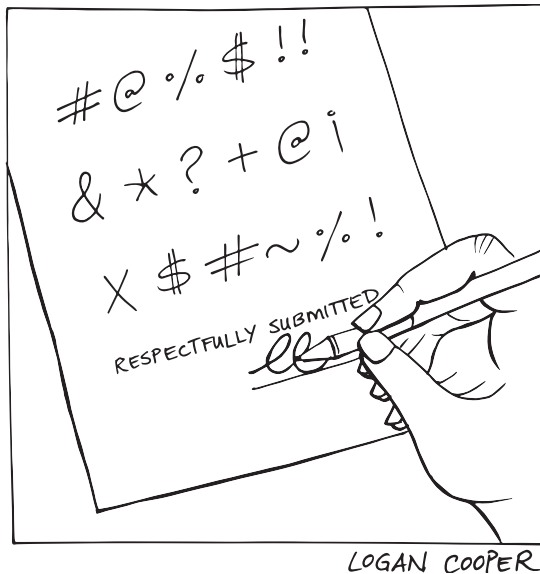


“Not-So-Respectfully Submitted”



Sometimes I read mediation memoranda that deliver hard hitting points, blunt positions and frank messages that border on being rude or insulting. Invariably, this rather harsh memorandum concludes with “Respectfully submitted”. Mediation memoranda are an excellent opportunity to try to manage the parties’ expectations as they prepare for a mediation, but it’s important to make sure that your brief comes across in a way that is palatable for the recipient.

While most people involved in a lawsuit are professional litigants, it’s important to remember the plaintiff is not. Some plaintiffs who read a defence brief in advance of a mediation will be shocked to learn that they have serious challenges to overcome in their case in order to be successful. While the content in these memoranda is extremely important itself, we must not lose sight of the need to be attentive to how the content is delivered. I have witnessed how tone and word choice in a mediation brief can completely derail a mediation even before it begins. Plaintiffs will come to a mediation with their back up and ready for battle – it’s certainly not ideal when the goal should be to engage in civil, thoughtful settlement discussions. When this written message is repeated or amplified as part of an opening statement, lawyers for plaintiffs face an additional challenge of keeping their clients at the table, engaged, interested and open to thoughtful negotiations.

The converse is true when a plaintiff lawyer delivers an extremely lengthy mediation memorandum which attempts to summarize almost every document produced in the litigation.

Frequently, the opening statement follows the form and content of the memorandum. A busy insurance claims professional is unlikely to devote the time and energy to read such a comprehensive document and is usually put off by what they perceive to be a lecture from counsel for the plaintiff. This is unfortunate; the vast volume of material delivered frequently means great content and ideas get lost in the mix.

Rather than paying lip service to “respect,” draft your mediation memoranda and construct your opening comments in a truly respectful manner. If you strive to avoid inappropriate language, harmful tone and unnecessary length in your mediation memorandum or opening statement, you may be pleasantly surprised by the way your submissions are received.

Logan Cooper joined the Cooper Mediation team in November, 2017 and now devotes 100% of her professional time to mediation. Contact Logan at: logan@coopermediation.ca or (416) 726-1344. Alternatively, you may view Logan’s Online Calendar to book a mediation: <http://www.coopermediation.ca/logan-coopers-online-calendar/>.

"[Logan's] strengths are her obvious intelligence, ability and (dare I say it?) training..."
- Senior Defence Counsel