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Colm Brannigan's ADR Notes

Welcome to ADR News

To say we are living in uncertain times is a bit of an understatement.

We need to help those less fortunate while at the same time protecting ourselves and our loved ones.

As we have all reached e-mail overload with the amount of information on COVID19, this will be a short newsletter.

I have been longtime proponent of using technology in online dispute resolution (ODR) and offer mediation, med-arb and arbitration services using the Zoom video

conferencing platform. Several of my upcoming mediations have now been switched to online.

Zoom, which many of you are likely familiar with is easy to use, reliable, encrypted and there is no need for participants to have a Zoom account. It also has great training resources.

I have also uploaded several articles on ODR, including one I wrote back in 2007 (the technology has changed incredibly but the theory/practice is more or less the same) to the Resources section of my website at

<https://mediate.ca/resources/articles/>



With the sudden interest in ODR and many practitioners offering it, I have some concerns about how we continue to provide services to our clients in a competent fashion so I will be involved in the following webinars about how to use ODR from a best practices perspective:

ADRIC Free Webinar - March 23, 2020 - 2:00 pm ET

Options for Online Dispute Resolution: An Introduction to Using Zoom

Once it is available, I will place the recording from the webinar on my website at

<https://mediate.ca/services/online-dispute-resolution/>

FDRIO Free Open Town Hall Meeting - March 25, 2020 - 12:00 noon ET (email info@fdrio.ca to register)

Best Practices for Online Family Dispute Resolution

I am part of a Panel of Speakers

ADRIO & ezCPD.ca Free Webinar - March 30, 2020 - 12:00 noon ET (registration opening on the ADRIO website, or email events@adr-ontario.ca to register)

Understanding the Basics of Online Mediation (with Demo)

I will be presenting along with Presenters: Gary Furlong, Jane Kidner, Marcel Mongeon, Joy Noonan

I also plan to offer a two-hour "beyond the basics" webinar on Zoom and other ODR platforms within the next two weeks. I had originally intended to make this a paid training but have decided instead to offer it free in return for the participants donating to a charity of their choice such as a foodbank, shelter, hospital or other medical organization. If you would like further information, please contact me.

On the point of collaboration my son, Conor Brannigan, who is a mediator with the CTA in Ottawa

<https://www.canada.ca/en/transportation-agency.html> has written an article from the perspective of a young ADR professional. It is available at <https://mediate.ca/wp-content/uploads/2020/03/Conor-ADR-Update-Student-Article.pdf>

The final version of the ADRIIC Med-Arb Rules will be released shortly and with that in mind, but in the circumstances, I have decided to cancel my two-day med-arb training course until further notice.

I am also happy that another of my short articles on med-arb, this time co-written with Conor, has been published by the OBA-ADR Section and is available here:

<https://mediate.ca/wp-content/uploads/2020/03/Med-Arb-The-Third-Alternative.pdf>

And finally another short article co-written with Marc Bhalla, which is the second of a two-part series on med-arb, is available at: <https://mediate.ca/wp-content/uploads/2020/03/MED-ARB-Part-2-The-Perfect-Couple.pdf>

As always, I welcome your feedback and please feel free to forward my newsletter to any of your colleagues.

CASE COMMENT

In this newsletter, I had planned to look in some detail at the recent *Amlani v. York Condominium Corporation No. 473*, 2020 ONSC 194 (CanLII), at <http://canlii.ca/t/j4rrl>.

While there has been quite a bit of attention in Condo Newsletters about the substantive impact of this decision, there has been little or no comment on the impact of the decision from either a negotiation or mediation perspective.

I have serious concerns that while in a positive way the court found that the condominium had a duty to negotiate in good faith, it also unnecessarily commented on "conduct" in the mediation.

This goes against the well accepted key concepts of privacy and confidentiality that are central to the mediation process. It is one thing for the court to say that it is unfortunate that a mediation has failed or that it should have been attempted, it is quite another to comment, without the specific consent of counsel, parties and the mediator on the conduct of counsel and or the parties at the mediation.

Given everything else that is going on, I am afraid that I will have to explore this further in my next newsletter. I am very interested in hearing comments from the Condo law and ADR community so please contact me if you have any.

In the meantime, I hope that you all stay safe and well.

If I can be of help in providing information about mediation, arbitration, med-arbitration, ODR or ADR and ODR training, please contact me.

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