
Kluwer Mediation Blog

Ontario Court Approves Mediated Settlement of Complex Class Action

Rick Weiler (Weiler ADR Inc.) · Friday, March 22nd, 2013

A recently reported decision of the Ontario Superior Court highlights the efficacy of the mediation process in resolving complex disputes particularly in circumstances where uncertainty of outcome reigns supreme.

In *Johnston v. The Sheila Morrison Schools*, 2013 ONSC 1528 Justice Perell was asked to approve a settlement in an Action which had been certified under the Ontario Class Proceedings Act, 1992.

The Action advanced abuse claims on behalf of students who had attended the Sheila Morrison School, a co-educational residential and day school for children between 10 – 18 years of age who suffered from learning disabilities and behaviour problems. The school operated from 1977 until 2009. It's closing coincided with the commencement of the Action.

The Defendants denied liability. Moreover they were impecunious so that the only potential source of recovery was insurance. Coverage was a significant issue and it appeared that there would likely be significant gaps in coverage resulting from the involvement of four insurers, varying limits, off-coverage positions and the fact that there was no insurance coverage for 8 of the years during which the abuse was alleged to have occurred. What a time and money-consuming mess this promised to be if it had to be fully litigated!

Wisely, the parties agreed to participate in a judicial mediation before Justice John C. Murray. A \$4 Million settlement was agreed to in principle at the mediation and the detailed settlement agreement was signed two months later. Details of the settlement can be seen in Justice Perell's decision approving the settlement.

It will, of course, be of interest to some that this mediation was conducted by a sitting judge as opposed to a private commercial mediator (of which there is no shortage in Ontario). I suspect the answer is that experienced counsel, such as we're involved in this case, held the view that the additional clout that can be brought to bear by a judge-mediator was required to reach settlement in this matter. It seems to me hard to argue, particularly in light of the successful outcome, that this was an inappropriate allocation of judicial resources.

I want to sign off this month with a plug for the International Academy of Mediators (IAM) 2013 Spring Conference taking place in Toronto, Ontario Canada on May 8-11, 2013. This will be a

world-class gathering of top commercial mediators and the outstanding program can be seen [here](#).


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