

A CONFLICT RESOLUTION ALTERNATIVE TO CONSIDER: THIRD PARTY FACILITATION

Kimberly J. Jakeman

As I complete my 26th year in the practice of law advocating for clients in the healthcare sector in regulatory disputes, I reflect on the pros and cons of the process that presently mandates the resolution of such disputes. I am now a rostered mediator in BC and as part of my training, I chose to focus on how I, as a mediator, might assist in resolution of complex workplace conflicts.

It is my view the structure developed around the common respectful workplace policy (RWP) might not always achieve the optimal result. Often times what seems to be missing from the process is early consideration of a third party facilitated or mediated response to the conflict.

There are usually two courses of possible resolution in the RWP. The first is a more informal process. This is a process where the complainant makes a complaint, both sides are interviewed separately and an outcome is determined. Usually one person is reprimanded while the other may “move on”. Unfortunately, moving on is not that easy. One may forgive another for a singular transgression but it is difficult to forget. What I mean is that this informal process of resolution does not always resolve the underlying problem. An underlying current of stress or distrust can remain.

The second course of resolution is what I like to call divide and conquer. Here a complaint cannot be resolved in a more informal way and so an investigator is employed to interview both the complainant and the recipient of the complaint along with any other people who might have information regarding the interaction forming the basis of the complaint. As part of this process, the parties are separated and interviewed by a third-party who may or may not understand the subtleties of the work environment. This third person investigator makes the decision about who is right and who is wrong. The parties to the complaint are then advised of the decision and penalties or levies are meted out by management or administration. Most significantly, and what I object to most specifically, is the next step in the process. The parties in the dispute are then told to simply return to work. Very seldom is there an opportunity to interact in a safe, facilitated way in advance of reintegration. This is troublesome to me as frequently, particularly in health care, these people have to return to a high-intensity, high-stress environment where absolute trust in their interactions is necessary. Intuitively this approach is flawed. How can two professionals work together again without some opportunity to heal in a safe environment with a facilitator or mediator to guide the discussion as necessary?

[2]

In my view, an early course of resolution that should always be offered is a third party facilitated approach. It can be an adjunct to the other two delineated courses of action in the RWP or it can stand alone. This approach will allow the individual parties to the complaint to meet with a mediator/facilitator to tell their story, to be involved in the process and the resolution of the dispute guided in a safe, productive environment. Statistics show that people who are in charge of their own destiny are much more likely to fulfill objectives and achieve positive results. People who are responsible for developing their own expectations improve behavior more readily than those who are dictated expectations. I am not naïve enough to believe that this approach will work in every circumstance. There are certainly high-conflict situations involving personalities that may never find a way to resolution but, in my view, we cannot ignore the possibility of this well-regarded process used every day in civil litigation to resolve disputes as a potentially valuable tool to resolution of disputes in the workplace.



Kimberly J. Jakeman
Harper Grey LLP

604.895.2817
kjakeman@harpergrey.com

If you have any questions regarding this article or about mediation in general, please contact me.

I've developed an online resource to help explain the mediation process: hg.legal/kjakeman-mediation

MEDIATION: FACILITATING YOUR SOLUTIONS

In my mediation practice, I draw on the unique insights, perspectives and skills I have cultivated in my legal practice. My background experience and understanding of the nuances of litigation gives me the foundation to appreciate the importance of the mediation process in resolving disputes.

As a mediator, I am people and outcome focused and unflinchingly impartial. In the role of mediator I actively listen, find common ground and shared interests, and help facilitate supportable and lasting agreements.

Learn more about me [here](#).

© Harper Grey LLP, All Rights Reserved