

## Wealth Preservation & Estate Litigation Practice



e-News from Alexander Holburn Beaudin & Lang LLP

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Barristers & Solicitors • Trade-mark Agents

### Estate Mediation

Estate mediation is an attractive alternative when compared to litigation. We can be your mediator, or we can provide counsel at mediation.

Mediation offers flexibility, informality, without prejudice communication, speed, and early resolution. The people in the dispute create their own solution from a broad range of creative options. Mediation is often desirable because of its confidential private nature and its ability to permit the parties to preserve a long-term relationship without a public feud.

Litigation in court is governed by rigid, formal rules, communications may be used against a party, the dispute is public, the process is slow, and early court dates are rarely available. When a judge is forced to resolve the dispute, the remedies available are limited by strict laws and precedent, and the court decision may be something neither party really wants. Litigation's win/lose structure can force a party to take an extreme position, and then defend that position all the way until the end of a trial, which can take place several years after the dispute began. The court imposed decision may lead to an appeal, or new difficulties in the collection or enforcement of the court order.

Although mediation is an attractive alternative, mediation is not "easy" and, like litigation, requires a significant investment in preparation, fact-finding, communication, and creative thinking. Mediations can be emotionally demanding, especially in a family setting. Litigation usually involves property interests, and claims are usually expressed in dollars. In mediation, if the parties decide it is useful or necessary, issues surrounding non-material emotional and spiritual values, and personal actions, may be explored.

Mediation may be used to permit discussions among family members regarding a parent's estate plan, while the parents are still alive, as an "ounce of prevention" instead of litigation's "pound of cure". Mediation is also a safe setting for discussions regarding the care of an elderly or frail family member, to satisfy concerns in a manner which does not force someone to make serious allegations against another person, before all the facts are known, in order to get some answers.

Our lawyers have provided counsel to a wide variety of clients, in many types of estate mediations.

Some of these mediations involve millions of dollars and multiple parties, with weeks of court trial time on the horizon. Others simply clear up a misunderstanding: “I had to buy a van to drive our mother around to her medical appointments”.

We are able to act as a mediator at any stage. We would be pleased to discuss with you the use of mediation to resolve ongoing litigation, or to permit an open discussion before litigation is commenced.

To find out more about Alexander Holburn's Wealth Preservation and Estate Litigation Practice, contact Practice Group leader, **Andrew MacKay**, at [amackay@ahbl.ca](mailto:amackay@ahbl.ca) or visit our website at [www.ahbl.ca](http://www.ahbl.ca).

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