

The Implications, Challenges and Impacts of Apology: A Canadian Cultural Interpretation

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Abstract

The use of apology as a conflict resolution tool can make significant steps towards resolving a conflict depending on when it is presented, how it is conveyed and the sincerity of the action. In any conflict, there are social, psychological, legal, moral and tactical considerations that exist which will influence a party's willingness to give an apology. The aim of this paper is to identify the fundamental motives for apologizing that contrasts both the cultural and legal ramifications created by an apology. These contrasts will be referred to as the *apologizer's dilemma*. This paper will look at the role apology plays in mediation, coupled with an overview of the pre and post mediation factors that affect whether an apology will be given and how that apology may be received in a Canadian context.

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1. Introduction

Apology is a complex issue fraught with challenges for the legal and mediation community. There is an intertwined matrix of social, psychological, cultural and legal factors that both encourage apology and conversely inhibit it. For the person contemplating an apology (hereafter referred to as the *apologizer* or the *offender*) these factors are complex and challenging as a person navigates their way through the resolution of a conflict. In fact, individuals are faced with various opportunities and obstacles to offering an apology and these conflicting variables will be referred to in this paper as the *apologizer's dilemma*. The role of this paper is to provide an overview of the competing factors that both encourage and reduce the likelihood of an apology in the Canadian cultural, mediation, and legal framework. Specifically, it examines the apologizer's dilemma in the context of a wrongful act committed by one party which causes harm to another party and where issues such as liability, breach of duty, negligence, and personal injury are at issue (but the matter is non-criminal). These wrongful acts are commonly referred to in the Canadian legal system as torts.

The paper begins with a definition of apology. The usefulness of apology and the distinguishing characters of a *basic apology* versus a *full apology* are outlined. The basic motivations for apology and its benefits are explained. In the third section, the discussion turns to ever present factors that influence an individual's propensity to provide an apology. Included in this discussion are the challenges of apology for the apologizer and the *apology receiver* (or *victim*), the timing of apology, and the cultural context. The mediation process and the dynamic ebb and flow of factors that will encourage the production of an apology, or prevent one, follow in the fourth section. In the fifth section, the consequences of moving a conflict into the legal arena and the impact of the legal system on the apologizer's dilemma are considered. The new apology legislation in Canada and how this legislation could impact the apologizer's dilemma are analyzed in closing.

2. The Definition of Apology

Apology was defined by Pavlick (2003) as: "an acknowledgement intended as atonement for an injurious remark or act - and admission from one person to another of a wrong, accompanied by an expression of regret" (p.834). Apology is an action of moral character that serves as a fundamental basis for resolving disputes and addressing hurt feelings that are associated with a perceived wrong (Pavlick, 2003). For an apology to be effective it must first be voluntary and it must also communicate emotion in a manner that is believable to the victim (Petrucci, 2002). The core element of an apology consists of:

- (a) An expression of regret or remorse;
- (b) Open acceptance of responsibility; and,
- (c) A genuine offer of repair, restitution or compensation and a promise to avoid similar future behavior (Petrucci, 2002) (Taft, 2005).

Hence, the effective apology serves to repair the frayed or severed relationship and allows the victim and offender to regain their internal needs for esteem and belonging thus creating affiliation in the moral community (Fadiman & Frager, 1976).

Apologies are not all equal and it is important to note the different types. A *basic apology* consists merely of an expression of sympathy from one party to another; for example, if someone is injured in an accident the average Canadian normally does not hesitate to say "I am sorry for what happened." In the basic apology, the apologizer has not accepted responsibility or fault for the pain and suffering of the injured party. Also, the basic apology is unlikely to resolve a wrongful action that caused significant harm and/or suffering to an individual.

As the seriousness of an offence escalates, the weight of the apology must increase in order to more fully acknowledge the harm caused to the victim. A *full apology* offers much more than the basic apology by moving beyond simple expressions of sympathy. The full apology accepts responsibility for the harm caused, acknowledges the victim's injury and suffering, shows empathy for that suffering and offers to do whatever is necessary to relieve the pain of the victim and prevent a similar circumstance from happening again (Taft, 2005). The full apology requires more consideration on the part of the negligent party, as compared to the basic apology that is suitable for minor slights.

After a wrong has occurred, the apologizer's dilemma presents itself almost instantly. The offender is met with the immediate challenge of trying to figure out precisely how to properly apologize and appropriately gear the apology to the severity of the associated harm. Consider the following example: after a botched surgery, a medical professional simply says "sorry for the loss of your limb," without any further concessions. An apology of this nature would reasonably be assumed to increase anger and resentment of the patient thus rendering the apology completely useless. Therefore, the potential apologizer in any situation might first make note of the severity of the victim's suffering. The apologizer might also want to consider what core elements of apology will be needed to ensure the highest probability that the apology will be accepted and that the apology will have a positive impact on the conflict situation. Although these considerations are of importance, Kellerman (2006) notes that an imperfect apology, in most circumstances, is better than no apology at all.

2.1 Basic Motivations for Offering an Apology

What prompts individuals to apologize? Lazare (1995) states that there are four basic motivations. The first motive is to salvage or restore a relationship. In this circumstance, an offender has hurt someone that they care for and the desire to protect that relationship for the long-term overcomes the variables (such as pride) that would have inhibited them from offering an apology. The second motivation is apology for purely empathetic reasons. In this example, the apologizer experiences sincere regret for the suffering they have caused the victim and apologizes to diminish their pain. The third motivation is perhaps less virtuous: apologizing to escape punishment. In some circumstances an individual may believe that an apology will satisfy the victim to the point where the victim no longer pursues damages for the wrongful act. The relief of a guilty conscience is the fourth basic motivating factor for apology. When the offender is ashamed of his/her actions and troubled by the victim's suffering, they are motivated to apologize in an effort to relieve feelings of guilt. The apologizer is attempting to maintain a sense of self-respect because they are troubled by their actions and therefore apologize in an effort to preserve their sense of self. The individual is motivated to apologize for a variety of different reasons. A majority of the reasons leading to an apology relate to the personal benefit for the apology giver, displaying a focus on benefits to self rather than altruistic motivations.

2.2 The Benefits of Apology

The initial benefit of receiving an apology, from a victim's perspective, is a feeling of empowerment (Pavlick, 2003). When an injured party hears an apology from an offender, it places the victim in a position of power. This is due to the fact that the offender has made a concession and now requires the acceptance of the victim to successfully complete the act (of apology). The victim also has the power to reject the apology if it does not meet his/her expectations. In addition to feelings of empowerment upon hearing an apology, a victim can also experience feelings of relief. To hear the offender accept responsibility, convey sympathy, and show remorse may provide a victim with an opportunity to release their feelings of resentment and anger toward the offender (Pavlick, 2003). Also, receiving an apology can sometimes initiate and encourage healing for the victim (Rehm & Beatty, 1996). A full apology can allow a victim to see that the offender feels guilty for the harms they have caused and can encourage forgiveness, thus allowing them to move forward.

Apology also offers important benefits to the offender. Apology allows an offender to “save face;” i.e., demonstrate that they may not be as bad of an individual as the victim might perceive them. The act of apology can also allow an offender the chance to express their feelings of shame, guilt, and sorrow over their actions (Cohen, 1999). The opportunity to show these feelings to the victim can serve to repair the relationship between the two parties (Dezan & Barling, 2006). In addition, it allows for an offender to contribute something beyond monetary compensation to repair the damages caused by their actions (Tucker et. al. 2006).

3. Competing Factors Influencing the Decision to Apologize

The basic motivations and benefits of apology acknowledged, there are other key and ever present factors that serve to complicate the decision to apologize. The aim of this paper is to exemplify the apologizer’s dilemma in both the mediation and legal process; but, before delving into these specific contexts, we see that the victim and offender’s potentially negative perception of what an apology will mean for their situation, timing, and greater cultural attitudes in Canada play a role in apology. These factors underlie whether apology can be part of the mediation or legal process. This paper will make the linkages, but first lays the groundwork of the dilemma of apology.

3.1 The Challenges of Apology

While apology can present benefits for both the apologizer and the injured party, in reality, for every benefit there can also be an associated cost. In many ways, apology offers both benefit and challenge for the same reason. As previously noted, one of the benefits to the apology receiver is empowerment to accept or reject the apology. At the same time, providing an apology also places the victim in a position where he/she is required to decide whether they can forgive the offender. Some injuries may not be repairable through apology. In addition, some victims may not have clearly thought about whether they are willing to forgive the offender. The victim may also be put on the spot; that is to say, having to decide to accept or reject the apology and determine if it meets their expectations of offender’s remorse, regret, and/or offer of compensation etc. The act of apology may have significant meaning to the victim but if the apology only goes halfway towards meeting their expectations they are then placed in the predicament of deciding if the apology is enough for them to accept and move forward. Depending on the nature of the wrong, the level of pain and suffering caused by the offender and the quality of the apology provided, the apology receiver can be placed in an overwhelming circumstance.

Turning to the apologizer, we also know that he/she can be faced with challenging obstacles. This is particularly true when the apologizer may wish to show that they are morally conscious but given the circumstances, they may not want, or believe it is right, to accept full blame for a particular offence. Providing an apology can also make the offender feel vulnerable because they have to admit to their wrongs (Pavlick, 2003). Furthermore, egocentricity plays a factor. The highly egocentric are unlikely to appreciate the suffering of another individual; thus, it is difficult to generate a willingness to show remorse through the action of apology (Pavlick, 2003; Lazare, 1995). The offender may harbour concerns that a failed apology will permanently damage the relationship creating a long-lasting grudge. Finally, the offender’s request for forgiveness could be rejected. In this example the offender could be going out of their way to offer an amends to the situation only to realize that their effort was completely unproductive (Schneider, 1999). Feelings of bitterness may increase, making resolution of conflicts all the more difficult in situations of this nature. Deciding to apologize is no easy task. There are numerous challenges that confront the offender creating great discomfort over the decision to withhold or provide an apology.

3.2 Canadian Cultural Considerations

There are several cultural factors underlying the decision to issue an apology or refrain from the act. First, we know that children observe and often imitate adult behavior. They get a sense of the value of apology based on what they observe. According to Pavlick (2003), as result of this observation, an individual's inclination to use apology may be increased or decreased. Second, North American countries such as Canada tend to value autonomy and independence (Levi, 1997). In turn, this has created an overall cultural tendency to place greater emphasis on winning over moral healing (Taft, 2000). In fact, the act of apology is "antithetical to the ever-pervasive values of winning, success, and perfection" (Lazare, 1995, p. 1) because it is viewed as both a sign of weakness and an admission of liability (Schwartz, 2004). Third, and in addition to these pervasive cultural attitudes, Haley (1986) has noted that within individualist societies there is a tendency for people to focus on formal practices and procedures as opposed to informal gestures such as apology.

The focus of many of the Canadian dispute resolution processes is generally not on the psychological needs of the victim or the offender. It is more focused on ensuring that the offender and victim are appropriately identified; and, that both parties receive a fair process, identifying who is guilty and ensuring that justice has been done (Haley, 1986). Furthermore, the standard expectation of the Canadian legal system is a presumption of innocence until proven guilty. As a result, there is a disincentive to apologize because it is construed as an admission of guilt, which is illogical if persons are to be considered innocent until proven otherwise. Adding further incentive to this rationale is the Canadian cultural focus on punishment for wrongful acts (Haley, 1998). This focus on retribution values the commission of apology with less significance as it relates to addressing the victims harm but does not punish the wrongdoer and exemplify the consequences of repeating similar behavior.

Canadians experience a widely held societal view that everything has a price and therefore the admission of wrongdoing equates to a need for monetary compensation to redress the harm. This also relates to the idea that payment can restore the damage of wrongdoing; thus, many of the resolution processes concentrate on calculating the reasonable value of that harm and ignoring the value of other things like an apology (Taft 2005). This understanding of Canadian norms is bound to influence (perhaps unconsciously) an offender's decision to apologize.

Clearly the above mentioned cultural traits are only general rules applying to Canadian society. There will always be exceptions based on the values held by certain communities, and specific individuals within them. The key and overarching perspective to understand is that many Canadian systems do not lend themselves towards the encouragement of apology, or to widespread understanding of the value and benefit that an apology can provide. Rather, Canadian society is overall more inclined to refrain from apologizing for the multiple reasons noted above making cultural considerations a key and ever present contributing factor to the apologizer's dilemma.

3.3 Timing

The timing of apology is also a factor that influences its effectiveness. Note that the impact of timing will be discussed further as it becomes specifically relevant to the mediation and legal processes; however, the pervasive influence of timing on a macro scale must be acknowledged.

Timing of an apology is of the utmost importance because if the apology takes too long, it may eventually be too late for the victim to accept and forgive the offender (Petrucci 2002). The amount of time one has to apologize before this happens depends on the victim and the circumstances of the offence but the apologizer should consider that it could, at some point in time, be too late for an apology to be accepted.

To further complicate the apologizer's dilemma, the apologizer must also recognize that it is actually sometimes better not to provide an apology too soon after the harm has been caused. Research conducted by Frantz & Bennisson (2005) indicated that the timing of an apology is of critical importance to its impact and effectiveness. Results showed that apologies provided later in a conflict were more effective than apologies provided early in the conflict. They noted that the conflicting parties reach a certain level of "ripeness" that enhances the effectiveness of the apology if given at that point in time (Frantz & Bennisson, 2005). It should not be underestimated, however, how complicated knowing when to apologize really is for individuals. As stated by Levi (1997), the timing of an apology is an issue of critical importance but there are no formulas to determine when it is a good time to apologize.

The first time an individual apologizes is likely to give the most impact and potential for acceptance by the victim; thus, it may be important for the apologizer to realize the significance of this action and make sure that an effort is made to do it correctly. The apologizer may wish to give some thought to the severity of the offence and consider what core elements of apology will need to be addressed to create the highest probability that the apology will be accepted.

4. The Role of Mediation in Producing and Preventing an Apology

Mediation is in many ways one of the best opportunities for an offender to provide a full apology to a victim and have the victim warmly accept it. One of the first reasons mediation is beneficial to the act of apology is that it provides a zone of protection for the apologizer. This allows the apologizer the opportunity to overcome some of the culturally ingrained disincentives, such as those outlined in Section 3, to offer an apology.

Why is mediation conducive to apology? There are several reasons. First, there is the aspect of confidentiality in the mediation process. Before engaging in mediation, disputing parties have their lawyers draft a confidentiality agreement using the term "without prejudice". Once both parties have signed a "without prejudice" confidentiality agreement aimed at settling a dispute, it creates a legal privilege (M. Maloney, personal communication, 26 March 2006). This legal privilege means that all communications (notes and information) presented within the mediation, including the notes of the mediator, are generally treated as inadmissible in common law (M. Maloney, personal communication, 26 March 2006). Further, the mediator cannot be pulled into court to testify about statements made in the context of the mediation (Gray, 1998). This standard of common law practice is subject to a few exceptions, such as a duty to report inappropriate conduct involving children or the uttering of criminal threats (Gray, 1998; Morris, 2003). Further exceptions include information that is discoverable outside of the mediation context. If an individual made a statement in the mediation that informed the opposing party of something they did not previously know, the information is not protected if a party could discover evidence to prove the fact of that information, on their own account, outside the mediation process. It is unlikely, however, that an apology would be admissible in court as result of this exception. The sum effect of these measures is that if the offender was to apologize, both the apology itself and the admission of liability would not be privy to the courts. This legal privilege provides a "zone of safety" where a party can offer another party a full apology and the apology is kept separate from the trial, should the conflict move to the legal arena (Morris, 2003).

Second, the private and confidential nature of the mediation process encourages open communication between the disputing parties (Pavlick, 2003). As stated by Petrucci (2002), "face-to-face interaction provides the most expedient means to communicate emotion thus leading to effective apology being offered" (p.344). Not only does the mediation process provide a good environment for the commission of apology, but the focus on the interests of each party encourages discussion that moves beyond determining the amount of monetary compensation to be awarded for damages. The focus on each

party's interests can provide the victim the opportunity to communicate how they have been harmed and what they might need to hear from the offender to be able to begin healing.

Third, the mediation process may further encourage apology as the face-to-face open communication combined with a focus on party interests mesh to create the necessary degree of "ripeness", that is to say optimum timing for an apology. Research conducted by Frantz & Benningson (2005) showed that "feeling heard and understood increases a victim's faith in the 'good' part of the offender, by helping the victim to believe that the offender knows what he or she did wrong, and why it was hurtful to the victim" (p.202). Furthermore, as a result of expressing themselves and feeling understood, the victim may be more inclined to accept an apology (Frantz & Benningson, 2005). The mediation process with the correct third party is a relatively ideal setting because it attempts to identify both the positions and respective interests of the involved parties. It is the consideration of party's interests, the direct face-to-face contact that is an ingrained part of the process, and the amounts of party autonomy and control that creates an ideal environment and "ripeness" for a full apology to be provided and accepted.

Finally, the mediation process is flexible. Specifically, mediation allows the flexibility for parties to negotiate the nature and terms of an apology. In fact, not only is it possible in mediation to create the right timing and environment for an effective full apology but the offender and the victim can discuss how the apology will be conveyed and what actions and/or damages are necessary to alleviate the harm caused. This is slightly different than the legal process where an offender can provide an apology but a judge or jury would determine the impact that apology will have on the determination of liability and awarded damages.

It has been demonstrated that in many ways mediation is the ideal environment for an apology; thus, one might question where the apologizer's dilemma exists and why parties don't always automatically apologize in mediation? The reasons that individuals in mediation may not apologize can be traced to obstacles outlined earlier in this paper: egocentricity of the offender, a genuine lack of remorse, fear of being rejected, and the strong desire to avoid a perception of weakness. Also, due to cultural factors that place little emphasis on moral healing, it is possible that the notion of apology could be totally overlooked by a mediator who is focused solely on the bottom-line (Pavlick, 2003).

Apology may also be inhibited by the fact that in general practice, lawyers are involved in advising parties before, during, and after the mediation process. As stated by Morris (2003) "lawyers are bound to make sure they protect their clients from adverse consequences in case the matter ends up before a judge" (p.5). As a result, lawyers frequently caution their clients against making pre-trial statements which could be admitted if the issue goes to trial (Morris, 2003). The advice of the lawyer could have a significant impact on apology pre and post mediation. Although mediation offers a "safe zone," some individuals might not be willing to take any chance that their apology could eventually act as an admission of liability. Thus, the key dilemma in this situation is that it may be morally correct to apologize, but due to legal considerations (even within a mediation process that protects them) the offender might still refrain for fear of the consequences.

Lawyers and offenders may also harbour concerns that a full apology could harm the strength of their negotiation position for settlement at the mediation stage. In this circumstance, the offender is again faced with a dilemma. On the one hand, they may want to provide an apology because they feel guilty and it is morally correct. Apology properly stated and timed might settle the issue and the victim may no longer pursue damages. On the other hand, the offender might also be concerned that providing an apology will only strengthen the victim's case allowing them to dig-in their heels and ask for a significant proportion of damages. The offender may also fear that their apology will not be judged (by the victim) to be good enough, potentially increasing the anger of the victim which makes resolution all the more difficult in the mediation process.

Another factor that adds increased complexity to the apologizer's dilemma relates to circumstances of malpractice. Insurance companies can provide an added element of concern. For example, a dental patient requires a full apology to achieve closure over an incident in the dental office; however, malpractice insurance agencies often warn that an apology may risk compromising the dentist's malpractice insurance. This acts as a disincentive to apologize even if the dentist genuinely feels an apology is necessary and is willing to provide one. The financial impact of the lack of insurance coverage adds complexity to the issue (Schwartz, 2004). The Director of the Professional Liability Program (PLP) at the Royal College of Dental Surgeons of Ontario, Don McFarlane (2004) stated:

What needs to be avoided, however, is saying anything that might be construed as an admission of liability. Such admission may preclude an insurer's ability to defend the dentist and thereby lead the insurer to deny coverage. This is likely the position that all insurers would take, not just the insurer used by the PLP (Quoted in Schwartz, 2004, p.450).

In sum, although mediation is in many ways the ideal time and the ideal place for an apology, there are still significant issues such as fear of liability that can inhibit the offender from being forthcoming with an apology. Mediation, then, unfortunately does not solve the apologizer's dilemma.

5. The Apologizer's Dilemma in the Canadian Court System

While the mediation process is imperfect, it still offers a highly conducive environment for apology. The same cannot be said for the Canadian court system. Within the Canadian dispute resolution continuum, the court system is not by its nature encouraging for either the provision or genuine acceptance of an apology. As stated by Petrucci (2002):

Offenders do not have to testify, seldom face their victims, and can proceed through the entire adjudication process without discussion of their actions or motivations except in private communications with their attorneys (p.356).

The courts are both adversarial by nature and dominated by lawyers; thus, there is likely no ideal opportunity to apologize should one wish to do so. Furthermore, "in the case of car accidents, professional errors and other civil wrongs (unintentional 'torts'), the popular wisdom is that persons who face the prospect of being blamed should avoid apologizing or making statements about the incident in question" (Morris, 2003, p.1). An ever present assumption exists that the expression of sympathy can be perceived as an admission of fault, which can subsequently be construed as an admission of liability (Pavlick, 2003). The legal system represents a process that provides little opportunity for an effective apology to occur.

The conciliatory nature of an apology is almost completely antithetical to the adversarial nature of the court system. The court system perpetuates a 'win lose' focus in an adversarial process that shifts the offender's attention away from moral concerns, such as whether apologizing would be the right thing to do, and towards one's legal defense including tactics that will assist to secure a victory (Alder, 1999). This is not favorable to encouraging apology in any way.

If the aforementioned challenges of the court system are not enough to completely inhibit the expression of apology there is the added dilemma of the inverse relationship between an effective apology and legal liability. In Canada, the "common view is that an apology equates with an admission of legal responsibility" (Special Report No. 27, 2006, p.9). In practice, however, giving an apology before or during a legal proceeding, and outside of mediation, does not constitute a complete admission of guilt in every circumstance. What is true is that an apology is most often used as a form of evidence (testimony)

in an attempt to prove a defendant's level of responsibility (Morris, 2003). An apology may be used as evidence but it does not always prove guilt or liability. The liability implications of an apology will depend on whether the statement made includes things like a confession, an admission of fault, an acceptance of responsibility and an admission of negligence, or specific statements that would likely prove the elements of the plaintiffs' case (B. Berger, personal communication, 26 March 2006). Thus, the way in which an apology can be used as evidence in the Canadian legal system adds to the apologizer's dilemma because a full apology, which is most likely to positively impact the victim and mitigate the conflict, presents the greatest legal risk to the apologizer because it is likely to completely "jeopardize one's defense in a court case" (Alder 1999, p.2). Providing a basic "I'm sorry" apology is unlikely to prove the offenders liability in court, however this apology likely does little to positively impact the injured party. Thus, it seems that once the legal system is involved the more effective the apology might be to satisfying the needs of the victim, repairing the relationship and allowing the victim to heal, the greater the potential legal consequences are for the apologizer. As a result, "the conventional legal wisdom (not to apologize) would seem to be sound advice for a defendant whose only goal is to avoid criminal culpability or civil liability" (Alder, 1999, p. 3). One large component of the apologizer's dilemma once engaged in the legal system is that the better the apology is at addressing the victim's harm the more dangerous the potential consequences for the apologizer become.

There are additional challenges that increase the complexity of the apologizer's dilemma beyond the process and structure considerations of the legal system. By the time the conflict has matured into the legal realm, the victim may consider it absolutely too late for an apology to be effective. Again, it is the underlying factor of timing. As stated by Petrucci (2002), the longer someone waits to provide an apology the less likely it is that an apology is to be accepted. Levi (1997) adds further support to the challenge of waiting too long when stating "at each stage, each party develops an increased sense of entitlement, and, as more tangible remedies become attractive and constituencies begin to urge victory rather than reconciliation apology becomes more remote" (p.1197). The victim may become further aggravated by the fact that the offender provided a full apology in the mediation stage but, for one reason or another, a settlement may not have materialized in the mediation stage. As a result of the protections provided in the mediation process, the victim is faced with the intolerable situation of having to prove liability beyond a reasonable doubt in the courts for something that the now defendant, has already admitted too (Taft, 2005). Once the conflict is converted into the legal system the offender who admitted to fault in the mediation stage is now entitled to abstain from accepting any liability, thus pleading not guilty. This exemplifies the dilemma of apology between the Canadian mediation and legal system.

Even if an apology was to be given in the context of a legal proceeding, it is important to consider that the nature of the court environment itself is not conducive to production of a genuine heartfelt apology. The courtroom is not encouraging of one-on-one open communication between the victim and the offender in a manner comparable to that provided in a mediation setting. As stated by Alder (1999):

The tenderness of informal, heart-to-heart apologies will not be achievable through these processes, which by virtue of being part of a larger legal process, are to some degree bureaucratized, formalized and carefully scripted. So, the opportunity is not great for truly personal and moving apologies – of the sort that involve the baring of the apologizer's soul and the shedding of tears – to occur (p. 7).

Even when an apology is provided in the courts to ensure that the apology is not interpreted as an admission of liability, the language of the apology is sometimes carefully crafted. This can frequently create apologies that sound insincere or not even like an apology at all (Pavlick, 2003). Concerns of liability not only affect whether an apology will be provided but how an apology is provided.

Given all of the cultural, personal, and systemic factors present in the legal system that inhibit the presentation of an apology, it is questionable whether an apology should ever be provided in the courts. Yet because there remain factors that will still influence an individual to apologize, it suggests an important role of apology in the courts despite the obvious challenges. Some of these factors are those previously identified as a need for individual's to save face, reduce feelings of guilt, and provide something to the victim beyond monetary compensation. There are also alternative variables that can influence an individual to apologize. One situation in which individuals might apologize is to minimize the amount of damages awarded to the victim when the offender is fairly certain that they will be held liable for the harms caused. This is sometimes referred to as a 'tactical apology.' In this situation, the offender is reasonably sure that they will be found liable so they formally apologize in an effort to minimize the amount of damages awarded to the victim. As stated by Alder (1999):

In court, apologies tend to occur only after guilt or liability is clearly established ... when apologies are made, they maybe fuelled by ulterior motives, such as obtaining a more lenient sentence or avoiding punitive damages. Such apologies would probably not be meaningful for the survivor and would more likely hinder the healing process then help it (p.6).

Alder also noted that apology could mitigate financial damages. This kind of apology may not provide much to the victim but it could potentially improve the circumstances for the offender. Tactical apology is one important consideration influencing the apologizer's dilemma.

As in the mediation process, the offender must consider the timing of their apology while in the court system. If the judge realizes that the only reason the offender is apologizing and accepting responsibility is because they believe they are likely to be found guilty anyway, this lack of heartfelt apology could lead to increased anger and could result in a harsher punishment (B. Berger, personal communication, 26 March 2006). The key component of the apologizer's dilemma in the legal setting relates to the fact that individuals are considered innocent until proven guilty. The offender has the legal right to plead not guilty and refrain from any statements of guilt until they see the evidence and case surmounted against them. However, waiting too long before apologizing could lead the judge to believe that the apology is not of genuine moral meaning but merely a manipulation tactic and thus the offender may have been better off with providing a full apology early on in the court proceedings, taking the chance that the victim and the court will show leniency. Isaacs (1999) refers to this dilemma as a "structural trap"... "a condition where one part of the system requires people to act one way, while another part of the organization requires them to do something else that directly contradicts this" (Isaacs, 1999, p.205). Due to the nature of the legal system, providing a full apology early in the court proceedings could most certainly be expected to result in an attachment of liability and related damages, but waiting and testing the strength of one's legal case before apologizing can result in significant consequences. The legal system does not provide an environment that is likely to induce a genuine full apology that is warmly accepted by the victim. One of the most significant considerations of the apologizer's dilemma in the legal setting is not only the issue of whether to apologize but when to apologize.

6. The Impact of the B.C. Apology Act

In British Columbia, there is new legislation that will impact the role of apology in the legal system. The B.C. Apology Act is the first of its kind in Canada (News Release, 2006). This legislation states that an apology "does not constitute an express or implied admission of fault or liability" by the person providing an apology (Bill 16 Apology Act, 2006). This progressive legislation is beneficial because it could encourage individuals to provide an apology early after a wrong has been committed, allowing the offender an opportunity to address the emotional damage of the act committed without attached liability. It gives the victim of a wrongful act some form of redress which could fully satisfy their concerns

allowing them to heal. At the very least an apology protected under this legislation could be regarded as better than nothing at all. The legislation can also allow offenders to alleviate feelings of guilt without punishment.

In the example of a medical malpractice case, the new legislation could allow the offender to provide a sincere apology to the victim while still maintaining their insurance coverage. In this circumstance, the victim could receive a full apology that serves to promote healing, in addition to gaining some form of monetary settlement, and the offender could relieve their feelings of guilt and still maintain their medical practice and insurance coverage. In the example of a medical malpractice case having legislation such as the BC Apology Act might be considered to be a win-win situation.

At first glance this legislation appears to resolve the apologizer's dilemma given that a full apology can be provided without attached liability allowing the parties to focus on the emotional and restorative aspects of the act of apology. Robbennolt (Quoted in Taft, 2005) notes one of the benefits of this legislation is that it will improve the chance of settlement between conflicting parties. In actual fact, this legislation only seems to further complicate the apologizer's dilemma. One obvious reason for this complication is that the legislation is only in force in the province of British Columbia and no other place in Canada. This creates an inconsistency of practice throughout the country. Taft (2005) contests legislation of this nature, stating that empirical evidence showing legislative protection increases rates of settlement is of little merit when considering the moral harm caused by legislation of this nature. Taft (2005) further argues that it is not beneficial to "transcribe moral processes into systems that are primarily adversarial" such as the courts (p.1016). By creating legislation such as the BC Apology Act, the government is in essence placing a higher value on settlement than on the acceptance of responsibility for harmful actions because it is providing a legal protection from liability for expressions of apology thus avoiding the full responsibility of their actions (Taft, 2005). As a result of this legislation, Canadian society takes the social risk of placing a higher value on settlement of lawsuits than on accepting moral responsibility and accountability for harms caused. Cohen (2002) adds to the challenge against legislation of this nature when he asks: "If an injurer is truly sorry, why shouldn't his apology be used against him in court? Doesn't being sorry mean taking responsibility, including paying for what he has done?" (p.821). Both Cohen and Taft make notable contributions to the dilemmas presented by this type of legislation.

With the ability to apologize for wrongdoing sans direct consequences, one must wonder if true remorse can ever be conveyed when there is no accountability for the harmful action? The BC Apology Act could create a standard practice of apology where individuals potentially responsible for wrongdoing automatically offer an apology whether or not they are responsible. This could lead to numerous insincere statements of apology, which in turn could render all apologies suspect. Referring to Taft's (2000) argument:

When lawyers, legislators, judges, and mediators disrupt this process by viewing apology in utilitarian terms, they subvert the moral potential of apology in the legal arena. When the performer of apology is protected from the consequences of the performance through carefully crafted statements and legislative directives, the moral thrust of apology is lost (p. 1159).

The BC Apology Act has its negative and beneficial consequences. The legal system will have to deal with the consequences of this legislation and its repercussions for offenders, victims, and the act of apology. Time will tell if the new legislation improves the complexity and frustration of the apologizer's dilemma but it is unlikely that it will resolve it.

7. Conclusion

The act of apology can be both powerfully rewarding and very costly depending on the severity of the harm and suffering caused by the offence; the timing of the apology; and, the apologizer's ability to convey empathy, remorse and acceptance of responsibility. Surrounding the benefits and challenges of apology is a complex web of factors that both encourage and inhibit the production and acceptance of an apology at the same time. This interrelated web of factors such as, culture, personality, psychology, timing, mediation and the rule of law are what constitute the apologizer's dilemma. This dilemma is prevalent from the moment a harmful act is committed and continues to compound in complexity as it moves through the mediation and legal processes in Canada.

At the very heart of the apologizer's dilemma is trepidation because the proper apology at the correct time can have immense benefits for both the apologizer and the apology receiver. In ideal cases a well timed full apology can resolve the conflict entirely. However, the fundamental dilemma is that once a full apology has been given the apologizer is committed to the gesture and is then placed in a vulnerable position where he/she has to hope the apology is accepted. In the alternative paradigm the victim can reject the apology, increase their anger for the offender and can consider the apology a complete admission of full liability and an acceptance of full punitive damages. Clearly there is no set formula allowing one to determine what kind of apology to give and when to give it. Rather the apologizer's dilemma represents a unique dance of processes, variables and considerations that are often specific to the conflict and the individuals involved. Careful consideration of the apologizer's dilemma can lead one to wonder: Is there ever such a thing as a simple apology?

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