Kluwer Mediation Blog

“Real Mediation” Rant

Rick Weiler (Weiler ADR Inc.) · Friday, September 21st, 2012

I’ve been working in this field for more than 20 years and one thing that I’ve observed with genuine curiosity over that time is the sniping from various quarters that what I (and others with practices similar to mine) do each day falls short of “The Promise of Mediation”.

As readers of this Blog will know, I primarily mediate litigated money cases in the Province of Ontario. Yes, there is a basic template for mediating these cases: a mediator attempts to facilitate an orderly march to apparent true points of monetary resistance with a final push to bridge the gap. And…it’s much more than that.

In years gone by when I attended meetings and conferences of mediators I was frequently told that what I was doing was not ***“real”*** mediation. You may appreciate that this tends to have a dampening effect on one’s enthusiasm for attending future such meetings and conferences.

Over the years the impact on me of such attacks (for that’s how they feel) has faded significantly from invoking angst-filled self-disgust to now being little more than minor irritation.

But that minor irritation was felt once again with the September 14th article by highly respected Ontario family law practitioner and adjunct professor Linda Ippolito entitled “ADR has lost its ‘alternative’ way”. I invite you to read the full article.

I have no argument with many of the points raised by Ms. Ippolito. I certainly agree that mediators must continually be striving to acquire knowledge and competencies in the “three Ps: pedagogy, practice and process.”

What I do have a problem with is the suggestion (and maybe I’m just being hyper-sensitive) that the model of mediation that has become the norm for mediating litigated cases in this Province is somehow without value and deficient.

Scores of commercial mediations occur across Ontario each business day. While I am not burdened by any recent studies to quote, my sense is that the vast majority of those mediations result in settlement. Those settlements don’t just happen. They are not the product of the mechanical application of “standardized, dehydrated ‘five-step’ formulas” applied by retired judges and lawyers with a weekend course under their belt.

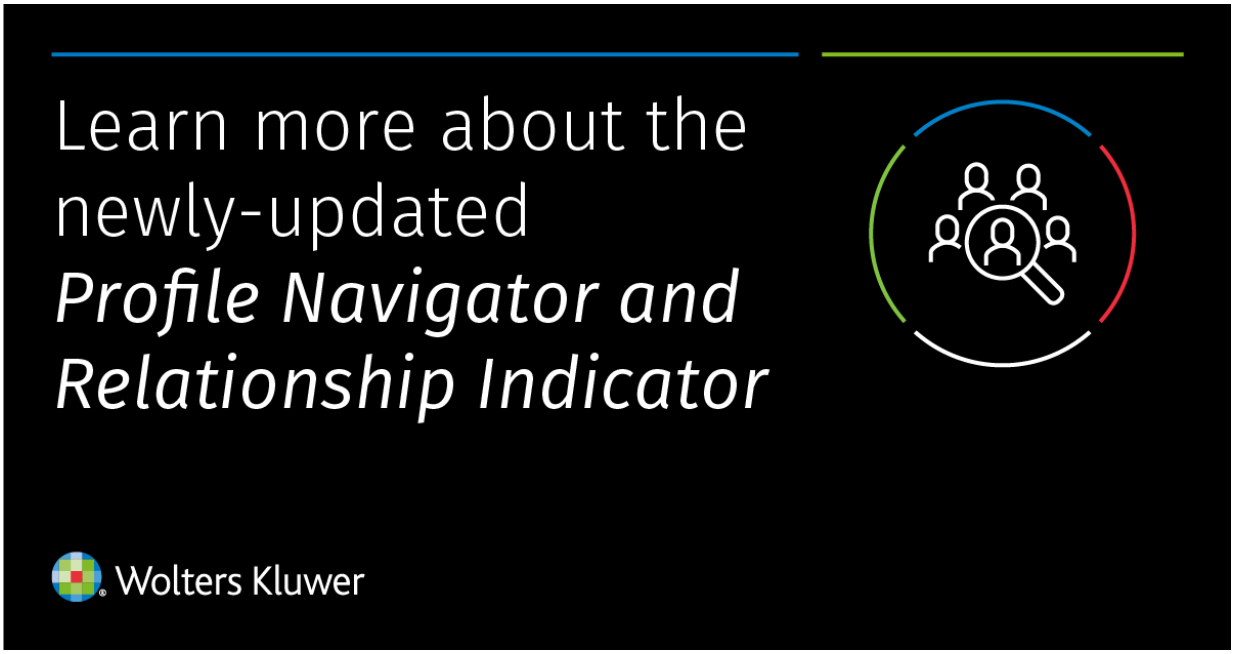
Each case brings a (sometimes highly sophisticated) matrix of legal and factual issues overlaid by an always complex mix of personalities, motivations and interests. While each mediator’s style is

uniquely his or her own, to be successful, to achieve settlements, to attract new mediation business, mediators have to be able to assimilate all of this information, gain the trust of all parties and facilitate their journey to resolution. That, my friends, is as much art as it is science and we shouldn't be shy about letting people know. In this jurisdiction the government, the Courts and the marketplace have all recognized the significant value of the current model of mediation.

Could this model of mediation be improved? Absolutely! And it is being improved every day as mediators gain experience, try different techniques and approaches and collect feedback from their users.

In the past 20 years mediation has assumed a crucial role in the administration of justice in this Province. That achievement speaks both to the power of the model of mediation employed and the skills of the mediators. There is certainly room for a new collaborative approach – among mediators themselves; an approach that celebrates achievements to date, that shares the successes, and yes, the failures and seeks to learn from both, and most importantly, that recognizes the diversity inherent in the mediation process and that accepts, respects and encourages that diversity.

Thank you for sticking with me this far. Thus endeth the rant.



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