

Kluwer Mediation Blog

Mediator Weiler's Blog Introduction "From the Trenches"

Rick Weiler (Weiler ADR Inc.) · Thursday, September 22nd, 2011

As this is my first post to the new Kluwer Mediation Blog I thought it appropriate to take a moment to introduce myself and provide a brief summary of my background and experience. My intent is that this will assist the reader (clients, lawyers, other mediators, academics, students and innocent bystanders who have chanced upon this blog) in assessing the information and opinions I share with you in my posts to this blog.

My name is Rick Weiler and I'm a commercial mediator and arbitrator based in Ottawa Canada providing service primarily throughout the province of Ontario Canada (a Common Law jurisdiction). I was called to the bar of Ontario in 1979 and after a decade of corporate / commercial solicitor's practice I made the move into full time Alternative Dispute Resolution. Currently my practice is about 80% mediation and 20% arbitration involving a wide variety of subject matter from insurance-related disputes, through construction, corporate/commercial and employment to historical sexual abuse. I mediate between 150 - 160 cases in a year.

I've also had some international experience providing ADR training and consulting services on a variety of projects, including ones in Russia, Albania, Uganda, Lesotho, Guyana and the United States. More information on my background and experience can be seen [here](#).

The perspective I will bring to these blog posts is that of an "in the trenches" commercial mediator working with disputants and their lawyers to find settlements that are acceptable to everyone on an "all things considered" basis. I will report on legislative and judicial developments pertaining to commercial mediation from across Canada and offer my humble opinions on those developments. I will also share some stories from mediation I have actually conducted (on a "no names" basis) to illustrate some views I have come to hold about what works in mediation and what doesn't.

My philosophy of mediation is probably best set out in the opening statement I deliver at most of my sessions. It usually goes something like this:

"Good morning and welcome. My name is Rick Weiler and I'm looking forward to working with all of you as your mediator today. Before we begin I'd like to say a word or two about the mediation process. My approach to mediation is a simple one: I see it as an opportunity for us all to have a talk. The purpose of the talk is to see if there's

some way we can settle this matter, here, today, in a way that's going to work for everyone involved. My job as mediator is to serve as an impartial facilitator of the talk. I try to keep it moving along in a positive, productive and respectful manner. I try to ensure that everyone understands - without necessarily agreeing, of course - the different perspectives on this matter. Most importantly, I work to bring you all to the point where you're in a position to make a good decision, all things considered. I always think that's the main opportunity in mediation: for everyone involved to make a good, a wise decision, all things considered.

As you all know, today's mediation is off the record. Nothing said here today can be used in any subsequent proceedings and I stress this important element of mediation because it means we can speak frankly here today. We can examine various options for resolution - including, I stress, outcomes that would not be available if this matter proceeds to trial. You can do all this knowing that nothing said here today will come back to haunt you. The Courts respect the confidentiality of these sessions.

We usually start out like we are here; all together around the table. In a moment I'm going to ask [Plaintiff Counsel] to start us off on our conversation. I want to thank all the lawyers for the very helpful material they've filed with me in advance of this mediation. I've been through it in detail and there's really no need to go through it paragraph by paragraph for my benefit. I'm sure [Defense Counsel] will have some things to say as well and, of course, there's an opportunity - not an obligation - an opportunity for the clients here today to contribute to our joint session as well.

Once we've been around the table we generally break off into a caucus format. This simply means separate private meetings. I become the shuttle diplomat and visit each group. We meet, in confidence, to discuss what's been said and to try and figure out what is the right next step towards the settlement that you are all looking for here today.

Usually we continue in that fashion until you all feel that you can make the "good decision" I talked about. We know from lots of experience in mediation that most days those good decisions will result in a settlement; a settlement that will undoubtedly require some compromise on everyone's part - it always does - but a settlement that, all things considered, represents a better way forward for everyone than the path you are on now which will lead you ultimately to a court room and someone else making all your decisions for you.

We're not here to try this case today. We're here to settle it. I ask you to keep that in mind because I know everyone is going to hear things they don't agree with. That's in the nature of these sessions and as it should be. But, my experience over 20 years of conducting mediations has been that if we can keep focussed on our goal - to settle this case - that is precisely the result we'll achieve."

Typically my mediations start at 10 in the morning and most days we are signing the settlement agreement by 3 or 4 in the afternoon. On those days we are not able to achieve a settlement I work very hard to make sure everyone involved knows precisely why that is. I also generally follow up with the lawyers when settlement hasn't been reached in mediation because I believe the primary quality expected in an effective

commercial mediator is perseverance.

So, that's enough for this time. I look forward to future posts as well as your comments and questions. Thank you for taking the time to visit and read this post.

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The image shows a screenshot of the Kluwer Arbitration Practice Plus web application. The interface is clean and professional, with a blue header and a white main content area. On the left, there's a navigation menu. The main content area displays a profile for 'Gary S. Barr', including a profile picture, name, and various statistics. Below the profile, there are several circular charts and data tables, likely representing the 'Relationship Indicator' mentioned in the text. The overall design is modern and data-driven.

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