

Take 2 Aspirins and Call a Mediator in the Morning!

What kinds of disputes can benefit from mediation? How do I know when a mediator can help me? I am regularly asked variations of that question. Many people have heard about mediation but are not really sure when mediation is appropriate. They want some real-life examples of situations where mediation has been used. One of the features, and in fact one of the benefits of mediation as compared with court proceedings, is that mediation is generally conducted with strict confidentiality. The information that I can provide is limited to very general, non-identifying information.

Most people have heard of or have direct knowledge of mediation for disputes during family separation and divorce. Many people have heard of or have direct knowledge of mediation for lawsuits. Some people have heard about the mediation program provided for farmers and their creditors, and even the required mediation for condominium disputes. When they understand the benefits of mediation, it is the less common situations that people want to learn to recognize. Here are some real life examples from my mediation log book.

- A group of siblings, faced with making decisions about care of an ill elderly parent, the family home, the parent's finances and related matters had been stuck for many months because of conflicts between them. This was causing further stress for the elderly parent. During three mediated half-day sessions in the siblings reached a resolution acceptable for everyone involved, to the great relief of the parent.
- Partners in a business were experiencing conflict which had the potential to destroy the business. The situation was complicated because family members of one partner worked in the business. In the course of one full-day mediated discussion the partners were able to resolve the situation and the business was able to continue.
- The Board of Directors of a nonprofit

organization was experiencing conflicts with its Executive Director. This brought much of the decision-making in the organization to a standstill. In a one-day mediated meeting the situation was resolved and the organization was able to get back to focusing on its services.

- Two employees were locked in conflict like deer with their antlers intertwined. The negative climate was having an impact on other employees and dealing with their disputes was consuming too much of the supervisor's time and effort. Although both were good employees, the employer was considering firing one or both. During two half-day mediated discussions the employees reached an agreement, a copy of which was provided to their boss and both continued working there.
- A parent and an adult child who had had no contact with each other for the several years since the child left home as a teenager, wanted to find a way to reconcile. Neither wanted to contact the other first or to be alone with just each other. A mutual friend arranged mediation which both agreed to attend. During two mediated half-day sessions they built an agreement which served as the foundation for resuming their family relationship.

Benefits of Mediation*

- Mediation can help parties resolve disputes faster, saving them time and money.
- Mediation is an accessible and affordable alternative to court for individuals and businesses.
- The mediation process is informal, neutral and completely confidential.
- Mediation offers the parties an opportunity to craft a solution that meets their needs.
- Mediation promotes cooperative problem solving and improved communications.

*according to the fact sheet "Mandatory Mediation: Rules 24.1 and 75.1" Ontario Ministry of the Attorney General, November 2001.

Mediation myths

Myth: *If you start court proceedings you cannot use mediation to resolve that dispute.*

Fact: Mediation can be used at any time during a court action. The Ontario Mandatory Mediation Program requires the mediation to be completed within 90 days or, if the parties agree on the additional time, 150 days of the first defense being filed unless the court permits a longer time. Mediation can be used to resolve the dispute right up to the trial date which is typically several years later.

Myth: *Mediation can only be used in situations that could go to court.*

Fact: One of the benefits of mediation is that it can be used effectively in disputes or conflicts which would never be taken to court. This might be because of the sensitivity of the subject matter, the risk for both sides of a negative decision, cross-border wrangling about which country's court has the authority, or the fact that the remedies available to the court could not adequately redress the situation.

Myth: *Mediation should not be used in situations where there are allegations of harassment, for example in a workplace.*

Fact: Mediation can be very effective in resolving alleged harassment situations. The opportunity to communicate in a controlled environment with the help of an experienced mediator helps the parties to build a way to address the harassment. Often a supervisor or human resource leader is present for mediation of workplace harassment issues because the employer has a stake in making sure the harassment stops and company policies are followed in any agreement that is reached. Not every harassment situation can be mediated. For example, mediation may not be recommended when there is violence associated with the harassment or if the people involved do not agree to use mediation.

Myth: *In a unionized workplace, mediation can not be used to settle grievances or customer/ employee disputes unless it is spelled out in the collective agreement.*

Fact: While it is preferable to provide for a mediation process in the collective agreement, the union and management can agree for a specific situation or category of disputes that a mediation process will be the first step in dispute resolution. Generally it is also agreed that use of the mediation process does not limit access to arbitration later. Mediation is very effective in achieving an early, cost-effective resolution which preserves or improves the relationship between the people involved in the dispute.

Myth: *Mediation is not successful if there is no agreement at the end.*

Fact: I do not equate successful mediation with reaching agreement. About 80 to 85% of my mediation cases result in the parties reaching a resolution. In cases where there is not a full agreement, there may be an agreement on some issues so that fewer issues proceed to trial and the time and cost of the trial is greatly reduced. In addition sometimes I hear back from people that they were later able to resolve the dispute themselves building on the work they had done during the mediated session. In my view those situations are also "successful".

In my opinion a competent mediator will never settle 100 % of their cases because the resolution is up to the parties not the mediator. It is simply not going to happen that all parties are ready and willing to reach a full resolution for themselves during the mediated session.

Help for Insurance Customers

Ontario insurance customers who have a complaint about the handling of a claim by their insurance company now have a new mediation program available. P & C insurers have established an independent mediation service in order to comply with the new consumer provisions of the Insurance Companies Act.

P & C (Property and Casualty) insurance, often referred to as "general insurance", refers to insurance protection for cars, homes, and businesses. Auto insurance is the largest product offering for P&C insurers in Canada. Property insurance, protecting against damage to buildings and contents, ranks second. A third category, liability insurance, protects the purchaser for legal liability to others for injury, death, or property damage that may arise from carrying out personal or occupational activities.

The new service is called the General Insurance Ombudservice (GIO). The service provides an initial 90 minute mediation, fully funded by the insurer, and an option for the parties to split costs for additional mediation time if they wish to extend the mediation. An unusual twist to the mediation service is that the mediator is required to provide a non-binding recommendation if there is no agreement at the end of the mediation. The mediation process does not limit later access to the courts.

The roster of 12 mediators for Ontario were selected by ADR Institute of Canada, an independent professional organization of mediators and arbitrators. The mediation service has been available since March, 2003. In Ontario already 134 insurance companies have signed on to the GIO and the number is still growing. The program has already been started in the Maritimes, the prairie provinces and British Columbia.

How does an insurance customer get mediation?

- Customers must approach their insurance company first and try to settle directly.
- If this is not successful the insurance customer may initiate mediation by making a written request with the GIO. The customer can do this either by filling out the GIO mediation registration form or by writing a letter to the GIO Customer Services Officer summarizing the case in dispute and the decision the customer wants the insurance company to make.
- Once the proper documents are received the GIO nominates three mediators from the roster and invites the customer to select a mediator from that list.
- Within 30 days of receiving the mandate to begin mediation, the mediator is required to provide the final mediation report unless there are unusual circumstances.

I recently completed my first case as a mediator on the GIO roster. The parties were successful in reaching an agreement about a claim concerning a car stolen many months earlier. Since the GIO is brand new it is too early to gauge the effectiveness. The plan is to conduct an annual review of the GIO service - so check back in about a year.

Contact the Ontario GIO office at 1-800-387-2880 or consumercentreonario@gio-scad.org. The website is www.gio-scad.org.

Mark Your Calendar

Upcoming Training Events
Presented by Kathryn Munn

Mediation Training

Full 40 hour program

Fanshawe College

Part 1 - October 2 & 3, 2003

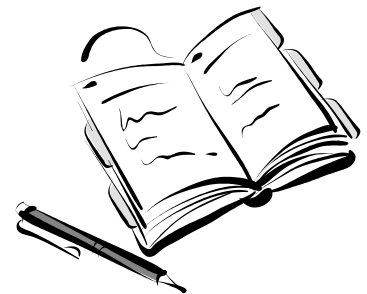
Part 2 - October 30 & 31, 2003

Part 3 - November 20 & 21, 2003

Call 519-633-2030 for more information and registration.

MUNN-THLY MEMO

Will return in the next issue of Common Ground.



I am pleased to fill requests for presentations about mediation and negotiation at meetings of professional and business groups. Call or e-mail to make the arrangements.

Electronic Common Ground

If you prefer to be on our e-mailing list please send us an e-mail.

Kathryn Munn, LL.B., Cert. ConRes., C.Med. 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, Canada. She is a Roster Mediator, Ontario Mandatory Mediation Program - Toronto / Ottawa / Windsor, a mediator under contract for the Farm Debt Mediation Service of Canada and for government departments.

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