ADR Update

Summer 2011 Newsletter of the ADR Institute of Ontario, Inc.

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Inside this issue:

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The ADR Institute of Ontario is a regional affiliate of the ADR Institute of Canada. It is a non-profit, private organization established to provide leadership in the promotion of alternative dispute resolution for ADR professionals and users of ADR services. The Institute represents over 800 professionals in Ontario.

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President's Message - Ontario

We are delighted to announce that future issues of ADR Update will be enriched by contributions from our colleagues in Saskatchewan, Manitoba and the Atlantic region and messages from their Presidents.

For now, we have included brief updates from the Presidents of these affiliates –with more extensive contributions planned for future issues.

All announcements at this year's Annual General Meeting were positive, including the fact that we are now over 800 strong across Ontario with an ever-growing number of members holding designations.

And those who attended the conference following the AGM left on a real high.

The panel on Improving Mediation Practice through Introspection and Dialogue, skillfully led by Peter Bruer of St. Stephen's House, covered such meaty issues as: What defines mediation? Mediator Power and the Impact of the Mediator on the Mediation; When, if Ever a Mediator Should be Evaluative; How to Maintain Neutrality While Giving Parties What They Need by Way of Reality Check; Importance of Fairness; Bringing Parties Back from the Brink and more. Panelists Dr. Barbara Landau, Heather Swartz and Roger Beaudry dropped gems of wisdom wrought from years of experience and provided a variety of perspectives that certainly contributed to my personal and professional growth.

McGowan Award winner Bill Horton then lead an outstanding panel that included Brian Casey, Tom Bastedo and the Honourable James Chadwick who filled their too-short time slot with nuggets on practical mechanics, process and procedure of arbitration before commenting on the key ingredients for making arbitration the better option in comparison to litigation.

Elaine Newman, currently preparing a fascinating course on Ethics for ADR Ontario, rounded out the day with a thought provoking and dynamic talk on that subject.

We thank all those who participated in this event for their time and effort and the obvious preparation involved. We also thank the Metropolitan Hotel for working with us to keep the price at an acceptable level for our members.

We are also happy to announce the appointment of Anne Grant as VP/ President Elect for 2012; Kathryn Munn as Secretary and our thanks to Enzo Carlucci who continues as our Treasurer. We welcome Cindy Dymond, Resa Eisen and Kathleen Kelly as new Board members. Many thanks to our retiring Board members: Bruce Ally, Richard Beifuss and Mel Matthias for their contributions.

As we enjoy the summer weather, activity continues at the Institute. The Professional Development Committee is hard at work under Kathryn Munn's leadership devising the Fall Program, the Meet and Greet and a Winter Weekend Retreat. Anne Grant is busy working on a membership survey that will allow us to anticipate member need, and Mena is busy scheduling interviews for members who apply for the C.Med prior to August 31 so they can be evaluated against the existing rather than the new criteria that goes into effect as of September 1, 2011.

Amidst this backdrop, Janet McKay and Mary Anne Harnick are working with the B.C. and National Conference Committees to develop a program like nothing we have ever seen before. I have already booked my ticket and I would urge all our members to do the same. Networking opportunities alone make this a not-to-be-missed event.

I look forward to seeing a strong contingent of Ontario members at the National Conference in Vancouver, October 27-28.

— Joyce Young President

Update from the President of the ADR Institute of Saskatchewan, Anne Wallace

Saskatchewan is.....

- providing a two day ***Facilitating with Ease*** training course in Saskatoon October 13-14, 2011.
- working on a new committee structure to better undertake activities.
- working towards a joint conference for May 2012 with Conflict Resolution Saskatchewan and the Collaborative Lawyers of Saskatchewan.
- in the process of transferring administrative activities to our new staff person, Brenda Lesperance, who is located in the national ADRIC office. More details soon...

Update from Alex Warga, President of the Arbitrators and Mediators Institute of Manitoba

- working on the NEW AMIM Website which should be finished by end of July.
- planning course training and administration of a mitigation program to assist Manitoba Public Insurance Corporation with the development of a dispute resolution initiative on unsettled automobile injury claims, which could be expanded to include additional claim settlements.
- hoping to develop a similar relationship with the WCB, yet to be explored.

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Update from the President of the ADR Atlantic Institute, Pamela Large-Moran

ADR Atlantic has.....

- held its AGM and Professional Development day June 25 in Halifax with Gary Furlong's session on ***"Effective Workplace Intervention Strategies – arbitration, mediation and beyond...,"*** receiving top ratings.
- delivered two successful professional development events, conducted C.Med assessments and embarked on exciting new marketing initiatives designed to increase Student membership, improve membership communication and promote awareness of the benefits of membership
- grown from 40 to 70 members in record time!
- redesigned its ***NEW*** ADR Atlantic website (www.adratlantic.ca) using Membership-friendly software
- set plans to have web-conferencing software to manage Board meetings which will be available to members (specific protocols and terms of use are being developed)

The ADR Atlantic Board has set the following goals for 2011-12:

- marketing and continued growth in membership
- improved benefits of membership
- continuing focus on PD learning and networking
- planning specific PD sessions and marketing in NB, NS, PEI and NL
- reviewing and re-writing the ADRAI By-Laws
- continuing to focus on the designations
- increasing participation in national events
- promoting and educating the public regarding ADR processes
- effective operation of the Committee structure that includes: Technology Committee, Marketing & Membership Committee, By-Law Review Committee, Chartered Designations Committees, Executive Committee

Congratulations and thank you, Mena!

Mena Sestito was surprised to receive special acknowledgement of her 25 years of service to the ADR Institute of Ontario at the Annual General Meeting and PD programme: The Art and Science of ADR. A custom-made necklace was presented by ADRIO president Joyce Young. Congratulations and thank you, Mena!

By Orie Niedzviecki, Evelyn Perez Youssoufian
and Igor Ellyn, QC, CS, FCIArb., Ellyn Law LLP

Arbitrator Lacks Jurisdiction to Make Injunction Orders Affecting Non-Parties.

Arbitrator Cannot Make Order Without Notice To All Arbitration Parties.

Evelyn Perez Youssoufian *has been an associate at Ellyn Law LLP since 2007. She is a graduate of the law schools of the University of Windsor and the University of Detroit-Mercy. She practices business litigation and arbitration. Evelyn also speaks Spanish and Armenian fluently.*

Igor Ellyn, QC, CS, FCIArb. *is the senior partner of Ellyn Law LLP. He is a certified specialist in civil litigation and a chartered arbitrator and mediator. He practices business litigation and arbitration with emphasis on complex shareholder and corporate matters. He is a past president of Ontario Bar Association and speaks French, German, Romanian and Hebrew.*

Orie Niedzviecki *is a partner of Ellyn Law LLP. He practices business litigation and arbitration, employment law and estate litigation. He has practiced law in Ontario since 1999 and is also admitted to the District of Columbia Bar.*

Justice Paul Perell's recent decision in ***Farah v. Sauvageau Holdings Inc., 2011 ONSC 1819 (CanLII)***[1] addresses so many important issues affecting arbitration that it should be on every arbitrator's and every arbitration counsel's mandatory reading list.

We preface our discussion by noting that we were counsel for the applicants in this case and continue as counsel in the arbitration before the Hon. R.S. Montgomery, QC. With this in mind, this article provides information about what the Court decided, without critique. There has been no appeal by either party from Justice Perell's decision.

In the space of 130 short paragraphs, the erudite jurist of the Ontario Superior Court of Justice addresses several important issues affecting arbitral jurisdiction, particularly:

- An arbitrator's jurisdiction to make an ***ex parte*** award;
- An arbitrator's jurisdiction to make an order affecting non-parties; and
- An arbitrator's jurisdiction to grant a Mareva injunction.

However, these points are not the only reasons why ***Farah v. Sauvageau*** is significant. Justice Perell also provides guidance on the following arbitration questions:

- Whether an arbitrator should be disqualified for exceeding his/her jurisdiction;
- What to do about an arbitral award, which has been filed in a Court and enforced without resorting to s.50 of the ***Arbitration Act*** ("the Act"); and
- Whether an arbitrator has all the powers of a judge.

Justice Perell also applies the rarely-used judicial jurisdiction which permits a judge to turn any motion into a motion for judgment. He does so in respect of the motion to set aside a certificate of pending litigation ("CPL"). Instead of dealing with the CPL directly, Perell J. directed that the conveyance in the case be set aside and the property be reconveyed to both applicants.

Facts

Farah owned a collection agency known as CSC, which he listed for sale. He wanted to move to Florida. Sauvageau is a Toronto lawyer who was interested in purchasing the collection agency. A share purchase agreement was made and the transaction closed in December 2009. Sauvageau incorporated a Holdco to own his shares in the collection agency. On closing, Holdco paid $600,000.

Farah used the proceeds of sale to discharge the mortgage on the home he owned with his wife, to pay debts and to pay his brother for his interest in CSC. A week after closing, Farah transferred his undivided interest in his family home to his wife. He had no debts at the time. He knew of no claim by Sauvageau. He wanted to facilitate his move to Florida, where he was going to look for a job, while his wife stayed in On-

tario to deal with selling the house.

A few months after closing, Holdco, represented by Sauvageau himself, sued Farah for fraudulent misrepresentations seeking rescission or damages for more than the purchase price. He also commenced a ***Fraudulent Conveyances Act*** action against Farah's wife claiming the transfer of title was fraudulent and obtained a CPL without notice. Farah's first legal counsel and Sauvageau agreed that all legal issues in both actions (except for the motion to discharge the CPL) be referred for arbitration by the Hon. R.S. Montgomery, QC of ADR Chambers ("the arbitrator").

Farah's wife was not involved in the transaction. Sauvageau, however, without formally amending his pleadings, fashioned a fraud claim against her based on her lie or mistake as to whether she was pregnant.

In November 2010, Sauvageau attended before the arbitrator without notice to Farah or his wife to seek a Mareva injunction restraining them from disposing of or using any of their assets. The arbitrator granted a far-reaching ***ex parte*** Mareva injunction restraining, ***inter alia***, "all persons with notice of this injunction". The order also required all banks to freeze Farah and his wife's accounts and to deliver all records of their financial activities.

Sauvageau then filed the arbitrator's order in Superior Court office in Newmarket in the existing actions against Farah and his wife. The Registrar's office issued and entered the arbitrator's order even though there was no application for enforcement under s.50 of the ***Act***. The arbitrator's order, with its appearance of legitimacy, was then served on Farah and his wife, on Farah's employer, on her father and on banks where Farah and his wife did business, all with devastating effect.

Farah's counsel moved before the arbitrator to set aside the ***ex parte*** order on the basis that it was made without jurisdiction and asked the arbitrator to recuse himself. The arbitrator upheld his decision and refused the recusal motion. He reasoned that the arbitration clause and the ***Act*** entitled him to issue all the remedies of a judge, including authority to grant the Mareva injunction and stated he had not pre-judged the case.

Against this backdrop, Farah and his wife applied to the Court to set aside the arbitrator's Mareva injunction and to request that the arbitrator be disqualified on the basis that by granting the ***ex parte*** Mareva injunction, the arbitrator had concluded that Farah was a fraudster and that the playing field was unbalanced.

Justice Perell's decision

It is well-settled that judicial intervention in the arbitral process is strictly limited to situations contemplated by the ***Act***. This is in keeping with the modern approach to arbitration that sees it as an autonomous, self-contained, self-sufficient process under which the parties agree to have their disputes resolved by an arbitrator, not by the courts. The Court has jurisdiction to intervene only where the arbitrator has exceeded his/her jurisdiction as to the subject matter of the dispute and where the arbitrator has treated the parties unfairly.[2]

After thoroughly reviewing the facts of the case, Justice Perell concluded that the arbitrator did not have the same jurisdiction as a judge of the Superior Court. While the arbitrator had the jurisdiction to make an injunctive order against Farah and his wife only, he did not have jurisdiction to grant a Mareva injunction affecting non-parties to the arbitration agreement. The ***ADR Chambers Arbitration Rules*** prohibited ***ex parte*** communications with the arbitrator. These Rules were not trumped by the arbitration agreement which made certain provisions of the ***Rules of Civil Procedure*** applicable

Justice Perell noted that arbitrators depend upon the Act and the arbitration agreement for their jurisdiction. The Legislature has not given arbitrators injunctive power over third parties and the private agreement of the parties to the agreement to arbitrate cannot invade the rights of non-parties.

Sections 6 and 8(1) of the ***Act*** give the Court the power to assist the arbitrator by providing an injunction and enforcement order where required. It followed that the arbitrator did not have jurisdiction to grant a Mareva injunction affecting third parties. Further, the filing of the arbitral Mareva Order in the Court office was contrary to s.50 of the Act. The arbitral Mareva order, which Perell J. referred to as "bogus", was set aside. However, Perell J. held that the circumstances narrowly justified a judicial Mareva order against Farah only. The Mareva order against Farah's wife was set aside with costs.

Notwithstanding the arbitrator's jurisdictional error, Perell J. did not disqualify him. Perell J. held that the arbitrator's error was not a denial of natural justice nor was Farah's apprehension of bias reasonable. The Court also held that the best way to deal with the property transfer was simply to direct that the title be transferred back to joint tenancy between Farah and his wife. This made the CPL unnecessary.

This case contains important lessons which will inform procedure and substantive law in future cases. It also highlights that even where a court action precedes arbitration, the arbitration order cannot be filed in court without

resort to the enforcement procedure in s. 50 of the Act if filed in the Court office. An arbitral order filed in Court as Sauvageau did in this case is bogus.

Justice Perell's decision reminds us that arbitrators are not Superior Court judges. Arbitrators are clothed only with the authority the parties to the arbitration agreement have given them. They cannot affect the rights of non-parties. Where the arbitration agreement is silent or incorporates by reference, the ***Act*** and the agreed upon arbitration rules may provide assistance. Within these parameters, the arbitrator is unable to proceed ***ex parte*** because an informed arbitration party would not permit it.

[1] See www.canlii.org or this link: http://bit.ly/hdNQDn.
[2] Inforica Inc. v. CGI Information Systems and Management Consultants Inc, 2009 ONCA 642 at para. 14, 27.

by Harvey M. Haber, Q.C., J.D., LSM, DSA, C.MED, C.ARB, B.A.

Mediation Dealing With Debt Collection Ontario

'A' seeks a loan from the Bank.

The bank does its due diligence and grants the loan to 'A'.

'A' defaults on the loan.

The Bank commences litigation against 'A' for the outstanding debt by issuing a Statement of Claim.

'A' responds with a Statement of Defence.

Before the matter proceeds to Court, in Ontario, there must first be a compulsory Mandatory Mediation.

Harvey M. Haber Q.C., J.D., LSM, DSA, C.MED, C.ARB, B.A.
Senior Partner, Goldman Sloan Nash & Haber LLP
haber@gsnh.com

Either both Counsel agree on a Mediator acceptable to both of them, or failing agreement, the Court will designate a Mediator.

The Mediator then contacts both Counsel to select a date for the Mediation to be heard, which is satisfactory as well to the Mediator.

The Mediator then prepares a Mediation Agreement setting out the terms of Mediation, i.e., the time, place and date where the Mediation is to be held, the Mandatory Mediation Fee to be paid by each Party, the Counsel acting for each Party, the Court Action Number; Mediator's confidentiality; the fact that the Mediator will not be called as a witness to testify as to the fact of the mediation, or as to any oral or written communication made at any of the mediation; what happens in the event the mediation is cancelled; the exclusion of liability of the Mediator, and sets out further guidelines for the Mediation, and other relevant terms - to be signed by each Counsel, together with 2 forms - Form 24.1B - Notice by Assigned Mediator, & Form 24.1C - Statement of Issues.

Counsel and their clients attend at the agreed upon location, time & date, together with the Mediator.

The meeting is without prejudice to the parties rights.

The Mediator confirms that he/she has received the signed Mediation Agreement and the Mandatory Mediation Fee, sets out the guidelines for the Mediation, listens to the Plaintiff's Counsel, and then asks the Plaintiff if he/she wants to add anything.

The Mediator then listens to the Defendant's Counsel and then asks the Defendant if he/she wants to add anything.

It is important that the Parties themselves have an opportunity to tell their side of the matter.

The Mediator then opens the Mediation up to both Counsel to dispute their case with each other.

In most cases, the argument is over the amount in dispute.

The Plaintiff's claim being higher than what the Defendant is prepared to pay.

There is a magic moment when both sides have had their say.

It is at this stage that the Mediator puts both parties in separate rooms (it's called "caucusing") and then goes back and forth between them to see if an agreeable figure can be reached to settle the matter.

If it can be settled, then the Mediator puts both parties and their Counsel together and has one of the Counsel draft a Settlement Agreement, subject to the approval of the other Counsel.

Once the form of the Settlement Agreement is approved by both

Counsel (and by the Mediator) the Parties and their Counsel sign the Settlement Agreement, and both Counsel agree to withdraw the action.

If it cannot be settled at the Mandatory Mediation, it is very possible it can be settled prior to the matter being heard by the Court.

And going to Court can be very expensive.

In one of my books, I indicated that a 3 day Court trial brought by a Plaintiff could cost $38,200.00. Today, that cost could be $60,000.00 or even higher.

It makes a big difference if the Parties are aware of the cost of litigation, as the amount involved in the Mediation may be much less.

I have personally conducted over 100 mediations and I find that once the parties are made aware of the potential cost of the Mediation, they both view settlement with a much more favourable attitude.

There is also Private Mediation, where the Parties agree to mediate the matter with their hand-picked Mediator by way of a signed Mediation Agreement (setting out the terms of the Private Mediation), but in a Private Mediation both parties generally pay 50% of the Mediator's regular Fee (as opposed to a Court mandated Mediation Fee).

Please see below the Mandatory Mediation Agreement that I use, which I trust and which may be of assistance to you.

In addition, it is worth noting that the ADR Institute of Canada has just published its new Mediation Rules and Code of Conduct for Mediators. These Rules provide a Mandatory Mediation Agreement that can be used in Private Mediations.

FORM 24.1B

_____ v. _____

Court File No. _____

NOTICE BY ASSIGNED MEDIATOR

TO: TEL # FAX #

_____ _____
Barrister & Solicitor
Solicitor for Plaintiff,

_____
_____
_____ LLP
Solicitor for Defendant,

_____

The notice of name of mediator and date of session (Form 24.1A) required by rule 24.1.09 of the Rules of Civil Procedure has now been filed in this action. Accordingly, I have been designated as the mediator to conduct the mediation session under Rule 24.1. I am a mediator named in the list of mediators for Toronto.

The mediation session will take place on _____, _____, 2010 at 9:00 a.m. at the offices of Goldman Sloan Nash & Haber LLP, 480 University Avenue, Suite 1600, Toronto, Ontario M5G 1V2.

Unless the court orders otherwise, you are required to attend this mediation session.

You are required to file a Statement of Issues (Form 24.1C) by _____, _____, 2010 (7 days before the mediation session). A blank copy of the form is attached.

When you attend the mediation session, you should bring with you any documents that you consider of central importance in the action. You should plan to remain throughout the scheduled time. If you need another person's approval before agreeing to a settlement, you should make arrangements before the mediation session to ensure that you have already telephone access to that person throughout the session, even outside regular business hours.

YOU MAY BE PENALIZED UNDER RULE 24.1.13 IF YOU FAIL TO FILE A STATEMENT OF ISSUES OR FAIL TO ATTEND THE MEDIATION SESSION.

_____, 2010

Harvey M. Haber, Q.C., J.D., LSM
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Toronto Ontario M5G 1V2
Tel: 416-597-3392 Fax: 416-597-3370

cc: Mediation Coordinator by fax 416-314-1360 Ontario Mandatory Mediation Program

By Kathryn Munn

London Lawyers Consider Mediation

On March 3, 2011 the seminar "Winning Mediation Strategies" was presented in London, Ontario by the Middlesex Law Association and the ADR section of the Ontario Bar Association (OBA).

Middlesex County, including London is not a jurisdiction with mandatory mediation although we are situated about equidistant between two such jurisdictions. A survey questionnaire was developed by Paula Puddy, CLE director for the Middlesex Law Association; panel members for the program, Vince Calzonetti and Greg VanBerkel; and myself as Program Chair with input from the OBA- ADR section members.

The purpose of this survey was to gather general information about the use of mediation, opinion about mandatory mediation and selection of mediators. This was used as background for the seminar on March 3. The survey was sent by email to Middlesex Law Association members on February 3, 2011.

Kathryn Munn, Munn Conflict Resolution Services, London, Ontario

The 8 question survey asked about the length of experience in practicing law, average participation in mediations per year, areas of law of mediation participation, hiring of local mediators, level of comfort and knowledge about mandatory mediation, participation in mandatory mediation in other jurisdictions, level of support and willingness to participate in a planning group for the introduction of mandatory mediation in London.

Thank you to the 56 members of the Middlesex Law Association who took the time to respond, about a 7 % response rate.

Demographics

The length of law practice experience ranged from zero to 21 years and over. More than half of the respondents (52%) had practice experience less than or equal to 15 years and the rest of the group (48%) had 16 years and more practice experience.

Frequency of Participation in Mediations

One survey question was used to determine the frequency of mediations that members participated in on average per year. A comparison was made between the frequency of participation in mediation and the years of practice experience. There was variability among the respondents' responses. The lawyers who participated in more than 15 mediations per year were those who had practice experience 11 years and over. Lawyers (50%) with experience of 16-20 years tended to have participated in more mediations per year (>15) than the rest of their colleagues, with either less or greater practice experience.

None of the lawyers with experience up to 10 years has reached the level of 15 mediations per year. These less experienced lawyers tended to be the majority in the groups of respondents who participated 0- 2 mediations per year. For example 58% of those with practice experience 0 - 5 years and of those with 6-10 years of experience participated in 2 or fewer mediations per year. While this may be reasonable for lawyers with experience under 5 years, it is surprising for those who have experience closer to 10 years. Another interesting finding was that respondents with experience of 16-20 years conducted more mediations per year than did those who had more practice experience (> 21 years).

Areas of Law of Mediation Participation

To determine the type of areas of law of mediations that respondents participate in, a list containing the following options was provided in the survey: construction law, personal injury and insurance defence, family law, and estate law. Another category named "Other" was provided for respondents who participated in mediations in other areas of law. Labour and Employment and Commercial were by far the two most frequently identified responses in the "Other" category.

The area of law of mediations with the highest participation rate (66%, 37/56) was personal injury and insurance defence. Of these, 24.3% had 0 to 5 years in practice; 21.6% had 6 to 10 years in practice and 27% had 21+ years in practice. Only 3 of the 37

respondents (8%) were 11 to 15 years in practice (Figure 1). Lawyers with practice experience 16 to 20 years were the only ones who did not participate at all in mediations in this area of law. Although mediation in this area of law was predominantly being used by lawyers with the least experience (0-5 years) and (6-10 years) and by lawyers with the most experience (21+ years), the relative complexity of the cases is not clear. Is this phenomenon related to differing experience levels of plaintiff lawyers and insurance defence lawyers or to other factors?

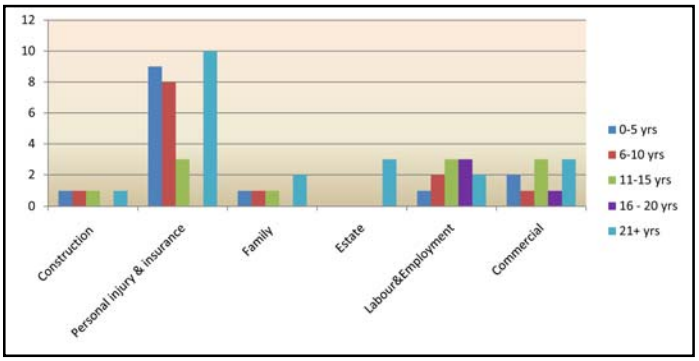

Figure 1:
Areas of Law of Mediation' Participation and Experience Level

As indicated in Figure 1, in the other areas of law of mediation participation such as: construction, family, labour and employment, and commercial, the proportionate rate of participation was almost equally distributed among all groups although there was a slightly higher frequency for those lawyers with the most experience. It was found that the only group using mediation for estate law were respondents with the highest level of experience (> 21 years).

The other areas of law in which respondents indicated their participation in mediation were:

- Human rights
- Regulatory offenses
- Expropriations
- Insurance claims
- Municipal
- Class actions
- Professional negligence

Hiring a Local Mediator to Facilitate Mediations

The results showed that 53% of the members have hired local mediators to facilitate their mediations and 47% of them did not. Interestingly, those lawyers who had practice experience over 21 years and those who had conducted more than 15 mediations per year were more likely to hire local mediators than lawyers with less experience.

Participation in Mandatory Mediations in Other Jurisdictions

Overall, 55% of the respondents (31/56) have participated in mandatory mediations in other jurisdictions such as Toronto or Windsor and 45% of them indicated that they did not. Of the 31 members who participated in the mandatory mediations, 12 were lawyers (62%, 12/19) with experience 21 years and over, and 5 were lawyers (62%, 5/8) with experience 16-20 years. In the experience categories from 6 to 10 years and 11 to 15 years the participation rate in mandatory mediation was about 50% (3 and 6 respectively). Only 45 % of lawyers (5/11) with experience less than 5 years (0-5 years) participated in mandatory mediations.

Comfort and Knowledge Level with Mandatory Mediations

The results also showed that only 49% of the members who responded to the survey questionnaire indicated that they felt comfortable and knowledgeable with the mandatory mediation program. Again, the level of experience was shown to be an influential factor. This information clearly indicates that further training on mandatory mediation might be needed to improve the knowledge and confidence level.

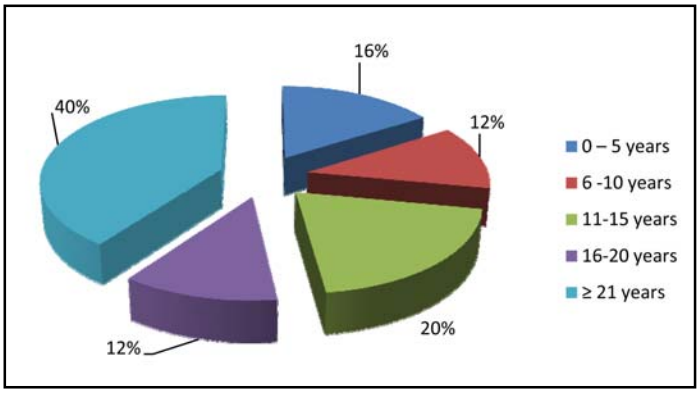

Figure 2:
Respondents' Comfort and Knowledge Level with Mandatory Mediations

As shown in Figure 2, of the 25 respondents who felt comfortable and knowledgeable with mandatory mediations, 40% were those who have long practice experience (> 21 years) followed by respondents (20%) who had practice experience within a range of 16 -20 years. Although it makes sense that the more experience you have, the more comfortable and knowledgeable you feel, findings showed that this was not the case. The group of respondents (16%) with lowest practice experience (0-5 years) felt a higher level of comfort and knowledge with mandatory mediations than the respondents with practice experience 6-10 years (12%) or 16-20 years (12%).

Supporting the Introduction of Mandatory Mediation

Respondents were asked whether they would sup-

port the introduction of mandatory mediation to London. The majority of the respondents (58%) were supportive of the introduction of mandatory mediation to London. The highest response rate (83%) for being supportive to the introduction of the mandatory mediation was found in the group of respondents who had the longest practice experience (>21 years) whereas the lowest response rate (25%) was found among lawyers with practice experience from 16-20 years, even though they have only slightly less experience than the group with 21 and more years. It was not a surprise that the low response rate found in this group of respondents (16-20 years) matched up with their level of comfort and knowledge with mandatory mediations, also found to be the lowest. We can only speculate about the reasons why this finding emerged.

Also an interesting finding was that 68% of lawyers (0 – 5 years) who had < 2 mediations per year and 57% of lawyers (> 21 year experience) who had > 15 mediations per year were more supportive to the introduction of mandatory mediation to London than the rest of the groups.

Willingness to Participate in a Planning Group in Support of a Pilot Project for Mandatory Mediation

An attempt was made to determine the respondents' willingness to participate in a planning group to develop a pilot project if they supported the introduction of mandatory mediation to London area. A slight difference was found between the respondents who supported mandatory mediation in London (48%) and those who did not (52%). Eighty-five percent of those who said yes to mandatory mediation as described in the previous section were willing to be part of the planning group. Surprisingly, 50% of those who were not in favour of the introduction of mandatory mediation in London also said they were willing to be part of the planning group. Given the workload levels for London lawyers, in my view this positive response rate demonstrated a surprising level of enthusiasm by those respondents who were willing to be part of the planning group.

Conclusion

Even though this was our first attempt to collect information in this manner, I was impressed with the level of response and with what we found out. The more experienced lawyers (21+ years) and those participating more in mediation (>15 per year) tended to hire local mediators. It was surprising to find that lawyers with 16 to 20 years experience in practice reported a higher overall participation rate in number of mediations per year although a lower level of participation in mediation in several areas of law. It appears that more education is needed to improve the lawyers' knowledge and confidence level with mandatory mediation. A majority of the respondents were supportive of the introduction of mandatory mediation to London. Many of those lawyers supportive of mandatory mediation in London and even half of those who were not supportive were willing to contribute by being part of a planning group for a pilot project to introduce mandatory mediation. Now we need to consider the next steps forward from this starting point.

Thank you to Paula Puddy, the OBA-ADR Section, to my colleagues and fellow presenters, Vince Calzonetti and Greg Van Berkel , and for research assistance, Luljeta Pallaveshi.

ADR Institute of Ontario congratulates Goldman Sloan Nash and Haber LLP

The International Institute for Conflict Prevention & Resolution (CPR Institute), presented its first Award for Excellence in Alternative Dispute Resolution for a Small Law Firm to Toronto's Goldman Sloan Nash & Haber LLP (GSNH) "For commitment to principled and creative conflict management and resolution" stating that "They have set a successful benchmark for addressing resolution, prevention, and management of major disputes in multiple practice areas."

David Bristow accepted the award on behalf of GSNH. CPR Institute is a global, non-profit think tank and alliance of corporations, law firms, scholars, and public institutions focused on commercial conflict prevention and alternative dispute resolution and conflict management.

We congratulate Team GSNH for receiving this prestigious award.

By Jeanette Bicknell

Mediation as a Substitute for Justice?

"Mediation is a complement to justice. It cannot ever be a substitute for justice."

These are the final words of the Gordon Slynn Memorial Lecture 2010, given by Lord Neuberger of Abbotsbury, the Master of the Rolls. (The "Master of the Rolls" is the Monty-Pythonesque title given to the second most senior judge in England and Wales. He is the presiding officer of the Court of Appeal, Civil Division.)

Lord Neuberger assures his audience that he is a "keen supporter" of ADR; his worry is that the tendency to treat mediation as good and litigation as bad may be inconsistent with a commitment to equal access to justice. His argument goes like this: Equal access to the law is a fundamental component of democracy. The civil justice system is not merely a service offered in the marketplace; to regard it as such is to misinterpret its constitutional function. Mediation and ADR, in contrast, are not part of the state; they are services offered to those in dispute. To insist that disputants try mediation before litigation places an additional financial barrier to the justice system, thus compromising the principle of equal access to the courts. Disputants may accept a mediated solution that does not reflect their legal rights because they cannot afford both to mediate and to litigate.

Lord Neuberger gave this lecture on November 10, 2010, just days before the British government announced cuts to legal aid for civil cases and increased support for mediation and ADR. His remarks have to be interpreted in light of the current political situation in the U.K.

What does Lord Neuberger mean when he claims that mediation is not a "substitute" for justice? It sounds like he means that mediation is something different from and inferior to justice, the way a baker might caution one that NutraSweet or sucralose would not be adequate substitutes for sugar in the chocolate chip cookie recipe.

"….Justice is Open to All – Like the Ritz Hotel"

I fear that this is the meaning that will be assumed by those who hear this remark out of context and fail to read his entire lecture. I think it is fair to say that Lord Neuberger means that ADR is not a substitute for the justice ***system***. He is using the word "justice" to mean something like "those decisions that are handed down formally through the legal system." Now, while it is legitimate to use the word "justice" in such a way, this is probably not the meaning that most people have in mind when they use the word. We allow for the possibility that certain laws may be unjust and that the administration of the law itself may be unjust. Of course, Lord Neuberger recognizes this too. He even quotes Sir James Mathew's ironic remark that, "In England, justice is open to all – like the Ritz Hotel." Yet while Lord Neuberger acknowledges that equal access to the law is far from being a reality, I don't think he makes enough of existing barriers – ones that have nothing to do with the proposed expansion of ADR.

No one would disagree that mediation is not a substitute for the civil justice system. Even the most enthusiastic ADR supporters recognize that some disputes are inappropriate for mediation. There are other reasons why "mediation" and "justice" should not be opposed to one another. Justice can be a quality of processes or of outcomes. Mediation and litigation are both processes of dispute resolution. As such, each can be conducted fairly (justly) or not. Litigation and the formal legal system do not have a monopoly on fairness. Similarly, the outcomes of either of these processes might be fair or not. The fact that a settlement has been voluntarily assumed or forced upon disputants does not tell us whether or not it is fair. Finally, mediation and the legal system need not be seen as in competition with one another. A mediated settlement may be formalized as a contract, a document with the power of the courts behind it.

Jeanette Bicknell, Ph.D. is a mediator and business ethics consultant in Toronto. She taught philosophy at the university level for several years, and is the author of Why Music Moves Us (Palgrave, 2009).

By Ernest G. Tannis, B.A. LL.B. C. Med. Acc. FM (OAFM) Solicitor and Mediator

Part 3 "Do We Have A Duty To Negotiate In Good Faith?"

This is the third and final part of the three-part series on this topic

Ernest G. Tannis B.A. LL.B. C. Med. Acc. FM

(parts ones and two appeared respectively in the ADRIO newsletters of 2010 Fall-Winter and 2011 Spring-Summer editions). Now the tripod of Values-Law-Justice is complete and we can sit on the negotiation chair with these perspectives in mind. My thesis has been that our society's problem-solving approaches seem to first dwell on 'what is the law", then 'how does the law serve justice' and finally, 'what role do values play', which I contend is all backwards. The approach should be first, 'what are our values', and then, 'which laws can serve those values in the pursuit of Justice'.

There was a cartoon long ago showing a person being crushed by a fallen filing cabinet with the caption saying that, at one time, the first person people called was a religious leader, then helpers, until nowadays people first call a lawyer! I like to say to people "stay out of trouble, if you can't, don't get caught; but if you get caught, call a lawyer, then you're really in trouble!" I believe our society is in trouble when our trouble-shooting is just that, 'shooting," in the manner of 'shoot first, talk later' and then deal with the consequences.

Litigation is a more civilized form of warfare, but it has many of the same traits. However, we can draw upon the history of diplomacy and treaties in the world at large, notwithstanding all of the conflicts, to argue that a great deal is done through dialogue and negotiation internationally, which does not receive the attention it deserves. I am convinced one of the root causes of the stresses and costs of our legal system is that historically we made a mistake in merging the disciplines of Barrister and Solicitor which has left a vast majority of the population unable to access the Courts, with almost fifty per cent of litigants being self-represented and family law being the main reason people enter the Court system. This is the conclusions drawn by a recent study written by former Ontario Superior Court Chief Justice McMurtry.

Suffice it to state that, without forgetting the enormous strides in improvements to our legal (not justice) system thanks to all those involved in the administration of the courts, including Judges and Lawyers, and advancements in pro bono services, as one Judge said at a session years ago, 'we don't need to change any laws, we only need to change our attitude". As Francis Bacon wrote in Advance of Learning, Book II, #25: "...if I have in any point receded from that which is commonly received, it hath been with a purpose of proceeding in melius (towards the better) and not in aliud (towards something different)." In my 1989 book Alternative Dispute Resolution That Works!, there is a chapter that ADR is alternatives, not ***to*** anything, but ***for*** people, giving individuals options which can vary according to diversity in cultures. The ultimate goal (which for me stands for 'greater opportunities and living standards') of this universal urge is for Justice, on which note I wish to conclude this series with the conclusion from the introduction in my first book:

"What, then, is justice? Twenty years ago former Prime Minister Pierre Elliott Trudeau called for a "just" society in Canada. Only by delving into the etymology of the word "justice" can we gain direction? According to the 1971 book, An Aid to Bible understanding, the Hebrew meaning of justice is, "what is right in a fair and impartial way" and in accordance with a "standard" or "conveying the idea of a particular plan, custom, rule or procedure for doing things." Ultimately, justice is what is known as righteousness since "whereas justice has legal associations, basically there is no distinction between justice and righteousness." Or we can consult the Greek meaning of justice, which the book says is avenging or looking towards a judgment. "The proper exercise of justice by government authority likewise contributes to the happiness and

> It might be said that fair is meeting goodness with goodness, evil with justice, and all things and all people with love.

well-being of its subjects."

In Chadman's Cyclopedia of Law, Vol. 1, the great English jurist, Sir William Blackstone is quoted: "(God) has so intimately connected, so inseparably woven the laws of eternal justice with the happiness of each individual, that the latter cannot be attained but by observing the former; and, if the former be punctually obeyed, it cannot but induce the latter." Indeed, a former Chief Justice of the United States Supreme Court traced the source of our common law to the Ten Commandments. Black's Law Dictionary, 4th edition, in the context of jurisprudence, cites case law to arrive at a definition of justice as "the constant and perpetual disposition to render every man his due" and includes the comments of John Bouvier (1787–1851) that "in the most extensive sense the word 'justice' differs little from 'virtue,' for it includes within itself the whole circle of virtues." Justice has also been described as "the crowning glory of virtues" (Cicero), "the great standing policy of civil society" (Edmund Burke), and "truth in action" (Joseph Joubert).

Often our understanding of justice includes the concept of being "fair"— and what is fair? To borrow from an ancient adage, perhaps it might be said that fair is meeting goodness with goodness, evil with justice, and all things and all people with love. In You and the Law it is recalled: "The Honourable James C. McRuer, former Chief Justice of Ontario, once wrote that although justice is a term that could be no more precisely defined than love or hate or charity, it is clearly something that the human heart acknowledges." The concluding paragraph of Mr. Justice Zuber's report to the Attorney General on the Ontario court system is a fitting end to this series:

"If some of the recommendations in this report do not find favour with the governing authorities, then other recommendations should be devised and implemented promptly. It would be wrong to confuse action with an endless circle of further studies, analyses, and reports which would likely do little more than lead to eventual paralyses; at this point we would do well to recall an ancient teaching:

"God is urgent about justice; for upon justice the world depends…""

Ernest G. Tannis B.A. LL.B. C. Med. Acc. FM (OAFM) Solicitor and Mediator, Counsel Francis/ Loubert LLP, ernestgtannis@adrcentre.org

By Samantha Greenspan

The Miscarriage of Restorative Justice: Canada's Inability to Carry Rehabilitation to Term

Sadly, and quite unexpectedly, I received an email yesterday (March 10, 2011) from the Volunteer Co-ordinator at Conflict Mediation Services of Downsview (CMSD) that they were shutting their doors after a 22 year life in the community. Due to budget cuts, all employees were let go, leaving those of us who were volunteer victim/offender mediators without a home.

I have been a volunteer mediator with CMSD since May 2008, working in their Adult and Youth Restorative Justice Programs. Both programs were designed to assist victim and offenders willing to volunteer, the opportunity to participate in a pre-trial mediation to try to resolve their conflict outside of the jurisdiction of adjudication proceedings. In my time and experiences with CMSD, I

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experienced many successful, and some not so successful, resolutions, helping to relieve the strain on our criminal justice system, and helping to repair and rebalance the harm and power caused by the criminal incident.

This development brings to the fore a question that has plagued me since my journey began in the pursuits of restorative justice. What are RJ mediators supposed to do? It unravels an even longer thread of questions, namely: Why do restorative justice mediators have to volunteer their time? Why is restorative justice given such little respect or perceived so frivolously by criminal justice professionals? Why is there so little understanding and such great cynicism about the efficacy of victim/offender mediations? Do we actually have to privatize restorative justice as an industry to start getting the recognition and

seriousness it deserves by lawyers, judges and our fellow mediators?

But an even more basic question, one that I frequently receive when I talk about restorative justice is, "Hmm, that's interesting. What is that?" This leads me to think that the only people who really know what restorative justice is are a handful of criminologists, a handful of lawyers, and even smaller percentage of judges, and a whole lot of struggling RJ mediators. Or maybe that's just the cynic in me starting to surface.

So here, for your educational pleasure, is one of the most concise and explicative definitions of restorative justice that I have found to date:

> [R]estorative justice is "a process whereby all the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future". ***Restorative justice*** is used as an umbrella term to describe any number of programs that view crime and the response to crime through a restorative lens. Victim offender mediation programs (VOMP), victim offender reconciliation programs (VORP), family group conferencing, community reparative boards, sentencing circles, and sentencing panels are just a few of the names now used to denote restorative programs. Declan Roche (2003) states, "Although this range illustrates confusion about the meaning and application of restorative justice, there remain four fundamental ideals: personalism, reparation, reintegration, and participation" (Gerkin, 226).

This statement clearly defines and expresses the purposes and goals of restorative justice. Based on my own education in and experiences with restorative justice, for me the essence of restorative justice is that it gives a voice. It is not meant to replace our criminal justice system, which is quite superior in a global context. But like everything else in life, even our criminal justice system is not perfect. What restorative justice does do is help to improve upon these imperfections. It gives a voice to the offender and to the victim and to the stakeholders in the crime.

John Braithwaite, a distinguished criminologist at Australian National University and one of the founders of the contemporary restorative justice movement, explains that restorative justice is meant to take power away from the state in deciding the fate of crime and criminals and return the power back to the people directly involved, namely the victims, the offenders and the stakeholders (community). It is not meant to overwrite the law, nor is it meant to undermine the law. Restorative justice turns away from merely using punishment as a form of deterrence, and looks towards amending the harm and hopefully transforming the individuals involved through the use of listening and understanding. It is not meant as a tool for coming to forgive the crime, but to understand and alleviate the harm and the hurt that the event created.

With our government's ever-growing favouritism towards a "tough on crime," American-style movement towards criminal justice, we as mediators should be looking to build and grow restorative justice initiatives, implementing them (as Nova Scotia has) as more than just pre-trial diversion programs, but as post-trial and pre and post-sentencing options for victims, offenders and the community. These programs can work. These programs do work. Or maybe that's just the hopeful idealist in me. Currently, the family courts and the civil courts in Ontario have implemented mandatory mediation programs in an attempt to alleviate the ever-growing burden of legal dockets faced by judges on a daily basis. Why not offer similar programs in the criminal justice system?

Do we actually have to privatize restorative justice as an industry to start getting the recognition and seriousness it deserves

Dr. Chung said:
"If victims would like restorative justice they should all be offered it."

Just a few days ago, I read an article entitled, "Why I confronted the man who raped me". A 50 year old doctor from Kent, UK was interviewed about her involvement in lengthy restorative justice sessions with her rapist. The rapist, a serial sex offender who has a long list of charges and convictions for sex offences dating back to 1988, met with the doctor in prison for their restorative justice sessions where he is currently serving his sentences for the doctor's rape. As she and the article superbly explain it:

> The mother-of-three explained that her motivation was to understand why he committed

the crime, and why she was chosen as the victim. "The rape happened – I could not change that. The only things I could change were his behaviour in the future and to get him to think about his crime in a different way." Restorative justice is backed by advocates who say that it helps many victims cope with the trauma of the crime and can also reduce reoffending rates. Dr. Chung said: "If victims would like restorative justice they should all be offered it. It has certainly helped me to channel the anger more productively. I no longer lie awake at night wondering whether he will come after me or my family. I also believe it changed the way the offender looked as his crime. I became a real person to him" (Barrett).

Samantha Greenspan is currently an M.A. student at the University of Toronto in the Centre of Criminology and Sociolegal Studies. She obtained her ADR education at York University in the Certificate and Advanced Certificate programs in Conflict Resolution in 2007 and 2010 consecutively, as well as a certificate from the Workplace Fairness Institute. Her area of interest at the Centre of Criminology is in victim/offender mediations in prisons. She has been a volunteer at CMSD since May 2008. samanthagreenspan@gmail.com

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ADRIO warmly congratulates the following members on achieving the designation(s) of Chartered Mediator, Chartered Arbitrator and/or Qualified Mediator:

Colm Brannigan, C.Arb
Ely M. Braun, C.Med
Nicole Charron, C.Med
John L. Ferris, C.Med
Edwin Greenfield, C.Med
Lawrence Herman, C.Med
Lilian Ruth Klein, C.Med
Diane Laurin, C.Med
Diane Mainville, C.Med
Judy Neger, C.Med
E. Joy Noonan, C.Med
Patricia Reder, C.Med
Ernest G. Soulliere, C.Med
Sam Wales, C.Med

****

Jennifer Maria Bell, Q.Med
Sandeep (Bob) Bhalla, Q.Med
Robert Bird, Q.Med
Cynthia Kroderis-Bowles, Q.Med
Mark B. Boyak, Q.Med
Richard Carpenter, Q.Med
Leanna C. Collins, Q.Med
Samy Czarny, Q.Med
Heydi Deen, Q.Med
Neil Donnelly, Q.Med
Marcel Faggioni, Q.Med
Samantha Greenspan, Q.Med
Mohammad Hafeez, Q.Med
Virginia Harwood, Q.Med
Kenneth Hinchliffe, Q.Med
Harlene James, Q.Med
Philip Kriszenfeld, Q.Med
Helen Lightstone, Q.Med
Douglas Macdonald, Q.Med
Roxanne Makela, Q.Med
Michael Maynard, Q.Med
Michael B. Miller, Q.Med
Martha Norman, Q.Med
Thomas O'Reilly, Q.Med
Ron G. Paulauskas, Q.Med
Eduard Sasonow, Q.Med
Judy Ann Scully, Q.Med
Valerie Y. Siebert, Q.Med
Maureen E. Smith, Q.Med
Peter E. Spratt, Q.Med
Victor C. Walcott, Q.Med
Jeff M. Wilson, Q.Med
Jonathan G. Elston, Q.Med

For information on any of the designations, please contact mena@adrontario.ca.

ADR Institute of Ontario, Inc.

President's Report Prepared for June 16, 2011

ADR Institute of Ontario, Annual General Meeting

a. Membership Numbers – A Good News Story

As of June, 2010, ADR Institute of Ontario (ADR Ontario) had 666 members. At the end of December 2010 we had 785 members. As of June 2011, we have 817 members and we anticipate continued growth to the end of 2011.

b. Designations – Since the Last AGM

If you have not applied for the C. Med, Q. Med, C. Arb or for the family designations Cert. F. Med and Cert. F. Arb you will want to do that as quickly as possible.

These designations are becoming increasingly important to those making referrals and to the public. These designations are, in fact, a well-recognized way for you to communicate your level of professionalism to users of ADR services. Our designations are very well respected nationally and internationally.

As you know, the new C. Med criteria will go into effect September 1. You can apply under the existing criteria until August 31.

National is presently reviewing C. Arb criteria and will be introducing the Q. Arb designation that will parallel the Q. Med sometime soon.

Please see Mena for an application and any information you may require.

Please note, we will be holding a C. Med information night and a C. Arb information night shortly so stay tuned for that notice.

Drum Roll

We would like to congratulate the following practitioners on attaining the following designations.

If you would please stand to be recognized and if our audience would please hold your applause until we have read out all the names:

(i) New C.Arb:

Colm Brannigan

(ii) New C. Meds:

Ely M. Braun, C.Med.
Nicole Charron, C.Med.
John L. Ferris, C.Med.
Edwin Greenfield, C.Med.
Lawrence Herman, C.Med.
Lilian Ruth Klein, C.Med.
Diane Mainville, C.Med.
Judy Neger, C.Med.
E. Joy Noonan, C.Med.
Patricia Reder, C.Med.
Ernest Soulliere, C.Med.
Sam Wales, C.Med.

(iii) New Q.Meds:

Jennifer Bell
Sandeep (Bob) Bhalla
Robert Bird
Cynthia Bowles
Mark Boyak
Richard Carpenter
Leanna Collins
Samy Czarny
Heydi Deen
Neil Donnelly
Marcel Faggioni
Samantha Greenspan
Mohammad Hafeez
Virginia Harwood
Kennith Hinchliffe
Harlene James
Philip Kriszenfeld
Helen Lightstone
Douglas Macdonald
Roxanne Makela
Michael Maynard
Michael B. Miller
Martha Norman
Tom O'Reilly
Ron Paulauskas
Eduard Sasonow
Judy Ann Scully
Valerie Siebert
Maureen Smith
Peter Spratt
Victor Walcott
Jeff Wilson

c. Advocacy

Heather Swartz, Barbara Landau represented ADR Ontario along with OBA and OAFM and were, we are happy to announce, successful in advocating for improvements in Family Law Process that will provide separating families an opportunity for up-front information and mediation and, we hope, more opportunities for mediator involvement all around.

d. Marketing

(i) ADRIO logo

Just a reminder that all ADRIO members are allowed to make use of the ADR logo to indicate you are a member of ADRIO on business cards, letterhead, web and other marketing materials.

(ii) Powerpoint Presentation

There is also a powerpoint presentation that you can make use of in marketing yourself that explains what ADR is, what you do as an ADR professional and what ADRIO is all about.

(iii) ADR Connect

Our members find that ADR Connect is an excellent way of advertising. With the database receiving about 1,396,000 hits in 2009 1,740,000 hits in 2010 and almost 900,000 hits to date in the first 6 months of 2011 it is very much in your interests to list yourself on ADR Connect.

You must also be on ADR Connect to join any roster or accept

any assignments from ADRIO.

We continue to provide services for disputes between Community Care Access Centres and their clients and will be calling a partial new roster of Independent Complain Advisors this summer.

We also continue to administer cases for 407, Mutual Insurance Companies Ombudsman and AMEX and we are in discussion with a number of entities for more roster work.

(iv) Rosters

We will continue to pursue opportunities that will bring work to our members and have a number of interesting leads we are working on. We will keep you posted as things develop.

(v) New Marketing Tool - Brochures to provide to professionals

We have also developed a brochure that our members can give to professionals who might be interested in referring a client for mediation or arbitration. These brochures will be mailed to you in due course and should be a valuable aid to your marketing efforts.

e. Sections

I would like to urge all members to participate in section meetings which provide excellent information and excellent networking opportunities. Our sections are extremely active and this year we will be webcasting so that you can participate from the comfort of your home or office. For those of you who have never been to a section meeting, we are the only organization I know of that provides these sorts of information sessions for free. Topics can be on anything related to Family, Family Arbitration, Construction, Restorative Justice, OMMP, Workplace, Facilitation, Insurance, Public Conflict, IP and IT.

f. Newsletter

We would also like to thank Colm Brannigan and Anne Grant for their continuing work on the Newsletter Committee.

g. Scrutineers

We would like to thank Ken Selby, Sam Wales and David Alexander for their jobs as scrutineers for our election.

Our distinguished speakers for our recent PD Day: *The Art and Science of ADR*, June 16, 2011

From left to right, Peter Bruer, Roger Beaudry, Barbara Landau, Heather Swartz, J. Brian Casey, The Honourable James B. Chadwick, Q.C., William G. Horton, Thomas G. Bastedo, Q.C.

The Mission of the ADR Institute of Ontario is to:

- Assist the public, business, and non-profit communities and government bodies at all levels to consider, design, implement and administer alternative (increasingly known as appropriate) alternative dispute resolution strategies, programmes and processes;
- Assist all the foregoing to locate ADR professionals with the level of skill and experience required to meet their needs;
- Provide training standards and accreditation procedures that contribute to the development of a community of ADR practitioners across Ontario that is competent, well educated and highly professional in delivering ADR services to its users;
- Provide a regulatory infrastructure that includes a Code of Ethics and a Code of Conduct for Mediators that set high standards of practice, as well as providing a complaint and discipline process for any dissatisfied user of ADR services;
- Provide ADR professionals throughout Ontario with educational and networking opportunities;
- Speak on behalf of ADR professionals in response to current events and government initiatives.

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