

Kluwer Mediation Blog

Effective Mediation Advocacy

Rick Weiler (Weiler ADR Inc.) · Saturday, November 23rd, 2013

What constitutes effective mediation advocacy? Litigation lawyers in an ever-increasing number of jurisdictions around the world understand that mediation is becoming or has become the primary dispute resolution forum and therefore naturally are interested in acquiring and enhancing the knowledge and skills necessary to effectively represent their clients in the mediation process.

Earlier this year the International Mediation Institute addressed this issue when it released its “[IMI Mediation Advocacy Competency Criteria](#)“.

Now, Osgoode Hall Law School in Toronto, Canada is presenting what promises to be a very interesting and dynamic two-day course on Mediation Advocacy, December 10th and 11th. The [Course program can be seen here](#) and it will be noted that not only has every effort been made to gather leading practitioners of the Ontario plaintiff and defence bar (not to mention, (modestly) some of the most in-demand mediators in this province) but that the Course design incorporates a dynamic collection of teaching techniques including video demonstrations, group discussions and role plays.

Your faithful blogger has been asked to participate in a panel discussion on Advocacy at the Mediation. The panel, consisting of a plaintiff counsel, defence counsel and mediator (also moderated by a mediator) has been asked to offer opinions on a series of questions. This is where I’m asking for your assistance.

Below you will see the actual questions the panel will be addressing. *I’m asking you to offer your own thoughts on all or any of these questions in a line or two.* I will then inject some of your comments into the panel discussion – with attribution (unless you note that you’d prefer me not to name you). So, without further ado, here are the questions. Thanks in advance for your responses:

- Is there a tactical role for the apology in mediation?
- First offers: high- or low-ball and where will each get you? How best to “return serve” when such offers are made?
- How to avoid being manipulated or drawn into replicating the other side’s unproductive or aberrant behaviours
- Maintaining credibility throughout the mediation – how will your offer/response style likely impact on your credibility with your client, with opposing counsel, with the opposing counsel’s client and with the mediator?
- Playing tough/scare tactics/threatening to walk out
- Showing up without the client/deals made “subject to ratification”

- What does “final offer” really mean?
- Using mediation for ulterior purposes
- Mediation as a dress rehearsal for trial
- Should you let your client speak?
- Negotiations in caucus
- Is it ever necessary to lie to the mediator?
- How to use the mediator most effectively
- Issues relating to the use of demonstrative evidence, technological aids, medical illustration, attendance of expert lay witnesses by video, etc.
- Dealing with troublesome situations, such as when plaintiff’s counsel seeks to insulate the client from the mediator.

Dear reader, if you have any other comments don’t hesitate to add them below.

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