Six Reasons Why Wrongful Dismissal Cases are so Successful at the ADR Centre

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Ever since the inception of the ADR Centre, wrongful dismissal cases have make up a large part of its caseload. Since the overall settlement rate at the Centre has been quite impressive , it is no wonder that there has been a corresponding high rate of settlement for employment law cases. However, there would seem to some other reasons why wrongful dismissal cases do so well at mediation. In a modest attempt to try to discover why this correlation exits , I offer the following thoughts:

1. **The legal issues tend to be relatively clear.**

   This area , although not simple, is not generally legally complex . The most common issues are reasonable notice, just cause , mitigation and calculation of damages**.** The typical case is not very paper orientated, as it is not unusual to have a case with between five and ten important documents. There tend to be only two parties , the ex-employee and the employer. Thus the pleadings tend to be straightforward and the respective interests of the parties are generally clear from the outset. As you are not dealing with insured interests, the named parties are the key players.

2. **Mediation can deal very effectively with the emotional aspects of a termination and its aftermath**.

   Losing ones' job is rated as one of the most stressful events in ones' life, right up there with death of a spouse and getting married. People often define themselves by their jobs , thus the loss of a job can mean not only loss of financial security but ones very identity . Traditional litigation virtually ignores the emotional side of a dispute , while mediation can help heal the wounds of termination. Sometimes the emotional aspect of the discharge can

be dealt with through a letter of reference or an expression of apology, however in some cases simply having the employee explain how they feel about their dismissal to the employer representative in a face to face meeting can be cathartic.

3. **Plaintiffs welcome lower cost and speedier methods of dispute resolution**.

Wrongful dismissal plaintiffs tend to be working and middle class people who have never been involved in litigation before. It scares the daylights out of them as they believe it will cost them more to litigate the case than they will win. Any thing that can be done to save money , shorten the time frame and increase predictability is welcomed. Mediation fits all these criteria. Plaintiff s' lawyers quickly come to realize that not only do they have happier clients as a result of this process , but that their law practice is more profitable if they are turning over cases on a speedier basis. In other words , happy clients lead to more clients which hopefully leads to a more profitable law practice. Clients do not mind paying for results , thus if you get a good result in a shorter period of time , you can bill the client a premium over your regular hourly rate.

4. **Sophisticated employers recognize that the systemic delay in going to trial can often weaken the employers case and be counterproductive to the organization**.

Most lawyers seem to think that employers like the delay of the litigation system as it gives them the upper hand in negotiating with employees by using the "starvation " principle of negotiation. However I find that most employers realize that terminations cost money and that it is simply part of the cost of doing business in Ontario. As such , sophisticated employers generally see that delaying a wrongful dismissal action can be a waste of company resources for the following reasons:

- In a case where just cause is the issue , lengthy delays increase the likelihood that key witnesses will no longer be in the employ of the company at the time of the trial.
- Preparation and attendance at discoveries , answering numerous undertakings and attending at trial can utilize large chunks of valuable executive and management time.
- Everybody back at the workplace (who still has a job) follows the lawsuit with great interest and gossips about the likelihood of success , who accused who of what and other distracting subjects.
- If the case involves evidence of suppliers or customers, there is a real risk that the business cost of winning the case will exceed the most expensive settlement.

5. **The parties appreciate the informality of the process**

Almost all layman find the physical setup and formality of a trial very intimidating and to be avoided if possible. A mediation , on the other hand, is very much like a standard business meeting and therefore much less scary. A good mediator will make the parties feel much more at ease than a trail judge ever could.

6. **The lawyers know that 99% of these cases settle anyway so why not settle it sooner rather than later.**

Mediation has not so much increased the percentage of cases that settle prior to trial so much as brought about those settlements earlier in the process. It used to be that you did not even have any serious settlement discussions on any but the most straightforward cases until after discoveries. Now you find that people plan the whole litigation process around the mediation because that is when everybody knows you will get serious. Discoveries can often be delayed until after the mediation , with the understanding that part of the mediation will be used to allow the parties an informal discovery of each others client on the critical issues. More and more I find that lawyers are agreeing that they will have a mediation before even starting a lawsuit , as they know that they will be forced into mediation as part of the litigation process. This allows the parties to choose their mediator, a luxury which litigants presently do not have at the Centre.