NEGOTIATION AND CONFLICT RESOLUTION

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In addition to our regular services, we offer structured negotiation and conflict resolution services. Most disputes headed to litigation or already in litigation, could be resolved much earlier and at less cost if the negotiation and conflict management were approached in a specific disciplined manner. Many business negotiations could proceed much more efficiently and effectively if the negotiations were approached in a systematic way. In both situations relationships that would otherwise be destroyed or significantly damaged could be salvaged, maintained or improved.

We have found however, that once a dispute arises, most clients and their legal advisors have taken discrete positions and are quite naturally intent on forcing their position onto the other side. They then seek, or threaten to seek, the assistance of the power of the State, namely, a Court or other tribunal, to make some decision supportive of their position. However, given the uncertainty and expense of litigation, often both parties are not satisfied with the results. Furthermore, an impending or threatened appeal further exacerbates the difficulties.

Typically, lawyers have been trained to advise clients not to reveal any information to the other side unless they are specifically required to do so by specific Court rules or by Court order. Extensive rules and legal principles have been developed that just barely creak open the steel doors that each side has built to prevent the leaking of information to the other side. Parties tend to err by disclosing less information rather than more. This quite naturally has a "chilling effect" on open communications between the parties at any stage of a dispute.

Of course, disclosure of many types of information must be resisted in any matter, whether a litigated dispute or a transactional negotiation. However, the propensity to minimize informational disclosure has resulted in a truncation of what might otherwise be an advantageous exchange. Valuable opportunities to understand interests, options and alternatives in the context of legitimate standards are significantly delayed and diminished if not lost altogether.

Mediation has in some ways helped ameliorate some of the shortcomings of "fight it out" litigation. However, the traditional model of mediation, where the parties meet, exchange opening statements and engage in face to face positional bargaining, has not led to an earlier more efficient way of resolving disputes. The advent of mandatory mediation in Ontario has not resulted in a statistically significant increase in the number of negotiated settlements. Often, parties intent on positional hard bargaining have used the mediation process as a guise to explore the other side's weaknesses. This has further lessened the effectiveness of traditional mediation.

In most litigation, settlements are reached at or near trial after the parties have engaged in expensive interlocutory proceedings, documentary discovery, examinations and cross-examinations. These processes are essential to the litigation process so that all parties and ultimately the Court or tribunal can be properly armed with all relevant facts and documents that underlie each side's position. Once this process is done the case is ready for trial.

Why do most cases settle after this extensive and expensive process? One reason is that the parties have exchanged relevant meaningful information and now for the first time have a clearer vision of the other's case and perspective. An even better understanding comes out at the actual trial when it is far too late for both sides given the enormous investment in time and money they have each put into the case. By then, whatever productive relationship the parties may have had is irreparably damaged. This is just not an efficient way to resolve anything.

We us a method taught by the Harvard Law School, Negotiation Project that attempts to truncate the traditional processes. The method has two levels of efficacy depending on the co-operation and openness of the other side. However, whatever the level of co-operation and openness of the other side, the method often moves the parties to a resolution faster and more efficiently. Furthermore, the method does not compromise your rights, property or confidential information in any way.

The method requires preparation by both the client and the lawyer in a manner that may appear somewhat unconventional. Nobody can guarantee that the use of the method will result in a favourable settlement. However, if a resolution is not obtained after using the method, at worst, the method will have caused you to reach a creative level of preparedness to face the other side that you may not have otherwise achieved.

The method is based in large measure on the work and teachings of Professor Roger Fisher, Bruce Patton, William Ury and Scott Brown of the Harvard Negotiation Project at the Harvard Law School, Cambridge, Massachusetts and makes use of many of the ideas and methodologies described in *Getting to YES: Negotiating Agreement Without Giving In*, Second Edition, by Roger Fisher, William Ury and Bruce Patton (Penguin, 1991) and *Getting Together: Building Relationships As We Negotiate* by Roger Fisher and Scott Brown (Penguin, 1988).

For more information on this effective method of negotiation, contact Martin Rosenbaum at 416-364-1919 or mzr@rosenbaum.com