

Sharon Charboneau

The Value of Mediation *in the Workplace*



Conflict in the workplace is never a pleasant experience for anyone—the employee, the employer, other employees, or customers.

Dealing with conflict can be intimidating. *Not dealing* with workplace conflict, however, can be time-consuming and expensive and can expose the company to the potential of increased staff turnover and loss of reputation and customers. Terminating an employee may be the only viable solution.

It should not be the first and only consideration.

Managing conflict takes time and courage. In hindsight, management at Honda Canada probably wish they had taken more time to manage the conflict between themselves and a 14-year employee with chronic fatigue syndrome whose employment they terminated for excessive absenteeism (*Keays v. Honda Canada*). When the company refused to meet with Mr. Keays or accept his doctor's medical opinion, he hired a lawyer and went to court.

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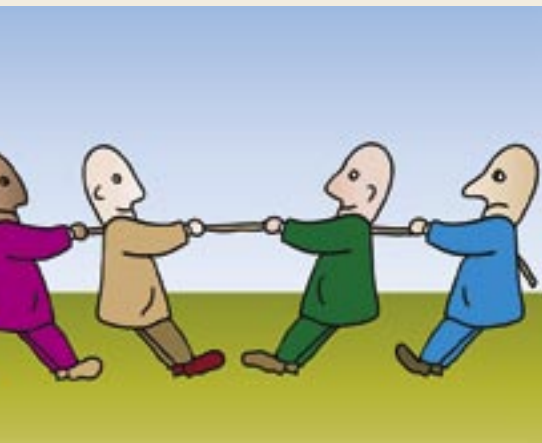
In 2005, an Ontario court found that Honda Canada had acted in a far less sensitive manner than is considered reasonable. The court agreed with Keays' position and awarded him 15 months' notice, plus an extra nine months' compensation as "Wallace" damages, which the Supreme Court of Canada ruled would apply when an employer was found to have acted in bad faith (*Wallace*

v. United Grain Growers Ltd.). In addition, the court awarded the record amount of \$500,000 punitive damages due to its finding that Honda Canada management acted in "...egregious bad faith."

Honda Canada is appealing the decision. Even if the case is overturned on appeal in March 2006, the award will continue to be known as the highest award ever handed down by a Canadian court.

Honda Canada's reputation as a fair and reasonable employer has been sullied and other Canadian employers can learn from their experience. Employers have an obligation to consider employees' medical information and not take steps to discipline or terminate an employee without taking the time to meet with the employee, do a proper review of the facts, and make a good-faith attempt to manage the issues in-house.

Not all employees have the money to hire a lawyer when their employer ignores their needs. Therefore there are other venues for dealing with employee complaints. Union employees file grievances with their union; non-union employees file complaints with Employment Standards or Human



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Rights. These venues are backlogged so, by the time a hearing occurs, the parties are generally entrenched.

Awards handed down through arbitrators or through the Employment Standards Tribunal or the Human Rights Tribunal become public, either in published awards or on their respective Websites—and some decisions make the newspapers.

For most Canadian employers, the end result on a smaller scale than the Honda Canada case can be time loss on the job, disruption in the workplace, and litigation costs—as well as the potential public embarrassment of being found to be an employer who acted in bad faith toward one or more employees, with the potential resultant loss of reputation and customers.

Now, doesn't it make ultimate sense to hire a professional mediator—skilled in handling conflict—to assist with the resolution of a dispute, in-house? Pro-active employers manage their issues in-house, where they can control the outcome: they take every possible measure to ensure that decisions about their companies are not made by outside parties such as arbitrators, Tribunal adjudicators, or the courts.

The value of mediation in the workplace cannot be overstated.

Mediator Sharon Charboneau has extensive experience in the investigation and resolution of grievances/workplace complaints under the *Employment Standards Act*, the Human Rights Code, and the Labour Relations Code. An experienced Human Resources generalist with specialties in recruitment, labour relations, and workplace investigations, she provides workshops for employers on current legislative changes and ways to avoid and/or resolve workplace issues through effective workplace management techniques.

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