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AN OPEN FORUM ON MEDIATION: AN OPPORTUNITY TO LEARN FROM DIFFERENT PERSPECTIVES

A multi-disciplinary look at how mediation works – And how to do it effectively

A SKILLS AND ETHICS SEMINAR

for the judiciary, administrative tribunals,
private mediators and the bar

APRIL 29-30, 2016

Start time: 8:15 am, Friday, April 29, 2016

Conclusion: 4:30 pm, Saturday, April 30, 2016

Chestnut Conference Center (next to City Hall)
89, Chestnut Street
Toronto (ON)



AN OPEN FORUM ON MEDIATION: AN OPPORTUNITY TO LEARN FROM DIFFERENT PERSPECTIVES

A multi-disciplinary look at how mediation works – And how to do it effectively

DEFINITIONS

Settlement conferencing, mediation, arbitration, and alternative dispute resolution are used to describe methods to resolve disputes outside of the traditional litigation format. In this multi-disciplinary seminar, the following descriptors will be used:

- “Judicial mediation” includes pretrial or prehearing settlement conferencing, judicial mediation, hybrid mediation/arbitration systems, and alternative judicial dispute resolution;
- “Tribunal mediation” includes all systems used for the effective resolution of disputes before tribunals outside of a hearing;
- “Private mediation” means all methods of dispute resolution, which are performed outside of a court or tribunal setting.

TARGET AUDIENCE

This seminar presents a unique opportunity to learn skills and knowledge from a multidisciplinary perspective on an essential tool in the dispute resolution toolbox: mediation in all of its forms and forums.

- An obvious target audience are those who perform the function of mediation, arbitration or settlement conferencing regardless of the forum in which the underlying dispute is being resolved: judges, lawyers, tribunal members, private mediators.
- Lawyers play a significant role on behalf of their clients in mediation. This seminar is also designed to “lift the veil” on what the mediator does and discuss frankly the question of who does what well, and conversely to discuss the lawyer’s role as an advocate in a mediation session.

OBJECTIVES

Mediation of many different stripes has gained considerable momentum in the Canadian legal system. It is successfully executed when a well-defined process is in place and all participants have a common objective: exploring resolution outside of an actual hearing before a court or a tribunal. This seminar is intended to answer these questions:

- What does good mediation look like?
- Are there any boundaries, and if so, are they only the boundaries of good practice or are there ethical imperatives?
- How does judicial mediation differ from what we are calling tribunal or private mediation (see definitions above) and vice versa?
- Where best should disputes be resolved?
- What is the interaction between judicial review of tribunal decision-making and tribunal mediation, if any?
- What are the latest techniques for mediation of any sort? How can lawyers and litigants maximize the possibility of a good outcome and reduce time and problems?
- What are the best techniques to conduct mediation effectively? What’s new?

Answers to these questions will be provided in the context of individual presentations, panel presentations and debate. A full discussion and debate on issues will be encouraged.

TAKEAWAYS

In addition to hands-on training and knowledge acquired during the seminar, registrants can expect the following:

- attendees will be sent documents/articles as preparatory homework before the seminar
- each presenter will be encouraged to share written materials prepared for the seminar outlining ideas and resources, which will be sent to attendees.

Co-chairs: Mr. Cliff Hendler, ADR Chambers, Toronto; The Hon. Madam Justice Georgina Jackson, Court of Appeal for Saskatchewan and President of CIAJ, The Hon. Madame Louise Otis, OC, Q.C., Quebec, The Hon. Warren K. Winkler, O.Ont., Q.C., LL.D. (Hon.), Toronto

In mounting this conference, CIAJ would like to recognize the work of the former Canadian Conference of Judicial Mediation (CCJM) created by the Hon. Louise Otis. The work of CCJM is being continued by CIAJ.

Primary contact: Michèle Moreau michele.moreau@ciaj-icaj.ca the Executive Director of CIAJ.

AGENDA (SUBJECT TO CHANGE)

FRIDAY, APRIL 29, 2016

8:15–8:45 AM **REGISTRATION**

8:45–9:00 AM **INTRODUCTIONS**

9:00–10:00 AM **OPENING PLENARY: JUDICIAL MEDIATION AND PRIVATE MEDIATION**

Over the past thirty years, mediation has emerged as a significant tool for the resolution of all sorts of disputes in all different types of settings. Mediation in all of its forms, including settlement conferencing, are commonly used in the courts, before tribunals and outside of the public systems—as a significant means of reducing cost, improving access to justice and increasing the timeliness and effectiveness of dispute resolution.

This panel will explore the strengths of judicial and private systems of mediating a dispute in lieu of obtaining an adjudicated resolution of it. Where are the points of intersection? When should a dispute be resolved by the courts or tribunals? Are courts assuming too much? Do we expect too much from our courts? When should a dispute follow the path of private mediation—and when should it cease to do so? What factors will determine the route a litigant will take? What advice do the lawyers give to their clients? Are there cases better suited to one method of dispute resolution over another? What are the lawyer's and the mediator's skills and how do they differ from forum to forum? What can we learn about the effectiveness of mediation by an examination of the forum used as opposed to the method?

Chair **The Hon. Warren K. Winkler**, O.Ont., Q.C., LL.D. (Hon.), Toronto

Panelists **The Hon. Gertrude Speigel**, Superior Court of Justice for Ontario

Thomas G. Heintzman, O.C., Q.C., FCI Arb, Heintzman ADR

Paul M. Iacono, Q.C., B.A., LL.B., Yorkstreet Dispute Resolution Group Inc

Michaela Keet, Professor of Law, University of Saskatchewan

10:00–10:30 AM **BREAK**

10:30 AM–12:00 PM **HOW TO CONDUCT THE GENERIC MEDIATION FROM THE PRIVATE MEDIATOR'S PERSPECTIVE AND FROM THE JUDICIAL PERSPECTIVE**

Three seasoned mediators, one who runs a private practice, and two others, who regularly conduct judicial settlement conferencing, will describe step by step how they approach what might be called the "generic" mediation.

Chair **The Hon. Madame Louise Otis**, OC, Q.C.

Panelists **Mr. Cliff Hendler**, ADR Chambers

The Hon. Rob Graesser, Court of Queen's Bench for Alberta

The Hon. Thomas McEwen, Superior Court of Justice for Ontario

12:00–1:00 PM **WORKING LUNCH IN PRE-ASSIGNED GROUPS AT LUNCH TABLES**

Participants will discuss this question: how would you design and lead the ideal mediation, judicial or otherwise?

1:15–2:45 PM **HOW TO DO MEDIATION EFFECTIVELY**

In this rapid-fire session, seasoned mediators will answer some of the pressing questions in mediation.

Chair **The Hon. Georgina R. Jackson**, Court of Appeal for Saskatchewan

- What if not all the parties are at the table? - **The Hon. Warren K. Winkler**, O.Ont., Q.C., LL.D. (Hon.)
- The use of the caucus: how and when to use individual sessions to improve the process of mediation - **The Hon. Madame Louise Otis**, OC, Q.C.
- The mediator as a negotiator: how and when to generate and carry on viable proposals - **The Hon. Associate Chief Justice John Rooke**, Alberta Court of Queen's Bench
- Mediation techniques: What really works - **The Hon. Gertrude Speigel**, Superior Court of Justice for Ontario
- Evaluating the judicial outcome in the event of mediation failure: the principle of self-determination and the expression of legal opinions by the mediator - **The Hon. Marie-France Bich**, Court of Appeal for Quebec

Note: While specific speakers are listed it is expected that other members of the faculty, with expertise in tribunal and private mediation, will play commentating roles.

2:45–3:00 PM **BREAK**



AGENDA (SUBJECT TO CHANGE)

3:00–4:30 PM

ETHICAL PRINCIPLES FOR JUDGES, TRIBUNAL MEMBERS AND PRIVATE MEDIATORS: DOES THE CHOICE OF FORUM CHANGE THE ETHICAL IMPERATIVES?

The working thesis for this session is that the ethical principles do vary, and the dispute may be resolved differently, depending on the forum. The panel will explore this thesis in the context of video presentations and specific fact patterns. After outlining the ethical principles for judges, tribunals and private mediators, the three panelists will indicate their views with respect to the proper approach to such questions as: to what extent should any mediator, of any type, be concerned about a discrepancy between what the injured party would receive if the matter proceeded to trial or formal adjudication? In the context of such a question, the panelists will examine the tension between institutional concerns, on the one hand, and personal autonomy, on the other.

Panelists

The Hon. Adèle Kent, Judge of the Alberta Queen's Bench and Executive Director, National Judicial Institute

Mr. Cliff Hendler, ADR Chambers

Michael Gottheil, Executive Chair for Social Justice Tribunals for Ontario

4:30–6:00 PM

HAPPY HOUR AND A HALF

6:00 PM

ATTENDEES ARE FREE TO PURSUE THEIR OWN DINNER PLANS - LIST OF RESTAURANTS WILL BE PROVIDED

SATURDAY, APRIL 30, 2016

9:00–9:45 AM

LESSONS LEARNED FROM THE MEDIATION OF A MAJOR LAW SUIT

In the context of a specific mediation, for which confidentiality has been waived for the purposes of this seminar, Madame Otis will describe how to prepare for a mediation session. Specifically, she will describe how she evaluates the case in preparation to mediate it, how she handles pre-mediation sessions, when and what she demands from pre-mediation briefs and other similar issues.

Speaker

The Hon. Madame Louise Otis, OC, Q.C.

9:45-10:15 AM

BREAK

10:15 AM–12:00 PM **CROSS-CULTURAL MEDIATION**

This session will explore issues facing mediators in cross-cultural conflicts and offer suggestions for conducting a successful cross-cultural mediation. Are there ways to improve our cultural competence as mediators?

Panelists

Nathalie Des Rosiers, Dean and Full Professor, Faculty of Law-Common Law Section, University of Ottawa

Andrea Morrison, Mediator, Human Rights Commission, Montreal

Francis (Butch) Wolfleg, Mediator, Siksika Nation

12:00–1:00 PM

WORKING LUNCH IN PRE-ASSIGNED GROUPS AT LUNCH TABLES

Participants will be invited to discuss this question: what has been most helpful to you in getting started as a mediator and improving your skills as a mediator?

1:15–3:30 PM

EFFECTIVE MEDIATION: QUESTIONS LAWYERS ASK (break around 2:30 p.m.)

Chair

The Hon. Associate Chief Justice John Rooke, Alberta Court of Queen's Bench

- How to get started as a mediator: pointers for the lawyer or the judge - **The Hon. Colin L. Campbell Q.C.**, Amicus Chambers
- What or who controls the judge: a look at the case law - **The Hon. Duncan R. Beveridge**, Court of Appeal for Nova Scotia
- What should a lawyer expect from a private mediator? - **Mr. Paul Iacono**, Yorkstreet Dispute Resolution Group Inc
- Mediation of complex multi-party cases: the role of the judge and the lawyer - **The Hon. Claude Dallaire**, Judge of Superior Court of Quebec, Montreal
- Why and when is med-arb or arb-med a good idea? - **The Hon. Warren Winkler**, former Chief Justice of Ontario
- What do judges want from the lawyers in a mediation: a look at legal ethics, reputation and approach - **The Hon. Thomas McEwen**, Superior Court of Ontario

3:30-4:00 PM

HOLDING THE CRYSTAL BALL: FOR ALL THOSE INVOLVED IN THE MEDIATION GAME, WHAT DOES THE FUTURE HOLD?

Co-Presenters

The Hon. Louise Otis and the Hon. Warren Winkler

4:00 PM

A BRIEF THANK YOU

REGISTRATION FORM

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CHESTNUT CONFERENCE CENTER (89 Chestnut Street)
Toronto(ON)

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Canadian Institute for the Administration of Justice
PO Box 6128, Station "Centre-Ville"
3101 Chemin de la Tour, Room A-3421
Montreal, Quebec, H3C 3J7

By Fax :

514-343-6296

By e-mail :

ciaj@ciaj-icaj.ca

Surname:

First Name:

Title to appear on name tag:

.....

Court/Organization:

Address:

.....

Postal Code:

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Do you have any dietary restrictions? Yes No

Which?.....

REGISTRATION FEE (includes documentation, continental breakfasts, lunches and reception):

CIAJ members **\$595** Non-members **\$695**

Students (Enrolled full-time) **\$75**

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REQUIRED TO MAKE THEIR OWN HOTEL
RESERVATIONS.**

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Individual members active in their profession are entitled to access all the documentation available on CIAJ's website (conference and seminar papers and video-recordings among other benefits). (This membership fee is recoverable by federally-appointed judges under S. 27(1) of the Judges Act. It may also be possible for provincially-appointed judges and others to be reimbursed through professional allowances from their organizations.)

Retired Person **\$75**

Members retired from their profession have the same benefits as individual members.

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I wish to join CIAJ

No Yes (See category checked above)

Payment added to registration fee

I would like information about Institutional Membership

Contributor

As an alternative to annual membership dues, you may choose to become a contributor (you will not have members benefits). You will be issued a tax receipt for a charitable donation (Registration number: 10686 1529 RR 0001).

Amount of donation: \$ _____

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