

Mediation *as Part* of an Effective Client-Centred System

Our justice system has been focused for too long on the needs of the courts and the legal profession; it has become inaccessible and even irrelevant for many people.

As a result, people with problems are avoiding the formal court system and are seeking other methods of resolving their disputes.

It is time to take a hard look at what the public needs from its justice system to ensure it is available to those people who need it and that it provides the timely, appropriate, and effective services to meet those needs.

I am a strong advocate of “appropriate” dispute resolution and mediation, in particular. I am convinced, however, that we need a strong and vibrant court system to assist people to resolve their disputes in those situations that need an adjudicative result. In addition, the court system can—and already does in many forms—provide a range of resolution options in addition to adjudication.

People have problems that may or may not ripen into “disputes” that require resolution. At the outset, many people benefit from wise guidance from a trusted advisor that can assist

them to resolve the problem directly. Others require other kinds of assistance, including intervention by a neutral third party to assist them to resolve the problem with the other party or parties. This intervention may take many forms including facilitation, mediation, arbitration, or adjudication by a judge.

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For the past five years, I have had the privilege of participating in research managed by the UBC Faculty of Law and funded by the Federal Government (through an SSHRC/CURA grant) to learn from those people who have experienced the BC justice system in the areas of motor vehicle personal injury (ICBC claims) and family law. They have much to tell us and we have much to learn.¹

ICBC claimants complained that:

- the system was too complex and confusing;
- money was insufficient compensation for their injuries and their experience in the “system”;
- they did not feel respected;



- it took too long to resolve their claims;
- they were often surprised by the legal cost;
- they felt disempowered.

Many also commented that:

- they wanted their lawyer to care about them and their family and to explain the process fully;
- they rated mediation as more effective and fair than either negotiation or litigation (adjudication by a judge);
- they were content to have the mediation be their “day in court”;
- although mediation was still stressful, it was better than litigation or negotiation

Spouses involved in family disputes commented that:

- they found the process overwhelming and extremely stressful (interpersonal, systemic, and external stress);
- the dispute had a significant impact on the rest of their lives;
- those couples who were able to work together well fared better;
- they wanted a lawyer who was an expert but who also was able to show empathy, understanding, and fairness;

- they were often surprised by the legal cost;
- the more realistic their expectations about the process, the more satisfied they were;
- those who experienced mediation were very satisfied with that process.

One can't help but notice the emphasis these people place on the **process** used to assist them to resolve their problems. Other research has highlighted that in many situations, people value a fair and effective process at least as much as outcome. We must be able to provide people with process choices that meet their unique needs and provide wise guidance to them along the way.

Mediation is not a panacea. That is, it is not the appropriate process choice for every dispute. As demonstrated by the feedback above, however, in these two areas, mediation is often a helpful and effective tool to help parties resolve

their problems. I suggest that it needs to be an available option for people at all stages of their resolution pathway.

For those who seek to resolve their dispute through the Provincial Court, I am happy to report that the Court Mediation Program provides a free mediation process for claims up to \$10,000 in five registries in the province (Vancouver, Surrey, North Vancouver, Victoria, and Nanaimo).²

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For claims between \$10,000 and \$25,000, Rule 7.3 gives a party in any registry of the Court a tool called the Notice to Mediate to bring the other party or parties to the mediation table to attempt to resolve their disputes.

Our justice system has already made some changes that support effective

process choice. Further work needs to be accomplished to ensure that the needs of the public are heard and heeded. ▲

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¹ In these two areas, the claimant (or injured party) in an ICBC claim and the parties in a family law dispute are individuals. Their opinions, however, are entirely consistent with the views of other kinds of actual and potential litigants including large corporations, insurance companies, and small business.

² Small Claims Rule 7.2.