



POINT COUNTER POINT
RESOLUTION CONSULTANTS

Practicing Preventative Law – Mediation through Understanding

Mary lives in Regina. She is married and the mother of two. While she likes to call herself a stay-at-home mom, she works part time at Robin's Donuts and also works part time as a realtor. Her life is full. She has recently received news of her mother Emily, who lives alone in her own home. She is 86 years old and has been diagnosed with Alzheimer's disease. Emily is fiercely independent, but has twice recently locked herself out of her own home. The last time, the police called Mary after Emily was found at night on a park bench in Wascana Park.

Robert is Mary's husband. He has a union job at the local steel plant, working near the blast furnace. He is 43 years old and is exhausted. He knows he can't stand the heat and heavy labour required of his job.

Peter is Mary's older brother. He lives in Calgary and works as an oil executive. He anxiously watches the price of oil every day. Each time there is a dip in the price of oil, Peter sees pink slips handed out to his colleagues. He feels he is in a precarious situation. Peter travels between the head office in Calgary to branch offices in Houston and Estevan. He travels at least twice a month.

Mark is Mary's younger brother. He works in a diamond mine north of Yellowknife, NWT. He flies in and works for six weeks and then is flown out for a two-week break. The work is lucrative but isolating.

Mary feels a strong sense of obligation to her mother. Emily was a single parent who worked tirelessly to raise her three children. Now her independence is slipping from her and the sense of panic she feels has caused her to reach out to Mary for help.

Mary has hired a lawyer. She wants her mother to sign a power of attorney. She knows her mother has a will but does not know its contents. Her lawyer told her it may be too late for her mother to sign a power of attorney. Her competence will need to be assessed. It may be necessary to apply to the court for an order of guardianship.

Mary has looked into nursing homes. At worst, elderly people are warehoused in large institutional buildings. Mary feels that if Emily is restricted to a nursing home she will not last long. What Mary really wants is to have her mother live with her and her family. She would quit her outside work. Robert, tired and frustrated, is resentful at the prospect of

caring for his mother-in-law. While home finances have been stable, he knows they cannot make ends meet without Mary's work outside the home.

Mary consults with her brothers. Both want to put their mother in a nursing home. The waiting list to get into a nursing home is 18 months. Mary has arranged for home care but more frequently than not, Emily will not answer the door. She is afraid of intruders. Frequently, Mary has gone over to let home care in. Mary knows home care is not a solution.

Mary organizes a teleconference with Peter and Mark. Her husband joins in.

Robert: Listen you two, something has to be done with your mother. She can't live on her own and Mary can't take this on herself. Can either of you come and help?

Mark: You know I work in the mine. I come out once in a while but I can't afford to pay for the travel. Mary, you live in Regina. Are you not able to handle this? Why are you expecting me to drop things and come down?

Peter: I have no time. My job is on the line and I can't take time away. If you can't handle it Mary perhaps it's time to look into a nursing home.

Mary: There is an 18 month waiting list. Have you seen those places? I can't put mom in there. I did talk to a lawyer about this and –

Mark: What the hell! Since when do we hire lawyers to solve family problems? What's going on Mary?

Mary: Actually, my lawyer suggested mediation.

Peter: Yeah, I've been through mediation before. Everyone behind closed doors while the mediator tries to cut a deal.

Mary: That's not what my lawyer is suggesting. He's suggesting new: Mediation through Understanding.

Mediation through Understanding was first developed by Gary Friedman and Jack Himmelstein as a markedly different way in which to resolve disputes. Their method is taught through Harvard Law School, Program on Negotiation. Their book *Challenging Conflict* © 2008 American Bar Association sets out a dispute resolution process where the disputing parties, guided by a trained neutral mediator will guide the parties to a deeper understanding that lies beneath the surface to the dispute. The parties to the dispute do not meet privately with the mediator. The mediator does not shuttle back and forth trying to broker a settlement. Instead the dispute is discussed together. The parties explore their own interests in the dispute. They brainstorm ideas and consider options.

In Mary's situation the mediator guided the parties to the common interest of properly caring for their mother. Mary came to understand the responsibilities Mark and Peter were under. They in turn accepted that Mary could not accept the care of their mother without financial help. Robert's position softened when he discovered the possibility of a common solution.

At Point Counter Point Resolution Consultants both styles of mediation services are offered. Kellan Gulka-Tiechko and Heather Carnegie are both trained mediators in the traditional methods of mediation. Rodger Linka is trained through Harvard Negotiation Institute in Mediation through Understanding.

Mediation is a growing and effective alternative to dispute resolution. A dramatically reduced cost to litigation, mediation offers a solution to all forms of dispute and disagreement. Point Counter Point Resolution Consultants offers resolution in the following areas:

- Commercial disputes including construction issues and breach of contract
- Employment - dismissal, work place grievances including claims of harassment
- Labour management disputes
- Elder Law - mediation of disputes related to the elderly and estate administration entanglements
- Divorce, division of property and parent-child responsibilities

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