

Common Ground



Conflict Resolution News

#11 Nov/Dec 2000

Dispute Resolution - Fast Facts

Information and views about mediation and arbitration.

Readers talk-back

Thank you to everyone who responded to our telephone check-in about Common Ground. We had many positive responses and we appreciate the time you spent giving us very helpful information. The overwhelming majority of readers we were able to reach on the phone want to continue to receive Common Ground, either by e-mail or "snail mail"

If we did not reach you please call us 519-660-1242 or toll free 888-216-3202 or email kmunn@munnrcs.com. Make sure we have your correct address, phone and e-mail information. We're asking whether you find Common Ground useful, what topics you like reading in Common Ground and we're listening to any other comments you have. If you don't want to continue to receive Common Ground please let us know that too.

We listen. Pick up the phone or mouse anytime you get the urge to send or phone your comments about any of the articles or ideas that you see in Common Ground.

Settlement rate holding steady - Ontario Mandatory Mediation Program

Since January 1, 1999 the Ontario Mandatory Mediation Program has been in operation as a pilot program for mediation of civil lawsuits in Toronto and Ottawa. As of October 1, 2000, after 21 months of operation, the program reported

Mediations concluded	2,685	
Actions settled	1,067	(40%)
Actions partially settled	449	(17%)
Actions not settled	1,169	(43%)

The numbers continue to show a steady 40% full settlement rate and in addition just under 20% of actions that are partially settled with mediation. The report of the independent evaluator is due in early 2001 with a look at the effectiveness of the program including the data from questionnaires completed by litigants, lawyers and mediators during the two years of the pilot.

What's likely to happen in early 2001 at the end of the pilot? My guess is that the mandatory mediation program will continue in Toronto and Ottawa. There

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Dispute Resolution - in my company?

From the June 5, 2000 edition of Business Week come some interesting statistics from the US.

Companies whose litigation costs have risen since 1997	64%
Companies who expect such costs to continue rising	50%
Companies that prefer settlement to trial	55%
Companies in the software industry that prefer settlement to litigation	66%
Companies that prefer mediation to trial	31%
Companies that prefer arbitration to trial	7%

It would be interesting to know what the statistics would be for Canada. Would fewer companies use alternate dispute resolution processes in Canada because there has been less popular profile for mediation? Or would companies' usage of alternate dispute resolution in Canada be higher because of the less litigation-prone climate - or maybe because of the international reputation of Canada as a peacemaker country?



Tired Of Running Into Brick Walls?

Munn Conflict Resolution can help you break down the barriers to successful negotiations. Call our office today to find out how.

• MEDIATION BLITZ •
London, Ontario
November 20 to 24, 2000
January 22 to 26, 2001

Two weeks reserved for mediation of smaller claims where time and cost need to be limited. Day and evening times are available. For further information and bookings, please contact our office.

Format: 3-hour mediation meeting
Focus: 2-party cases where there is a plaintiff demand under \$75,000.



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will likely be amendments of the Rules of Civil Procedure to fine tune the operation of the mediation program but not make major changes. The open question is: where in Ontario will the program be expanded next? It will most likely be added first to regions with case management, the new system of court administration which is so far only in certain parts of the province.

Remember that in mandatory court-connected mediation programs the settlement rate is typically lower than in voluntary private mediation. When the parties have agreed to mediation the settlement rate is usually in the 85% to 90% range or higher. My personal settlement rate for mandatory cases is in the 85% to 90% range.

For a summary of the Mandatory Mediation rule see [Common Ground, April 1999](#) at www.munncrs.com or call us for a copy.

Arbitration Confusion

There are at least 7 different legal regimes that could affect an arbitration.

- the law governing the parties and their right to enter into arbitration
- the law of the agreement to arbitrate
- the law for the enforcement of the agreement to arbitrate
- the law of the whole transaction
- the law of the procedure for the arbitration
- the law governing the enforcement of the award at the end of the arbitration
- the law of the contract between the parties and the arbitrator.

If you sometimes feel impatient when working out the details in mediation and arbitration clauses for contracts - especially across borders - remind yourself it's worth taking extra time at the beginning to be very clear. It may be a lot less expensive than resolving the problems later.

Munn-thly Memo

Q. My mother recently died and in her will left her estate to be divided equally between me and my sister. We are both in our 50's. It's not a large estate - not much more than a small house. I was the one who lived in the same town as my mother. I looked after her during her decline over the last several years. I moved her into my home to care for her in the last year of her life. My sister lived quite a distance away and only visited a 4 or 5 times a year. I feel that my caregiving should be reflected in the distribution of the estate. My sister does not agree. Because of the personal and emotional issues involved she and I would prefer to work this out using mediation. We also want to keep the costs down. We've each talked to a lawyer and both lawyers told us about the option of mediation. What do we do next?

A. The next step is to select a mediator that is agreeable to both you and your sister. This can be done through your lawyers or directly by you and your sister. If you don't know any mediators you could start with the yellow pages or the internet. There are organizations such as Family Mediation Canada www.fmc.ca, the Arbitration and Mediation Institute of Ontario www.amio.org and the London Area Mediators' Association www.lama.on.ca which maintain online information about their member mediators. When you contact a mediator through a professional organization you know that the mediator at least has completed the minimum qualifications for membership.

When you have a list of names of possible mediators, it is a good idea to contact them and get information about their mediation qualifications, their mediation experience, their approach to mediation, their estimate about how long it will take and their fees. When you and your sister have reviewed this information you will likely be able to find a mediator who is acceptable to both of you.

The next step is to contact the mediator you have selected, and schedule the mediation. I generally meet with both people separately for about an hour before the joint meeting. I provide both people with a copy of the mediation agreement so that they can review it in advance.

Sometimes I'm asked whether lawyers should attend the mediation meeting. It is up to you whether you wish to have your lawyer attend the mediation meeting. It depends on your comfort with the subjects of the mediation and with the other party. Even if your lawyer does not attend the mediation you may wish to meet with her or him before the mediation to ensure that you understand the legal issues involved. As a way to keep your costs down and still be able to get the information you need, you could arrange to be able to contact your lawyer by phone to answer questions and provide advice to you if needed during the mediation meeting.

Make sure you bring any relevant papers and other information to the mediation meeting. It will help to control your costs in the mediation if you both have all the information you need so that it is not necessary to schedule another mediation meeting for the purpose of returning with additional information.

As an added service for people who wish to mediate in less complex situations and who need to keep the costs down, I have reserved two weeks for a "Mediation Blitz". [Details here.](#)

Mark Your Calendar

Upcoming Training Events
Presented by Kathryn Munn

Mediation Level 1

November 8, 9, 10, 2000
The Management Centre,
Lambton College, in Sarnia
Call (519)542-7751 Ext. 505 for more information

Resolving Conflict, Building Solutions

November 17, 2000
12:30 p.m. to 1:30 p.m.
Middlesex Law Association -
Brown bag lunch series - no charge for members. Call (519) 679-7046 for more information

Civil Justice For Mediators

March 8 & 9, 2001
Fanshawe College,
London, Ontario
Call (519) 452-4430 Ext. 4609 for more information

I am pleased to fill requests for presentations about mediation, negotiation and related topics at meetings for professionals and business groups. Call or [e-mail](#) to make arrangements.

Electronic Common Ground

If you prefer to be on our e-mailing list, please send us an [e-mail](#).

Kathryn Munn, LL.B., C.R.C. is a mediator, arbitrator and lawyer. Through her firm Munn Conflict Resolution Services she works exclusively in alternate dispute resolution from a base in London, Ontario. She is a Roster Mediator, Ontario Mandatory Mediation Program - Toronto / Ottawa and a mediator under contract for Canadian federal government departments and Crown Corporations. She is a mediator for the Farm Debt Mediation Service in Ontario.
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