ADR Update

Winter 2010-2011 Newsletter of the ADR Institute of Ontario, Inc.

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Inside this issue:

The ADR Institute of Ontario is a regional affiliate of the ADR Institute of Canada. It is a non-profit, private organization established to provide leadership in the promotion of alternative dispute resolution for ADR professionals and users of ADR services. The Institute represents over 800 professionals in Ontario.

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By: Ted Dentay

Elder Mediation: State of the Union Report

No-one ever said that any specialized field of the mediation profession is an easy row to hoe and the newer it is, the tougher the groundwork.

Cultivation of the Elder Mediation field is no exception because, according to most serious practitioners, "Elder Mediation today is where divorce and children's issues were 25 years ago".

Predictions are that this branch of the profession is poised to make the next 'great leap forward' but the problem is that Elder Mediation is a very complex and constantly metamorphosing issue, requiring many more sub-groups of expertise – teaming - than one would find in corporate, labour, and perhaps even 'conventional' family mediations. For example, what 'conventional' mediator would understand the behavioural changes that are brought on by a simple bladder infection?

Further, the consensus of current practitioners is that the mediation technique employed in Elder Mediation tends more towards the transformative model, something that takes more time and money, commodities of which the elderly have in declining supply. But when you take future relationships into account – children, grandchildren, families, generations to come — the outcome may create more value. Bottom line? It's a tough call.

While Canada is well on its way to becoming a leader in Elder Mediation, we are (politically at least) somewhat behind U.S. states, such as Maryland, and more or less neck-in-neck with Ireland and Switzerland, both of which have had participants at the various Elder Mediation conferences conducted in such disparate places as Dublin and Chicago. **So it IS an issue of international attention and efforts are being made to standardize the requirements of eldercare mediation internationally.**

In a wide-ranging interview with Elder Mediation Canada's Judy McCann-Beranger (who works for the Newfoundland/Labrador Teacher's

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Message from the President

Greetings to all members...

and hoping that spring has been an opportunity for a new beginning in some aspect of your ADR journey.

As we review the accomplishments of 2010 and look forward to 2011 we can all agree that the ADR Institute of Ontario is a busy and interesting organization to be part of: Independent Complaint Facilitators with the Community Care Access Centres program continue to perform excellent work across the province; Ontario members have joined the Language Rights Support Program roster; we are in discussions with a construction organization to develop a construction roster and we are seeking out new work opportunities for our members.

We are, at the moment, busy setting the agenda for the program that will follow the Annual General Meeting on **June 16** so **HOLD THAT DATE**. We have also scheduled an open Board of Directors meeting in Ottawa on March 31, to be followed by a half day program on Mental Health for ADR Professionals, so members outside the Greater Toronto Area can see we truly exist and are working hard on their behalf. We hope to visit various locations for the same reason every year.

In addition, as we speak, Mena Sestito is busy scheduling Section Meetings from now until end of June and Janet MacKay is hard at work developing systems that will allow members throughout Ontario to enjoy these programs in an interactive way from their own homes or offices. We urge members to become involved in section meetings – by phone or in-person. These section meetings are free to our members and can be reviewed at ***www.adrontario.ca/resources/events.cfm***

We look forward to seeing you at these important events.

— Joyce M. Young, President

Notes from the Editor

Message from the Editors

Happy Chinese New Year!! According to the Chinese Zodiac the Year of 2011 is the Year of the Golden Rabbit, which begins on February 3, 2011 and ends on January 22, 2012. According to Chinese tradition, the Rabbit brings a year in which you can catch your breath and calm your nerves:

- It is a time for negotiation.
- Don't try to force issues, because if you do you will ultimately fail.
- To gain the greatest benefits from this time, focus on home, family, security, diplomacy, and your relationships with women and children.
- Make it a goal to create a safe, peaceful lifestyle, so you will be able to calmly deal with any problem that may arise.

Sounds like a perfect year for the ADR community!!

We would like to thank all the contributors for their thoughtful submissions. Due to the overwhelming number of submissions, we look forward to another newsletter in early spring. Keep those articles coming!

We would also like to take this opportunity to thank Bunny McFarlane for her commitment and hard work on the editorial committee. May the year of the Rabbit bring you luck!

— Anne and Colm

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Attention Newsletter Contributors – Deadline for Spring Issue - March 31st 2011:

Just a reminder, submissions:

- Should be no longer that 1,000 words in length
- MUST be submitted in WORD (not PDF)
- MUST be accompanied by the author's short bio with contact information

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By Harvey M. Haber, Q.C., J.D., LSM,DSA, C. MED., C. ARB., B.A.

Three Arbitrators – No Way!

Hundred of leases contain the right of the Tenant, if not in default, to renew its lease (or as I prefer to call it, to extend its term) on the same terms and conditions, except for any further right of renewal/extension and except for the basic annual minimum rent, which is to be agreed upon between the parties, or failing agreement within a designated time limit, then the fair market rent for the Premises during the renewal/extension term is to be determined by arbitration by three arbitrators, with each side picking one arbitrator and the two arbitrators picking a third.

Don't do it, if you can possibly avoid it!
Why not?
It's just too expensive!

Let's presume the retail space in question is 1,500 square feet, the Tenant is paying $18.00 per square foot per annum, and the Landlord has indicated that it wants $25.00 per square foot per annum during the renewal extended term.

The parties do not agree and the three arbitrators are chosen.

Now let's take a look at the cost of just choosing the three arbitrators. Let's presume that each arbitrator is at the rate of $500.00 per hour and that the arbitration will be for one day, comprising approximately eight hours, so that the cost for the three arbitrators for that one day arbitration is: ($500.00 x 8 = $4,000.00 x 3 = $12,000.00).

Each side then generally designates their own counsel, and I am assuming that counsel's hourly rate is also approximately $500.00 per hour, and therefore counsel's cost for that one day arbitration would be $500.00 x 8 = $4,000.00 x 2 = $8,000.00.

Each side also has to pick a designated appraiser for the property (to determine the fair market rent during the renewal/extension term,) and assuming the appraiser's cost is also $500.00 per hour, their cost for the day would be $500.00 x 8 = $4,000.00 x 2 = $8,000.00

Based on the above, the cost for the arbitration for that single day would total $28,000.00. The amount is then divided by two, as each party would pay 50% of the arbitration cost.

Thus the cost to each party for that single day arbitration is $14,000.00.

I am not even raising the problem of the arbitration taking more than just one day, as many do.

In my opinion, it is just too much money for either party to go to a three panel arbitration, unless, of course, the amount involved is extremely high.

What do I recommend?

Have both parties agree on a single experienced and qualified commercial arbitrator - that will cut down the costs substantially.

Secondly, both parties pick a single appraiser, who both agree as being fair, experienced and knowledgeable in the trade, - that will also cut down the cost of the arbitration even further.

So save your money!

Harvey is an author and Senior Partner, named as "one of Canada's most frequently recommended property leasing lawyers by Canadian Legal LEXPERT Directory." He can be contacted at Goldman Sloan Nash & Haber LLP Barristers & Solicitors, 480 University Avenue, Suite 1600, Toronto, Ontario M5G 1V2, Tel: (416) 597-3392, email: haber@gsnh.com, website: www.gsnh.com

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Association and has over 16 years' experience in eldercare mediation – from its infancy in Prince Edward Island- through to becoming an international authority on the subject) we discussed the emergence of Codes of Ethics and Certification Standards for Elder Mediators.

Currently, both Ethics and Certification are in the 'pilot programme' stage and are expected to be fully mature by 2011. "When this pilot programme is finished", McCann-Beranger said, "it will be applicable on an international scale and Canada will be first in its implementation."

Meanwhile some new models are being developed in Switzerland, where there are plans to have an Elder Mediation conference next year, but the exact contents of these new protocols remain 'confidential', according to McCann-Beranger.

It is of interest to note the current gender split in Elder Mediation: there is an exceptional preponderance of women. This, McCann-Beranger explained, is because of the linkage to the "helping fields". To date, she said that two men have been officially certified as Elder Mediators."Men haven't traditionally been identified with the ideas of nurturing. We're culturally to blame because –here in North America- we continue to perpetuate these stereotypes to the point where we are still 'culturizing' our children." She said she intends to address this issue on an ongoing basis, feeling that there is no reason more men should not be working in the field.

The actual growth of Elder Mediation, to the point where it is viewed as a superior alternative to litigation or adjudication, simply hasn't matched the enthusiasm which has been consistently demonstrated during and after discussions/presentations on the subject. For example, Susan Curcio, an Elder Mediator, practicing in St. Augustine, Florida, moved from New York City with the reasonable expectation that the seniors' demographic there would provide significant numbers of professional opportunities. This has not turned out to be the case.

Ryerson University's Interpersonal Skills Professor, Dr. Rheta Rosen, a vibrant and energetic 79 year-old, has found the same thing in Ontario: despite having given many presentations on the subject, generally for free, she has yet to experience an increase in cases. Why?

A virtually-universal perception among sole practice Elder Mediators is that lawyers and social workers are major barriers to the growth of sole-practice Elder Mediation providers. Lawyers often "stir the pot", according to the majority of respondents answering interview questions, thus fomenting more adversarial behaviour – despite the growing awareness of 'Co-operative Law'- Social workers, not generally credentialed as mediators, are put into the position and are paid by Governmental, Non-Governmental-Organizations (NGO's), or not-for-profit groups to mediate, rather than have the client pay. Outcomes may vary significantly from those of credentialed sole practitioners.

Forms of Mediation

According to Laura Watts (BC Family law) are many forms of mediation which exist under the broader umbrella of elder mediation. Some mediation can be understood as 'elder care' mediation - primarily managing day to day decisions which affect the older adult. Some other forms of mediation may include mandatory guardianship or substitute decision-making mediation, which requires a very complete understanding of the laws of capacity.

Further forms of mediation may take the form of disputes within long-term care or assisted living settings. It is important to realize that not all elder mediation is the same, and differing skill sets will be required of these mediators to ensure a positive mediation experience".

Currently, both Ethics and Certification are in the 'pilot programme' stage and are expected to be fully mature by 2011.

There are many issues involved in Elder Mediation, including:

- Health care – at home, in the community, in the hospital or in continuing care and long term care communities.
- Retirement
- Financial concerns
- Housing and living arrangements
- Nursing home decisions, medical decisions
- Safety
- Environment
- Care for the caregiver as well as caregiver burden
- Intergenerational relationships
- Relationship concerns
- Holiday schedules
- New marriages and step-family situations
- Abuse & neglect
- Religious issues
- Family business
- Driving
- End of life decisions
- Guardianship
- Estate planning

Retirement, residential, long-term care, and nursing home facilities are a problem for the Elder Mediator mostly because of remarkable corporate concentra-

tion barriers and dizzying levels of bureaucratization. Companies such as Tridel, Amica, Orca, Allegro, Viva, Chartwell, and Revera dominate the senior's landscape. Many of these corporate entities have other business interests – such as property development or management - that tend to dilute their direct attention on eldercare issues. When contacted for comment the response has been unvaryingly negative: They're simply not interested in the minutiae of eldercare issues. At least their media and public relations departments aren't, since they have not been tasked accordingly. If the various governments are unable to bring good governance to Elder Mediation at some point soon, the picture will continue to be a dismal one for Elder Mediation but, more importantly, their potential clients.

For example, long-term care subsidies in Ontario allow for 45 minutes of care per day for 'certain types of care and individuals.' Hardly enough to change a pair of 'Depends.'

So what are the positive aspects? The solutions? Because we're all going to be 'there' sooner than later? Here are some suggestions.

- Education
- Media exposure
- Lobbying for government support
- Awareness of the unique skills of the mediator in the legal/gerontological/medical/caregiving fields
- Awareness of the option within seniors' activity groups and meeting places.

Before studying ADR, Ted Dentay was a writer, editor, and publisher in a number of specialized fields. He was also a public and media relations practitioner. He lives in Mount Albert, Ontario.

By David I. Bristow Q. C., LSM, C. Arb.

The Commercial Mediation Act 2010

This proposed Act falls under the master plan of the Ontario government to promote Ontario as open for business.

The Act is found in the umbrella "Open for Business Act 2010" (Bill 68). This Act has to date received only first reading. The Commercial Mediation Act 2010 only comes into force when the Open for Business Act 2010 receives royal assent, which may be a long way down the road. The purpose of the Act is to facilitate the use of mediation to resolve commercial disputes. This Act defines a commercial dispute as:

"A dispute between parties relating to matters of a commercial nature, whether contractual or not, such as trade transactions for the supply or exchange of goods or services, distribution agreements, commercial representation or agency, factoring, leasing, construction of works, consulting, engineering, licensing, investment, financing, banking, insurance, exploitation agreements and concessions, joint ventures, other forms of industrial or business cooperation or the carriage of goods or passengers."

While the Act is to bind the government of Ontario it does not cover collective agreements, computerized mediation, actions taken by a judge or arbitrator to promote settlement of a dispute which is subject to the proceedings or mediation under the Courts of Justice Act.

The Act is based on the United Nations Commission on International Trade Law (UNCITRAL), and consideration must be given to this Act.

The mediation starts the day the parties agree to submit to mediation.

If one party invites another party to mediate, the invitation is deemed rejected 30 days after the invitation was sent if there is no acceptance, or within the period set out in the invitation.

The mediation ends on settlement or joint agreement that the mediation be terminated, the mediator declares the mediation terminated, or the day that a party whose participation is necessary for the mediation to continue declares that the mediation is terminated.

The mediator is appointed by agreement of the parties. A proposed mediator must make inquiries to determine if she or he may have a current or potential conflict of interest or if any circumstances exist that may give rise to a reasonable apprehension of bias, and make immediate disclosures. The mediator may continue on consent of all parties after making full disclosure. A person is deemed to have a conflict of interest if he or she has a financial or personal interest in the outcome of the mediation or the person has an existing or previous relationship with a party or a person related to a party to the mediation.

The parties and the mediator may agree on the manner of conducting the mediation. If the parties can't agree the mediator may conduct a mediation in the

manner the mediator considers appropriate. The mediator may either communicate with the parties together, separately, or in any combination, or make proposals for settlement of the dispute at any stage of the mediation.

The mediator must maintain fair treatment of the parties throughout the mediation which duty cannot be modified.

The mediator may disclose to a party any information relating to the mediation that the mediator receives from another party unless that other party expressly asks the mediator not to disclose the information.

Information relating to the mediation must be kept confidential by the parties, the mediator and any other persons involved in the conduct of the mediation, except in cases: where all parties and the mediator agree, disclosure is required by law, disclosure is required for the purposes of carrying out or enforcing a settlement agreement, disclosure is required for a mediator to respond to a claim of misconduct, or the disclosure is required to protect the health or safety of any person.

There are however exceptions to the confidentiality rule in that confidentiality does not apply to information that is publicly available, that the parties by their conduct do not treat as confidential or that is relevant in determining if the mediator has failed to make a disclosure under the conflict or bias section of the Act.

Information however about the conduct of a party to the mediation or the conduct of the mediator may be disclosed after the final resolution of the dispute to which the mediation relates for the purpose of determining costs of the mediation.

Unless all parties agree, a mediator shall not act as both a mediator and an arbitrator either from the commercial dispute the subject of the mediation or another dispute that arises from the same contract or legal relationship or from a related contract or a legal relationship between the parties.

While the Act states that the parties may agree not to proceed with arbitral or court proceedings before the mediation is terminated an arbitrator or the court may permit the proceedings to proceed to preserve the rights of any party, or in the interests of justice, and the starting of arbitral judicial proceedings cannot of itself be regarded as a termination of the mediation agreement. If a party to a settlement agreement fails to comply with the terms of the agreement an application is made to a judge of the Superior Court of Justice for judgment in terms of the agreement or for an order authorizing the registration of the agreement with the Court and a judge may grant judgment in accordance with the terms of the settlement agreement.

No judgment however may be granted if it is shown that a party to the mediation did not sign the agreement or otherwise consent to the terms of the agreement that the applicant is seeking to enforce, a settlement was obtained by fraud, or the settlement agreement does not accurately reflect the terms agreed to by the parties in settlement of the disputes to which the agreement relates. The filing of the settlement agreement with the registrar pursuant to an order authorizing the registration has the same force and effect as a judgment obtained and entered in the Superior Court of Justice.

If the settlement agreement is signed by one or more parties to a mediation and contains an undertaking by one or more of the parties to pay the fees and expenses of the mediator, and sets out the amount of fees and expenses payable, or the manner of calculating the fees and expenses, a mediator who has not been paid for his or her fees and expenses in accordance with the settlement agreement may register the agreement with the court which has the same force as a judgment

The Open for Business Act (Bill 68) or many parts of it may not become law, or the part of it that is the Commercial Mediation Act may be eliminated. It is however important to review the proposed Commercial Mediation Act as there are many paragraphs in the Act that would be useful in drawing any mediation agreement.

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A proposed mediator must make inquiries to determine if she or he may have a current or potential conflict of interest or if any circumstances exist that may give rise to a reasonable apprehension of bias, and make immediate disclosures.

ADR INSTITUTE OF CANADA, INC.

Q.Med C.Med C.Arb Professional Designations for MEDIATORS and ARBITRATORS

The Qualified Mediator (Q.Med), Chartered Mediator (C.Med) and Chartered Arbitrator (C.Arb) are Canada's only official designations for practising mediators and arbitrators and the most senior designations offered by the Institute.

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Annual Fee and Other Requirements

You will be invoiced $150.00 (plus GST) annually to maintain your designation, payable to ADR Institute of Canada, Inc. You must also remain a member in good standing with your regional affiliate and commit to the Continuing Education and Engagement Programme to retain your designation.

Application Forms

Application Forms for these designations may be downloaded from your regional affiliate website or call your affiliate to have a copy sent to you.

For more information, please contact your regional affiliate.

In Ontario call Mena: 416-487-4447 admin@adrontario.ca

by Joyce Young

Compassionate Listening: A Case Study

The following is excerpted from a presentation on Cultural Diversity and Mediation delivered at the ADRIC 2010 Conference in Calgary.

I believe that compassionate listening – the ability to listen deeply, openly, respectfully and without judgment – is a mediator's important skill. It requires us to focus exclusively on the client. Compassionate listening enables us to hear what the client is saying and it provides clues as to what the client may *not* be saying. It gives us clues to the deeper layers of their story.

Compassionate listening empowers parties. When people feel that they have truly been heard, that you "get" their story, they feel stronger and begin to trust you. Compassionate listening enables me to identify cultural differences and begin to build bridges.

Here's an example of how it worked in one case. This was a family mediation and child protection mediation.

Mary is a 28 year old woman from Jamaica. She has a two year old and a three year old. She had been on the street and using crack for six months. The Children's Aid Society (CAS) came in and told the father to go to court and apply for sole custody, allowing no access to the children by their mother; otherwise CAS would have to apprehend the children. Tom, the father told me he didn't want his kids to "go into the system" so he did what Children's Aid advised.

I first met with Mary the day before their first court date. She had been in detox for 2 days. When I asked about her personal history, she described her father as an educator, said they lived in a beautiful house and she had lots of toys and pretty dresses. We went along through her story of coming to Canada, finishing her education, getting a job as a law clerk, and then getting involved with crack. She described her life in the crack houses.

At that point I was puzzled, and I told her so. I said, "I don't really understand how you went from having a successful career to getting involved with crack. Why the crack?"

Mary was silent for about three minutes. Then she sobbed for a long time. Then she told a very different story. Her father drank and gambled and lost the house. Her mother deserted the family and went to Canada. Mary was sent to live with an aunt who had three sons and she was sexually abused in that household. She escaped to Canada when she was 16.

Mary had completely blocked that memory and re-written the story of her childhood. She later told me that breaking through to that memory was a great help in her treatment.

That's what I mean by compassionate listening. My intervention – asking her why she got into crack – was not planned: it was simply honest curiosity.

I met with Mary and Tom every two weeks for about 6 months, to develop a parenting plan and an agreement with Children's Aid.

This story had an amazingly happy ending. Mary stayed with the treatment and after care program. Mary and Tom got to keep their children, they reconciled, and they got out of the housing project. On her first anniversary of getting "clean", she called me to thank me for helping her to put her life back together. She said she was doing speaking engagements through her church about saying no to drugs. On her second anniversary she called to say the kids were doing great, she was again working as a court clerk, and her husband is the most wonderful man in the world.

Here is one way to approach compassionate listening. Imagine that you are an empty wooden bowl, round, strong and complete. Imagine that you want to let the other fill you with whatever he or she has to bring: hopes and fears, joys and sorrows. Imagine that you are curious to see how it will feel to hold the stories of the other. When you are finished, empty the bowl.

Joyce Young, M.S., C.Med. has over 25 years of experience as Mediator in private practice. She does family mediation and child protection mediation. Joyce is President of the ADR Institute of Ontario.

Compassionate listening – the ability to listen deeply, openly, respectfully and without judgment

By Lorne Wolfson

When Med-Arb Goes Bad

In recent years, mediation-arbitration (or "med-arb") has become the preferred choice for many family law lawyers and their clients. Med-arb received a significant boost when it was recognized and endorsed by the Ontario Court of Appeal in *Marchese*.

Its success rate (the vast majority of cases settle in the mediation phase) has made it more popular in many circles than its cousins (traditional mediation, collaborative law or litigation). While the advantages of med-arb (accessibility and adaptability, lower cost, predictability, privacy, good results, and speed) have been well-documented, less attention has been paid to those cases that are not suitable for med-arb and what the mediator/arbitrator should do when a case goes bad.

Cases Not Suitable for Med-Arb

Experience has taught us that the following cases are likely not appropriate for med-arb:

- Domestic violence or power imbalance that cannot be remedied by the presence of counsel.
- Difficulty in obtaining financial disclosure;
- A need to bind third parties;
- Party(ies) can't afford the cost of a third professional;
- Party(ies) won't respect court orders or arbitral awards;
- One party is represented by competent counsel and the other is not;
- An unhappy party is likely to abandon the process or use the arbitrator's fees as leverage;
- Case requires the arbitrator to determine a novel point of law.

Take Precautions

Wise arbitrators will take precautions at the outset before accepting cases that demonstrate any of these danger signs. They will disclose any prior relationships with any of the parties or counsel that might possibly create a reasonable apprehension of bias. They will ensure that they use well-drafted arbitration agreements that include clauses that permit them to resign at any time, to terminate the mediation phase at their discretion, to determine the procedure for the arbitration, to retain an expert at the parties' expense, to accept retainer payments from one party on behalf of another party who has failed to pay, and to make awards for interim fees and disbursements. They will also insist on adequate retainers to ensure that they can complete their mandates (hear a motion, finish the hearing, write the award, etc.).

> Bill C-168 is part of an ongoing evolutionary process in the dynamic between workers and employers, and its introduction allows Ontario to catch up with the rest of Canada and the developed countries in the world.

Terminating the Arbitration

Section 43(3) of the *Arbitration Act* provides that an arbitrator shall make an order terminating the arbitration if the arbitrator finds that continuation of the arbitration has become impossible. An arbitrator may resort to this provision if domestic violence or power imbalance, absence of competent counsel, or other causes prevent the arbitrator from ensuring that the parties have been treated fairly and equally or if the conduct of a party (failure to respect awards, replenish retainers, etc.) prevents the arbitrator from properly discharging his or her statutory duties.

Resignation of the Arbitrator

Section 14(1) of the *Arbitration Act* provides that an arbitrator may resign. While the statute is silent on the need for reasons, section 14(2) ("an arbitrator's resignation…does not imply acceptance of the validity of any reason advanced for challenging or removing him or her,") implies that the arbitrator need not give reasons for his or her resignation.

An arbitrator's resignation raises a number of issues. First, how is a new arbitrator determined? Section 16(1) of the *Arbitration Act* provides that a replacement arbitrator shall be appointed when an arbitrator's mandate terminates. However, section 16(5) provides that section 16(1) does not apply if the arbitration agree-

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By David Walther

Collaborative Practice South of the Border

In September the Law Commission of Ontario issued a report which indicts the family law system for failing to deliver workable solutions to divorcing couples.

The report makes favourable reference to collaborative law, in that its multidisciplinary approach of working as a team helps detect problems earlier and ends up saving money. The report does not discuss how collaborative law is the most likely form of alternative dispute resolution to result in transformational change, and ultimate reconciliation. This transformation-reconciliation is particularly important in domestic relations cases, where the well being not only of divorcing parents, but of their children, and secondary relatives, is also at stake. By making favourable reference to collaboration the report will further confirm collaborative practice place in the main stream of alternative dispute resolution here in Canada.

There have been three significant events in the past three years south of the border as well, that will further the collaborative method as main stream in the United States.

The first is the adoption by the American Bar Association in August, 2007, of Formal Op. 07-447 approving the use of collaborative practice. Although this opinion does not have the force of law in the U.S., it is influential in most American jurisdictions. It gives the green light to the collaborative process. The opinion stated that collaborative law practice constitutes a permissible limited scope representation, with the concomitant duties of competence, diligence, and communication. It requires that the client be provided with adequate information about the materials risks of, and reasonably available alternatives to the limited representation. In particular the client must understand that if the collaborative procedure does not result in settlement, all professional participants in the collaboration must withdraw and the parties retain new lawyers to proceed with the matter.

The second major development in the states is the adoption of the *Uniform Collaborative Law Act* by the Commissioners on Uniform State Laws in July of 2009. Once an act is adopted by the Uniform State Laws Commission, it is proposed for adoption into law to the various states. As of the date of this writing, the Act has been adopted in the state of Utah, and has been introduced in the District of Columbia, and in Ohio, Oklahoma, and Tennessee. However, the mere adoption of this act by the Uniform Commissioners gives a nationwide impetus to this practice.

The third major development south of the border is the *Special Issue on Collaborative Law* in the Hofstra Law Review, published by Hofstra University Law School in Hempstead, New York in September of 2010. This special issue, of nearly 800 pages, is the first authoritative and exhaustive presentation of the Uniform Law, and of collaborative practice. It arose from a conference on collaborative law held at the Hofstra Law School in November, of 2009. It presents a solid academic foundation for the collaborative process, and will shape the progression of collaboration on a national basis in the states. A copy of this special issue can be purchased from the Hofstra Law School by emailing lawreview@hofstra.edu.

Collaborative practice is singularly valuable in resolving disputes between parties who will have a continuing relationship after the dispute is settled. This is apt in domestic relations cases, but it is also important in cases involving parties for whom a business relationship will continue. Thus the transformative potential of the collaborative method is a unique and potent tool in the ADR process. And as collaboration becomes a main stream method of dispute resolution in the U.S. its growth there is bound to further that method here in Canada as well.

David Walther has a mediation practice in Gray-Bruce. He is a member of the International Academy of Collaborative Professionals, the ADRIO, and a foreign legal consultant, Law Society of Upper Canada. ***www.davidwalther.ca.***

There have been three significant events... that will further the collaborative method as main stream in the United States.

By Oscar Dal Bello

Ontario's Divorce Reform - A Case for Caucus Mediation

For some time now, Ontario Attorney General Chris Bentley has focused his attention on reforming the process of divorce and the Ontario Family Law Act. Responding to complaints regarding the length of divorce proceedings and concerns about the way custody is managed, Bentley has publicly stated that, "For more than a decade, people have recognized that there's a better way". Supporting Bentley's motion and reacting to a 2008 report released by the Ontario Bar Association, Ontario Chief Justice Warren Winkler has also called for a major review of family law in the province. This, after it was revealed that there are only 17 dedicated family courts in the entire province handling extremely high volumes of child protection, custody and support cases.

Mediation, as a non-adversarial approach to the resolution of family issues, appears to be gaining support under this push for reform. While mediation in a divorce is generally believed to provide better protection to family relationships and be less time intensive and costly than traditional divorce, it does also have its critics. Standard divorce mediation generally has both clients and the mediator meeting together. In this situation, while intended to be non-adversarial, conflict can arise when both parties are in the room. Couples may say things they may regret later. Caucus mediation on the other hand, provides an alternative that offers confidentiality because both parties are not in the same room.

Caucus Mediation focuses on separate individual meetings with the mediator. With typical mediation, if a situation gets difficult, only then is caucus used. The desired effect of this is almost like a time out, allowing the mediator to meet one on one with the clients to diffuse conflict, reduce tension and stress, and eliminates a power imbalance.

If caucus mediation achieves the aforementioned benefits, would there be value in having all mediations handled completely in a caucus setting?

The answer to this question can be judged based on the desired outcomes and results for mediation. The purpose of mediation is to reach a fair settlement that allows the marriage to be dissolved. Fair means different things to different people, but by definition it is "free from self interest, prejudging and favouritism, marked by impartiality and honesty, and conforming within the rules".

Caucus mediation eliminates power imbalance because each person negotiates separately with the mediator. Given that this is the mediator's area of work and expertise, his experience and skill set should be able to diffuse the power imbalance better than had the negotiation been handled by two people that have been in a relationship for some time. Having been in a relationship, there would have been an established difference in the role played by each, with one person having to have the edge in the power balance of the relationship. In the typical mediation, power imbalances are often leveraged, both physically and emotionally, especially when both parties are in the room and they already have a way of communicating positions of strength. The advantage as far as free from favouritism is clearly with caucus mediation. Not only does caucus mediation assist in reducing conflict and stress with the clients, it reduces conflict and stress for the mediator too!

The advantages of caucus mediation seem numerous, but what would the disadvantages be? Clearly, when compared to typical mediation, caucus mediation takes more time – meeting separately requires twice the meeting time that meeting together requires. At a high level, that may be true, but the benefits of working with less stressed clients and with less conflict may result in quicker resolutions. Quantifying this benefit is difficult, suffice it to say that the time savings with typical mediation may not be as large as one may expect.

Other advantages of typical mediation versus caucus mediation include having access to both decision makers at the same time, and being able to have the same message delivered and understood by both parties. These are indeed advantages, but they can be offset by the skill set of the mediator or even the ability of the spouses to communicate.

It is indeed difficult to quantify and measure the benefits of each form of mediation. Furthermore, the individuals involved in the process are unique. What suits one person best may not be best for the other. What is certain, is that mediation as an alternative to litigation, in the province of Ontario is becoming widely acknowledged as a more effective means of resolution for people in the midst of a divorce.

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By Bruce Ally Ph.D., LLM, DRE (York U), WPA & Sabrina Crucini B.A, WPA

Will The Ambiguous Terms In Bill C-168 Impact On Toronto's Workplace Hub: The Small Business?

There can be no doubt that the intent of Bill C-168 (the Workplace Anti-Harassment Bill) is good but, like most Bills enacted into law, there are problems with fleshing out its interpretations and applications.

For the unfamiliar reader, Bill C-168 was passed by Ontario's legislature on June 15th, 2010 and deals with violence and harassment in the workplace. It sets out provisions to enshrine the rights of workers such that every worker in Ontario can be assured of improved working conditions. Since the invention of the "spinning Jenny" at the beginning of the post-industrial revolution, working conditions have been changing. In some cases, those changes were made voluntarily by employers while other changes were attributable to organized labour. One might even argue that this process has always been saprophytic, meaning mutually beneficial to all parties. For workers, the benefit has been improved conditions, thus making jobs more attractive and acting as a complement to salaries (holiday pay, extended benefits, maternity leave, etc). On the other hand, the primary benefit for employers has been a guaranteed workforce without which there would be no production and thus no profit. It is therefore fair to say that there has been mutual benefit to both sides from these developments.

Eighty percent of Canadians are employed by small businesses. Any changes in employment law therefore have a direct impact on many employers. In a time of global monetary crisis, one in which the "R" word has been used and in which most employers are concerned about their survival, many observers are worried about the potential financial implications that Bill C-168 may have for their companies. In view of the scope of this Bill, this paper is restricted in focus to three fundamental aspects of that legislation: (1) What constitutes "reasonable precautions", (2) What is meant by "ought to know"; and (3) What constitutes the "workplace."

Until recently, Ontario was one of the few remaining jurisdictions that defined workplace violence and harassment. It can therefore be said that the amendments made to Ontario's law have been implemented to keep in line with other jurisdictions. Bill C-168 now requires employers to "take every precaution *reasonable*" in the circumstances to protect workers from violence that may occur in the workplace and that could result in injury. In examining the question of what is "reasonable?" should we presume that an employee's judgement is reasonable. It is the author's position that this is clearly not the case or there would have been no need for this law. That answer poses a challenge as we are no further ahead in finding the answer as to what is reasonable. We asked that question because if the answer does not lie with employees, should we rely on the sound judgement or thinking of employers? The answer to that question, at least from the writers' perspective, is that there would likely be as many definitions of "reasonable precautions" as there are employers. If we are correct in that supposition, it would seem that this would be one of the areas of weakness that could be exploited once disputes arise, and one which may ultimately lead to challenges to this Bill. We therefore suggest that there needs to be more thought given by the legislature to the concept of "reasonable". Despite the draw-backs of the potential options as to whether "reasonable" should be defined by the culture of an individual workplace, or by a group of like companies or even a formalized definition handed down from the government, further reflection should occur at the earliest opportune moment if only to prevent unnecessary challenges to the bill.

> This has meant that the traditional nine to five work-time has changed so that it is possible to gain access to employees 24/7.

This legislation's second problematic component is its use of the word "ought." We question what it is that we "ought" to know. That term presumes a standardized, universal unit of comprehension. Even in a homogeneous population that premise is not valid, given that each individual operates with

his or her own unique [2]apperceptive schema and no two people have the same education and life experience. Most Canadians would concede that the concept of homogeneity does not exit in Ontario society; in fact, Ontario has been lauded as one of the most culturally and ethnically diverse societies in the world. That means that we have numerous transplanted populations from various corners of the world with differing value systems and customs. Implementing an abstract concept such as "ought" is therefore problematic if not impossible. Although the writers are not sure about the answer to this problem, it is clear that an imposed definition of "ought" is not only impractical but may also erode the rights of minorities and lead to Charter challenges. Notwithstanding the difficulty involved in addressing this issue, it is clear that unless an answer is found this ambiguous concept will lead to many difficulties.

In today's ever-changing, technology-driven society, the workplace is undergoing profound changes. No longer are workers confined to an office environment. With the advent of email and the blackberry, offices can now be carried on an employee's hip. This has meant that the traditional nine to five work-time has changed so that it is possible to gain access to employees 24/7. That new accessibility raises the question of what and where is the workplace. If a group of workers has a meeting at a pub, does that bar constitute the workplace? How would one assess the liability of a worker who is doing legitimate company business using a blackberry when he or she sees and speaks to a person of the same or opposite sex in a manner that causes the other person to feel harassed? Would that interaction constitute workplace harassment? From the perspective of an employer upon whom this new bill might have an impact it is important to have answers to those questions. Again, it is the writers' opinion that unless there is a concerted effort to clarify these ambiguities there will be endless challenges to the Act and a good supply of work for investigators, analysts, and mediators at the expense of already overloaded employers.

Bill C-168 is part of an ongoing evolutionary process in the dynamic between workers and employers, and its introduction allows Ontario to catch up with the rest of Canada and the developed countries in the world. While this bill is overdue, the writers are concerned that the language it utilizes is unclear and, as a result, may stymie the implementation of change and result in Court challenges that would further cripple a backlogged Court system. That kind of impact would be bound to have a negative effect on the hub of industry that is defined by Ontario's small businesses.

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ment provides that the arbitration is to be conducted only by a named arbitrator. The arbitration agreement can avoid this problem by providing for appointment of a replacement either by agreement or court order. Second, what happens to the old arbitrator's awards? Do they become void upon his or her resignation? Once again, the problem can be solved by providing in the arbitration agreement that any interim awards made will continue in full force and effect until amended by either a replacement arbitrator or the court.

One Size Does Not Fit All

While med-arb continues to grow in popularity, it is important to remember that "one size does not always fit all". Counsel should be realistic about the prospect of a successful mediation-arbitration. Parties who have generated high conflict litigation will likely generate high conflict mediation-arbitration. Such cases might best stay in the court system, leaving med-arb for those parties who are most likely to benefit from that process. Arbitrators should also be cautious when accepting cases and realistic in their assessments of what can be achieved. By identifying the "bad cases" early, arbitrators can save themselves and their clients much grief down the road.

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[1] *"Bill 168- Workplace Violence and Harassment Training Products and Services," 26 Sept. 2010* **http://www.bill168.ca/inthenews.html**
"Workplace Violence and harassment-New Ontario Law News & Resources," 26 Sept. 2010 **http://www.osler.com/NewsResources/Details.aspx?id=1767&old_id=19352**
"Canada Labour and Employment, Ontario Passes Workplace Harassment and Violence Law", 26 Sept. 2010 **http://www.mondaq.com/canada/article.asp?articleid=91778**
"Preventing Workplace Violence and Workplace Harassment, Ontario Ministry of Labour," 23 Sept. 2010 **http://www.labour.gov.on.ca/english/hs/sawo/pubs/fs_workplaceviolence.php**
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[2] *"Alfred Adler," 24 Sept. 2010* **http://www.rpi:edu/~verwyc/ADLERPH.html.**
"Alderian (Individual) Psycholgy," 27 Sept. 2010 **http://www.behavenet.com/capsules/profession/psy/Alderian/apperception.htm**
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By L. Deborah Sword, PhD
The Conflict Doctor

Conflict Analysis of Theory of Mind

Theory of Mind is something most conflict resolvers know about while perhaps not knowing that it's called Theory of Mind. It refers to how a person knows what someone else's intentions are. This belief that we can know someone else's private unspoken intention, and judge the intention as moral or immoral, is the basis for Theory of Mind research.

Brains develop over time. A toddler's stubbornness or teenager's frustrations will reduce in intensity with maturity. One of the cognitive abilities that children over the age of about four develop is seeing that a person might not intend the consequences of a word or act, as in "Mommy, Brian did it but it was an accident." Children will come to understand that not all acts or words are deserving of punishment. Some are, but not all. Theory of Mind entails this discernment of whether intentions are or are not blameworthy.

Toronto native Rebecca Saxe, now a neuroscience researcher at MIT, among other researchers, has located the part of the brain associated with making those moral judgments about the intentions of other people. Rebecca tells us it is the area of the brain known as RTPJ, the right temporoparietal junction, which lights up in an fMRI when a person is thinking about whether someone intends to be friend or foe, intends to do good or ill, and intends to speak words as insult or comment. The RTPJ is the brain region used to read other people's minds to determine their intentions. When we think about what other people might be thinking, we think it in our RTPJ. Further, Rebecca has discovered that charging the RTPJ with a shot of magnetism will change a person's 'mind reading' ability. The RTPJ, in its changed state, will make different assessments about the person's intention in doing the act. In other words, if you witness an immoral act or word that you believe the person intended to do or say, and then witness it again after your RTPJ is charged, you might no longer believe the person should be culpable for the immoral act.

Implications for understanding conflict patterns of blame

As conflict resolvers, we intuit that a party's assumptions, attributions, and inferences about another's intentions can start or keep conflicts going. We challenge the parties to doubt their certainty that they know the contents of each other's private thoughts. Blame is, after all, based on knowing and judging a person's intention. While the RTPJ improves its skill from childhood onward, mind reading is still an imperfect art. Even if it were perfect, something seems to happen to mind reading ability in some conflicts. The conflicting parties get into a pattern of attributing intention to another, i.e. blame. The answer to the question - 'is that other person's intention blameworthy' - is often a strident 'yes."

A person in conflict will state as a fact that he knows the offense or insult was intentional. "She knew that would hurt me and she meant to," is an example of such a theme. In mediation or conflict coaching, the client(s) share points of view (intentions). It might be the first time he has heard her say what she really intended. Once he hears her, he can decide if his earlier moral judgment correctly assessed her intention as deserving of blame. He may change his belief about her intention, which we label as a transformative moment. Or, she might deny that she intended to hurt him, and he may not accept the denial as true. We may suspect it is obstinacy that he refused to believe her. Most likely, we didn't think about how his brain was wired to call those shots.

As we intervene in peoples' conflicts, we create conflict mental maps to help us understand the parties moving through their conflict landscape. A physical map that's a fair representation of the actual landscape is more useful than a map that's fanciful. We rely on maps to get us places topographically speaking, and thus accuracy matters. Conflict mental maps, however, are indeed fanciful. They may be a cognitive representation of the conflict landscape, but the conflict mental map must move with the landscape if it is to get us anywhere in the conflict. The parties move, their fitness on the landscape shifts, their intentions alter, and so the conflict moves around our conflict mental map as a result.

Conflict mental maps have an uncertainty principle. Data about the parties, positions, interests, intentions, and desired outcomes

are continually imperfect and in motion. A common conflict mental map may have to be a four or five dimensional representation of a conflict to have any chance of accuracy, which even then won't be accurate for long. As we accumulate data during the intervention process, we add layers to the conflict mental map so we can pick our way forward. How a party reads another party's intention is a layer to the conflict mental map. When we get to that tempting meadow we linger, testing the misconceptions, assumptions, and beliefs underlying a party's certainty that s/he knows of the others' intentions.

The RTPJ is the brain region used to read other people's minds to determine their intentions.

I suggest there are at least two obvious conflict analyses we can make of Theory of Mind. First, at all the stages of the conflict intervention, from opening the case to closing it, we use our own mind reading abilities as adaptable skills. Our conflict mental map can stay open to multiple new inputs. As we listen to parties tell their stories and engage with each other, we can listen for the effects of the RTPJ on their respective narratives. When a party says, 'I know he meant to hurt me,' she knows that through her RTPJ. When a party says, 'I assume it was an intentional act,' he is responding to what his RTPJ informed him was correct mind reading.

The second use, stemming from the first, is to design exercises to train RTPJs to expand their repertoire. A well-muscled RTPJ that has been relied on extensively will have the courage of its beliefs in its mind reading ability. If we want to build trust among the parties, we need to know how to talk to an RTPJ about its certainty of the others' intentions. It would be helpful to have 'requisite variety' of tools in our tool kit to deal with it. The principle of requisite variety holds that the range of possible solutions should be as complex as the problem being solved. Our old tools might not be the best language that an RTPJ understands. I'm following Rebecca's research to see where she next goes with this.

Conclusion

The RTPJ's use in reading other's intentions has implications for conflict resolvers at a number of levels. The European model in the developed world is to separate intention and consequences. If I didn't mean to cause harm, or couldn't stop the harm from happening, the legal system or other institutions should listen to me and decide the lack of intention means I'm not liable for anything. This is not a universal construct. In some ways of thinking, the consequences of the action or word may be determinative. In this approach, if I hurt or damaged or injured you, I'm liable for making things better for you. Intention has cultural and scientific foundations. Therefore, we need to understand intention better, and have a vocabulary capable of addressing its importance directly in our discussions and indirectly (perhaps) with our parties.

How an RTPJ influences mind reading of intention may suggest that the concepts of how to avoid bias, stereotyping, and even prejudice are problematic. Since the ability to 'read minds' is hard wired into our RTPJ, surely there was an evolutionary adaptive advantage to having it operate. How does one turn off the RTPJ to be impartial? Would you want to if the RTPJ is associated with discernment and judgment? Is the RTPJ more rigid with some people, or does it become so as a result of protracted conflict when trust is diminished? These are questions that might become known as Rebecca and her associates continue to research. Conflict resolution practitioners should be interested in the answers she has so far.

Deborah's research interests include groups negotiating highly contentious social issues. Her doctoral work used Complexity science as a framework for analyzing conflicts. She is active on behalf of the conflict community as a speaker, presenter, and author on topics of governance, and conflict management. She serves on the Boards of Directors of numerous organizations, and volunteers in the peacemaking and environmental movements.

Part 2 The Law
By Ernie Tannis

Do We Have A Duty to Negotiate in Good Faith?

Good faith is an increasingly controversial concept both judicially and academically. Yet, ironically, it is the doctrine that forms the underlying rationale for numerous other entrenched legal principles. These include misrepresentation, waiver, estoppel and forfeiture. This article will examine the scope of a party's duty to negotiate or bargain in good faith. It is a duty consisting of two obligations. The first is to act "in good faith" and the second is the "obligation to bargain." The former is negative in content as it prohibits certain forms of bargaining behaviour. The latter is positive in nature because it requires the parties to negotiate with a view to the actual conclusion of an agreement," (Good Faith in Negotiations, by Reva Seth, Dispute Resolution Journal Nov. 1, 2000)

To put the question in context, the challenge is to get beyond the blur of whether the duty exists prior to a contract being signed, or only after it is signed, and what happens if a contact is signed but for different reasons, it is legally unenforceable. As for the last of these three possibilities, or in cases where someone felt there was a legal protection without a signed agreement, the Courts of Equity have stepped in, now applying equitable principles to protect a party who negotiated in good faith but found that a contract is not enforceable, so many legal principles have been created to remedy that situation, as set out in the excerpt above, concepts of unconscionability, imbalance of power and vulnerability, doctrine of part performance, breach of confidence, breach of fiduciary duty, inequality of bargaining power, misrepresentation, doctrines of unilateral and mutual mistake, collateral warranties and collateral contracts, implied terms, undue influence, duress, fundamental breach, wavier and estoppel, unjust enrichment and restitution, then there are some jurisdictions, like in Quebec Civil Code where it is a statutory duty article 1375 to act in good faith throughout a contractual relationship embodied in other Statutes, and in some international treaties, etc. The point here is that the Courts have and still do go out of their way to provide a remedy when they sense some 'unfair dealing' as a result of an agreement or lack of one, but they have not taken the positive step to make negotiation in good faith a duty. How to explain it? It is possibly expressed well in Walford v. Miles 1992 2 W.L.R. at 181, House of Lords, England:

"..the concept of a duty to carry on negotiations in good faith is inherently repugnant to the adversarial position of the parties when involved in negotiations. A duty to negotiate in good faith is as unworkable in practice as it is inherently inconsistent with the position of the negotiating party."

As Professor Tetley points out in his 2004 article: "Thus good faith has often had to enter the common law in some disguised form, and this is precisely what it has done" This "backdoor" method is often confusing, although necessary. Yet in other areas of law, for example labour law, and rights of Aboriginal Persons, it is accepted that there is a duty to bargain in good faith, have reasonable consultations, etc. So why is it not expanded?

The leading Supreme Court of Canada case is Martel Building Ltd. v. Canada (2000) S.C.R. 860. In researching for this article, I noted that this case has been judicially noted about 200 times. The court posed the question in this way:

Given that one owes a duty of care not to harm those who might foreseeably suffer damage, does a duty of care exist to that same group with respect to negotiations? Does the tort of negligence extend to damages for pure economic loss arising out of the conduct of pre-contractual negotiations?

A central issue in this appeal is the extent to which Canadian jurisprudence recognizes a duty of care on parties in negotiations. If a cause of action exists in this context, it is apparent that the damages claimed would be a purely economic loss.

How Does It Answer The Question?

First, the very object of negotiation works against recovery. The primary goal of any economically rational actor engaged in commercial negotiation is to achieve the most advantageous financial

bargain. As noted above, in the context of bilateral negotiation, such gains are realized at the expense of the other negotiating party. From an economic perspective, some authors describe negotiation as a zero-sum game involving a transference rather than loss of wealth: see Cherniak and How, *supra*, at p. 231; and B. Feldthusen, *Economic Negligence: The Recovery of Pure Economic Loss* (4th ed. 2000), at p. 14. (par 62)

Second, as Feldhusen notes in the above passage, to extend a duty of care to pre-contractual commercial negotiations could deter socially and economically useful conduct. The encouragement of economically efficient conduct can be a valid concern in favour of the extension of liability for pure economic loss.

Third, to impose a duty in the circumstances of this appeal could interject tort law as after-the-fact insurance against failures to act with due diligence or to hedge the risk of failed negotiations through the pursuit of alternative strategies or opportunities. This Court has previously expressed a reluctance to extend pure economic loss in this manner.

Fourth, to extend the tort of negligence into the conduct of commercial negotiations would introduce the courts to a significant regulatory function, scrutinizing the minutiae of pre-contractual conduct. It is undesirable to place further scrutiny upon commercial parties when other causes of action already provide remedies for many forms of conduct. Notably, the doctrines of undue influence, economic duress and unconscionability provide redress against bargains obtained as a result of improper negotiation. As well, negligent misrepresentation, fraud and the tort of deceit cover many aspects of negotiation which do not culminate in an agreement.

A concluding but not conclusive fifth consideration is the extent to which needless litigation should be discouraged. To extend negligence into the conduct of negotiations could encourage a multiplicity of lawsuits. Given the number of negotiations that do not culminate in agreement, the potential for increased litigation in place of allowing market forces to operate seems obvious.

For these reasons we are of the opinion that, in the circumstances of this case, any prima facie duty is significantly outweighed by the deleterious effects that would be occasioned through an extension of a duty of care into the conduct of negotiations. We conclude then that, as a general proposition, no duty of care arises in conducting negotiations.

To show the attempt by Judges to remedy what they see as injustice, there is a recent Ontario case where the Judge presented the Plaintiff with an argument not pleaded, finding that there was a breach of duty but the Court of Appeal reversed the decision only because the Court is not to put in its own arguments not pleaded by one party, and the Court of Appeal added that it would make no comment on the status of the law of Ontario on the duty to negotiate in good faith until it comes up again directly. This also leaves a door open.

The other method the Court seeks to impose sanctions on bad faith is awarding costs against a party if it can show that reasonable attempts to settle were rebuffed, institutionalized in the Offer to Settle rules that can be shown to the Judge after judgement to penalize the party who did not accept the offer to avoid trial. But how can one afford to go that far is the question? So what can we afford to do.

This brings me to the conclusion. Really, Justice is Just Us. We can all always speak about this duty to negotiate in good faith to all parties, all lawyers, to move that principle along, and appeal to something that is really inherent in our nature, except for those who show no goodwill or when a precedent is needed, or where there is a genuine question to be adjudicated. All ancient Teachings refer to our duty indeed our purpose to be caring, fair, and reasonable with one another. The majority of the world subscribe to some Great Religion, or Teaching, so they should be given the opportunity to 'walk the talk". We should always continue to encourage ADR clauses in contracts, and make the duty to negotiate a term of the contract, I have a precedent which many use and is always improved upon by people and lawyers, also an ADR clause in Wills to prevent or reduce estate litigation, which clauses are available at www.adrcentre.org These pro-active steps and always promoting these principles in cases, causes, and public education is where the true values, justice and law is found. Our hearts know it to be true.

All ancient Teachings refer to our duty indeed our purpose to be caring, fair, and reasonable with one another.

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