. This must be done within 30 days of the filing of the first defence.

The mediation session to take place within 90 days after the first defence has been filed,

- unless the court orders otherwise, or
- unless the parties agree to postpone the mediation for up to 60 days and file a written consent with the mediation co-ordinator.

If the deadlines are not met, the mediation co-ordinator assigns a mediator from the list of mediators for the county. The assigned mediator must immediately set a date for mediation and give the parties 20 days' notice.

Mediators:

Mediators who applied and met the criteria for educational background, mediation training and experience, familiarity with civil justice and insurance were placed on a list. The list is open and new mediators may apply and be added to the list. The list of mediators and

other information about the program can be found on the net at www.attorneygeneral.jus.gov.on.ca.

Cost of Mediation:

For mediators on the list of mediators the fees are fixed by regulation at up to \$600.00 total for two parties and increasing to a maximum of up to \$825.00 for 5 or more parties. This fee covers one-half hour of preparation per party and up to 3 hours of mediation. After that time, if mediation continues the fees are at the rate negotiated with the mediator.

Under the regulation each party is required to pay an equal share of the mediator's fees. If the parties agree, a mediator not on the list may be selected and the fees are not regulated. Expenses such as rental of the facilities or travel costs are not covered under the regulation. The only requirement is that before the mediation starts the mediator must ensure that the parties understand and agree to the terms of the mediation including the expenses that will be charged.

After Mediation:

After the mediation session the mediator is required to file a report. If there is an agreement it is to be signed by the parties or their lawyers. If the agreement settles the action a notice shall be filed within 10 days after signing, or if it is a conditional agreement, within 10 days after the condition is met.

Case Management:

At this time Rule 24.1 applies only to case managed actions in Toronto and Ottawa. Only 25% of Toronto actions are case managed at the beginning of 1999. This is expected to increase to 100% of actions by the end of 1999.

Munn-thly Memo

Question:

I'm just starting my business. When I'm negotiating with potential suppliers and customers I feel that I have to agree to what they want. I end up agreeing to pricing and terms that really are not very good for my business. How can I negotiate better?

Answer:

Negotiation when there is a large difference in power between the negotiators is a problem everyone has, not just in business negotiations. One way to make the balance of power tip more evenly toward your side is to prepare thoroughly for the negotiation. Preparation involves three main steps. The more important the negotiation is for your business the more it is worth your time and effort to go through the steps. My suggestion is to jot down your answers and take them to the negotiation meeting

Step One: What are we negotiating about?

Sometimes it is not obvious to both parties what is at stake in the negotiation. You need to be clear about what the issues are, and what your alternatives are to this negotiation. You also should think about what the other negotiator will see as the issues and their alternatives to being "at the table" with you.

Step Two: What information do I need? Your starting point is to gather full information about the product or service and similar products or services which are available in the marketplace. It is very helpful to find out whatever you can about the person and the company with whom you will be negotiating. Good places to start looking are the Public Library and the Internet. How do they

approach a negotiation? What is their perception of power relative to you? What power do you have in the negotiation? When you think about the various aspects of power, there may be more power on your side than you initially thought. Are there advantages or disadvantages of the time or place of the negotiation for me or for them? For example, will this salesperson be especially interested in closing the deal this week before the end of the month so it shows up in her or his month's sales figures. Are there external criteria that could be used to assess whether the outcome of the negotiation is fair? Depending on the context, these could be prices for similar products or independent research results.

Step Three: How can I prepare for agreement or conflict? How can I establish rapport with the other negotiator? How can I get them to buy in? This is easier to answer when you know the person's background. What will be the major points of conflict and how can I attempt to resolve them? How formal does the agreement need to be for me and for them? What approval process will there be and how long will it take?

Review your notes just before the negotiation add any additional ideas that you can. You're ready to negotiate.

What is Win-win Negotiation?

One Hundred Percent Oranges

A classic fable which I use to illustrate win-win negotiation and mediation is the story of two sisters and one orange. The sisters both wanted the orange and their discussion followed the pattern,

"I want the orange."

"No, you can't have it. I want it."

Eventually they decided or had imposed on them the solution of cutting the orange in half and giving each sister half. Sister #1 took her half of the orange, squeezed out the juice and threw away the rind. Sister #2 grated the rind from her half and threw away the rest.

When they both told each other their position, "I want the orange," the result was a compromise. If they had asked each other the reason they wanted the orange, in this simple example the solution was evident. Sister #1 was thirsty and wanted a drink of orange juice. Sister #2 was baking a cake and wanted to flavour it with orange rind. Both sisters could have had 100% of what they wanted.

Often we settle for compromise, the 50% solution when better negotiation skills would provide a result much closer to 100% of what we and they want.

Mark Your Calendar

Upcoming Training Events Presented by Kathryn Munn

April 14, 1999

Constructing Consensus From Conflict
Managing in the New Millenium – Breakfast Series

London Chamber of Commerce
7:30-10:30 a.m.

Call (519) 432-7551 for more information.

April 20, 21, 22, 1999

Negotiation – Phase
Fanshawe College, London
\$400.00 each course.

9:00 a.m.- 4:00 p.m.

Call (519) 452-4425 for more information

May 11, 12, 13, 1999

Mediation – Phase 1
Fanshawe College, London
\$400.00 each course.

9:00 a.m.- 4:00 p.m.

Call (519) 452-4425 for more information

May 7, 1999

Civil Justice for Non-lawyer Mediators
Fanshawe College, London
\$150.00

9:00 a.m. - 4:30 p.m.

Call (519) 452-4425 for more information.

Kathryn Munn, LL.B., C.R.C. is a mediator, arbitrator and lawyer. Through her firm Munn Conflict Resolution Services she works exclusively in alternate dispute resolution from a base in London, Ontario. She is a Roster Mediator, Ontario Mandatory Mediation Program - Toronto / Ottawa and a mediator under contract for Canadian federal government departments and Crown Corporations.

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