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Grievance Mediation: Why and How it Works

David C. Elliott & Joanne H. Goss

Aurora: Canada Law Book Inc., 1994, 120 pp.

Reviewed by Kim Johnson[†]

Anyone involved in the court system knows how slow and expensive it is. Unfortunately, the grievance arbitration system set up to alleviate some of these problems in the area of labour and management relations has become overburdened to the point where it is often criticized as being equally slow and expensive. Those who have grown frustrated with these problems may find solace and assistance in *Grievance Mediation: Why and How it Works*. This book explores the problems of today's popular methods of dispute resolution and offers some practical ideas to make the process more friendly and efficient.

The book is divided into three parts. The first contrasts traditional grievance arbitration with the proposed alternative: grievance mediation. Mediation is promised to be cheaper, faster, and more effective than traditional arbitration while maintaining and improving relations between labour and management (at 17–20). Essentially, mediation is a form of guided negotiation in which an impartial mediator assists negotiators to find a mutually acceptable plan. The mediation process is described in practical, easy to follow stages that may be used to complement arbitration, rather than replace it. Disputes that can be solved in the mediation process will not require arbitration, and there are some statistics included showing impressive success rates of mediation in settling disputes. However both parties must agree to all terms in a mediation settlement, so arbitration may prove necessary in the end. Should arbitration be necessary, issues have, at least, been narrowed and defined in the preliminary mediation stage, leading to a more efficient arbitration.

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Part Two fits grievance mediation specifically into the context of labour relations. Various innovative dispute resolution processes are described as alternatives to adjudicative systems, each of which may be used in conjunction with mediation to tailor the process to fit the needs of an individual organization. The growth and development of alternative dispute resolution in the United States and Australia is described, as well as its preliminary development in Western Canada. Again, studies footnoted demonstrate a glowing success rate of this type of dispute resolution.

Part Three is the most useful section of the book, laying out steps for the design and implementation of a grievance mediation process including answers to practical questions on time limits, how the problem is referred for mediation, who attends, who mediates, who pays, and who has authority to settle under the system. There are also solutions to avoid problems of confidentiality and accountability.

The appendices in this book cannot be overlooked because of their importance to anyone attempting to set up a mediation system. They include draft forms of agreements to mediate and mediator appointment agreements, as well as a model grievance arbitration clause to include in a collective agreement. Helpful and practical inclusions like these make actual implementation of mediation possible.

There are some problems, however, which the authors have failed to adequately address. For instance, what would prevent mediation from eventually suffering the same criticisms that plague the courts and the arbitration system? At one time arbitration was hailed as the solution to the time and expense of a trial. The authors admit that arbitration was originally conceived as a comfortable process that addressed the needs of both parties (at 12). Good intentions did not prevent that system from becoming impractical in many situations. Perhaps the more popular grievance mediation becomes, the more delay there will be before a mediator can assist with the problem, until mediation eventually mirrors the backlog of today's arbitrators.

Another problem with mediation is directly addressed by the authors themselves: if the trained and skilled negotiators on both sides of a labour relations dispute cannot resolve the problem, how will a mediator, who may only guide further negotiation, really help (at 21)? The author's response is that the egos of the

negotiators, which are based on a fear of perceived weakness, get in the way of efficient negotiation. Negotiators may also be lacking in communication skills negotiation techniques, which a skilled mediator may be able to facilitate (at 37). Although a mediator could be hired to assist in the situation, one could argue that the most efficient means of solving these problems would be to simply replace the negotiators with ones who are qualified. A truly skilled negotiator will both have the necessary skills and be able to get the job done in spite of problems with ego or posturing.

Despite these possible problems with mediation, *Grievance Mediation* presents a convincing argument to try, at least, the system. Because of the detailed and practical guide provided, it seems a simple task to attempt, and one which may provide fast and inexpensive results, at least until the system's popularity jams it with request for mediation, resulting in delay or expense.