

Judicial Mediation in Atlantic Canada

Presentation for “Between Us” XXth Anniversary of
Judicial Mediation

The Honourable Justice Duncan R. Beveridge

November 22, 2018





Judith sensed that the mediation would take more time than the half-day that it had been scheduled for.

La médiation judiciaire se porte bien au Canada atlantique

- But that is not to suggest processes and experience are the same in the four Atlantic provinces

Similarities

- Judicial mediation is an essential part of the work of trial judges scheduled to hear civil or family law disputes
- Where a settlement conference is held before a sitting judge, the success rate is high, at least anecdotally

Questions

- WHEN DID YOU START HOLDING JUDICIAL SETTLEMENT CONFERENCES?
- ARE THEY MANDATORY?
- HOW MANY SETTLEMENT CONFERENCES ARE HELD PER YEAR
- PROCESS USED? WHO SETS THE PROCESS?
- SUCCESS RATE?
- TRAINING FOR THE JUDGES?
- WHO SELECTS THE JUDGE TO DO THE CONFERENCE
- WHAT ABOUT FOR CRIMINAL CASES?

Nova Scotia

- Informally since 1980's; Formal structure set out in the 2009 CPRules
- Judicial settlement conferences are not mandatory in civil proceedings under the Rules.
- In family cases, some form of ADR must be attempted before the parties may proceed to trial or hearing.
- No firm figures, but historically estimated to be 85-90%
- The numbers vary: for example 2012, 161 held with 139 settled;
- 2017 only 121, but in only 9 months in 2018, 110
- The process is determined by the presiding judge in consultation with the parties.
- Training is not mandatory but encouraged
- The parties can jointly request a specific judge or each nominate three judges to conduct the settlement conference

Nova Scotia Resolution Conferences

- Not generally used in Provincial Court
- Supreme Court has been using them for decades and have gone through different incarnations
- Most recent incarnation set out in a 2012 Practice Memorandum

Nova Scotia Administrative Tribunals

- Mediation plays a significant role in the disposition of human rights complaints by the Human Rights Commission
- Resolution conferences are mandatory unless the Commission is of the view that a resolution conference is inappropriate
- Resolutions conferences are, therefore, the primary mechanism through which complaints are resolved
- Also can order Restorative Boards of Inquiry
- Nova Scotia's Labour Board permit it to use any ADR mechanism with consent
- Mediation is also available for many of the matters heard by the Utility and Review Board

New Brunswick

- Unknown how many....The Chief Justice says “a lot ”
- No trial dates without a settlement conference if the case is more than a two day trial
- No set process
- No mandatory training

Newfoundland

- 1994
- Judicial settlement conferences are not mandatory in civil proceedings under the Rules. Practically speaking, though, they are set down in most civil actions.
- In family cases, some form of ADR must be attempted before the parties may proceed to trial, unless the requirement is specifically waived
- In St. John's, approximately 100 settlement conferences a year in civil proceedings. An equal number in Family Court and best estimate another 100 in the outside judicial Centres.
- The process is determined by the presiding judge in consultation with the parties.
- No firm figures, but estimated to be 85-90%
- Training is not mandatory
- Court staff in consultation with the Chief Justice or Senior Admin Judge
- Their Criminal Rules provide for "Resolution Conferences"

Prince Edward Island

- Pre-trial conferences often morph into a settlement conference
- Unknown how many per year or success rate
- Training is not mandatory
- No stand alone Resolution Criminal Conferences

Mediation of a litigated case

- Judicial Mediation is available through a formal process in New Brunswick and in Nova Scotia
- Not available in PEI with a judge, with just three full time justices on the Court of Appeal, it is not a practical alternative.
- Newfoundland amended their Civil Procedure Rules in 2016 to permit the parties to ask or a judge to direct a pre-hearing conference to discuss “the possibility of a settlement or mediation hearing”