

"Mediation in conflicts involving the elderly requires a special approach"

By Deborah Lynn Zutter & Arlene H. Henry

Our population is aging. There are – and will continue to be – many conflicts in which an elderly person is central.

Our experience leads us to believe that the nature of these conflicts requires a special approach on the part of the mediator:

What types of conflicts might involve, directly or indirectly, an elderly person? Here are some examples:

Estate Planning

- * Where siblings are concerned about one or both parents' intention to "cut out" one child from the group of beneficiaries to their estate.
- * Where a widowed or divorced parent, with adult children, is contemplating marriage to another person who also has adult children.
- * Where a widowed or a divorced parent with adult children has married a much younger person, perhaps after a very short courtship.
- * Where a divorced or widowed parent, with estranged adult children, has a long-term, childless marriage with another person.

Estate Conflicts

- * Among the surviving spouse of a deceased and the deceased's adult children from a previous marriage.
- * Amount adult children and stepchildren.
- * Among siblings where the disposition results in unequal control/use of assets.

Dependant Adults

- * Between an elderly person and his/her adult children over how he/she will live.
- * Between an elderly person residing in a communal setting and her or his neighbour.
- * Between an elderly person and her/his physician over medical treatment .
- * Between an elderly person and the staff/management of a residential/retirement facility.
- * Between siblings over how one sibling is managing the elderly parent's estate.
- * Between sibling over medical decisions to be made for a terminally ill parent.

What is special about estate and dependant adult mediation?

There are several common themes in the foregoing examples:

- * Most of the participants are involved in a conflict over someone else's money or independence. There are issues over rights, control, fairness and grief (whether over diminished capacity or the loss of a loved one).
- * Families are being reorganized. Often past service of devotion to the dependant is viewed as a future debt owed to the caregiver.
- * A role-reversal between the aging person and the adult children, stepchildren or caregivers is occurring wherein the independence of the aging person is being negotiated.

* Trust and respect among the disputants is lacking or questioned, creating an extra-sensitive atmosphere. Frequently the disputants have had relationships spanning many years. Not surprisingly, unresolved conflicts exist and will impact on the mediation of the dispute.

Given these common themes, mediators of estate or dependent adult disputes need to be sensitive to the perspective of the elderly person, be patient and aware of the danger of condescending behaviours (e.g., Does the mediator raise his voice when speaking to an elderly person?).

They also need to be alive to the high likelihood that the mediator and the elderly person, as well as other persons in the room, hold different value systems.

They need to be alive to cultural differences in the definition and/or expectation with regard to the care of dependent adults and be sure to check their own assumptions about who is the dependent.

They need to make inquiries about abuse (physical, emotional and financial) and to assess capacity, being mindful that evidence of disorientation may be the result of medication imbalance.

Mediators of conflicts involving aging persons or dependent adults may want to learn more about gerontology and diseases that affect the aging adult.

This article was adapted from a workshop presented at the Interaction 2000 Conference of the Network: Interaction for Conflict Resolution, which took place in Vancouver in June.

Arlene Henry is a mediator and lawyer in Vancouver. Her solicitor's practice includes working with various First Nations across Canada.

Deborah Lynn Zutter is a lawyer and certified family mediator in Vancouver. She is the past chair of the National Alternative Dispute Resolution Section, Canadian Bar Association.

<<PUBLICATION DETAILS >>

- * Publication:
The Lawyers Weekly
- * Date:
July 21, 2000
- * Page(s):
12
- * Publisher:
Butterworths
(www.butterworths.ca/tlw.htm)