

2016 Annual Winkler/IAM/OsgoodePD
Conference on Mediation

"THE UNSETTLEABLE CASE"

ADVANCED STRATEGIES FOR SENIOR COUNSEL & MEDIATORS



A unique opportunity to learn from an international faculty of mediation experts on key issues, including:

- Are you going to mediation to settle? Recognizing those ulterior motives
- **Ethical considerations** in resolving large/difficult disputes
- **Power imbalances** - does the mediator have an obligation to level the playing field?
- How savvy businesses navigate the non-financial issues
- Difficult participants in the mediation - dealing with aggressive and rude behaviour
- Settling those multi-party complex cases - **practice tips for counsel and mediators**
- Does the "unsettleable" case really exist?
- Is the civil trial case on its death bed?
- The evolution of mediation: where do we go from here?
- **Judicial mediation** - will it change the role of the judge?

Plus! Don't miss the **Keynote Address** by **The Hon. George H. Brown, Resolute Systems, LLC, Memphis, Tennessee, Distinguished Fellow, IAM** on **"Dealing with Diversity in the ADR World."**

Engage first-hand with
the leading international
experts about refining your
mediation skills

*"THE SELECTION OF TOPICS
WAS VERY GOOD. THE
PRESENTERS WERE VERY
KNOWLEDGEABLE AND THE
QUESTION/ANSWER FORMAT
WORKED WELL IN PROVIDING
INFORMATION AND HOLDING
THE AUDIENCE'S ATTENTION."*

Lynn Lindsay

Senior Claims Consultant, RCMP
(2015)

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Webcast Available

Chair

Jon Fidler, J.D., C. Med.
M+F Mediation & Arbitration
Services, Distinguished Fellow, IAM

Date and Time

May 12, 2016
9:00 a.m. - 4:00 p.m. EDT
Online Replay: June 23, 2016

Keynote Speaker

The Hon. George H. Brown Jr.,
Resolute Systems, LLC, Memphis
Tennessee, Distinguished Fellow, IAM
"Dealing with Diversity in the ADR
World"

Location

Osgoode Professional Development
1 Dundas St. W., 26th Floor
Toronto, ON



2016 ANNUAL WINKLER/IAM/OSGOODEPD CONFERENCE ON MEDIATION "THE UNSETTLABLE CASE" ADVANCED STRATEGIES FOR SENIOR COUNSEL AND MEDIATORS

Mediation plays a critical role in our justice system, requiring a special skill set and raising unique challenges for both mediators and counsel. The "unsettleable" or complex case, the focus of this year's program, poses even greater challenges and requires mediators and counsel alike to know the range of strategic and tactical options so they can advise clients/parties on the pros and cons of each.

Developed as part of a unique partnership of legal, mediation and academic experts, the goal of this *OsgoodePD* program is to provide a forum for discussion focusing on broadening the skills of counsel and mediators who deal with those "unsettleable" cases. Topic include:

- Insights and lessons learned from government, political and other high-profile cases
- "Hard sell" vs. "soft sell" approaches: which is right and in what circumstances?
- Practice tips to mediators and counsel - from neutrality, civility and beyond
- The future of mandatory mediation - it's spread across the country
- The impact and significance of the emotional piece

With a faculty of leading **Canadian and international experts**, mediators and counsel will gain valuable insights and practical tips. This is a unique opportunity to have these experts all in one room. You will engage with the best and walk away with tools that you can immediately put to use in your practice.

Plus! Don't miss the **Keynote Address** by **The Hon. George H. Brown**, Resolute Systems, LLC, Memphis, Tennessee, Distinguished Fellow, IAM who will share his insights from many years as a mediator: "*Dealing with Diversity in the ADR World.*"

REGISTER NOW by visiting
osgoodepd.ca/COM16

Chair

Jon Fidler, J.D., C. Med.*

M+F Mediation & Arbitration Services

Keynote Speaker

The Hon. George H. Brown Jr.*

Resolute Systems, LLC, Memphis Tennessee

"Dealing with Diversity in the ADR World"

Faculty

Tracy L. Allen*

*Global Resolutions, PLLC,
Mt Clemens, Michigan*

The Hon. George H. Brown Jr.*

*Resolute Systems, LLC,
Memphis, Tennessee*

Genevieve A. Chornenki,

Estate Mediation Group

Patrick C. Coughlan*

*Conflict Solutions,
Raymond, Maine*

Tom Curry, *Lenczner Slaight*

Royce Smith Griffin LLP

Alan L. W. D'Silva, *Stikeman*

Elliott LLP

Sandra A. Forbes, *Davies*

Ward Phillips & Vineberg LLP

Jessica Kimmel, *Goodmans*

LLP

Adrian C. Lang, *Associate*

*General Counsel, BMO
Financial Group*

Eugene C. Moscovitch*,

*Judicate West, Alternative
Dispute Resolution, L.A.,
President-Elect, IAM*

Dr. Jennifer L. Schulz,

*Associate Professor, Faculty of
Law, University of Manitoba*

Paul Torrie, *Global*

Resolutions Inc.

The Hon. Warren K. Winkler,

*QC, Former Chief Justice
of Ontario, Mediator and
Arbitrator*

*Distinguished Fellow, IAM (International Academy of Mediators)

WHO SHOULD ATTEND

- Mediators
- Counsel
- Ombuds
- Provincial government including those working within FSCO
- Human Relations / HR Professionals

Do you have all of the skills you need to effectively conduct or represent your client in a complex mediation?



AGENDA

8:30

Registration and Continental Breakfast

9:00

Welcome and Introduction

JON FIDLER, *JD, C. Med., M+F Mediation & Arbitration Services*

9:10

The “Unsetttable” Case - From the Mediator’s Perspective

Moderator:

THE HON. WARREN K. WINKLER, *QC, Former Chief Justice of Ontario, Mediator and Arbitrator*

Panelists:

PATRICK C. COUGHLAN, *Conflict Solutions, Raymond, Maine*
TRACY L. ALLEN, *Global Resolutions, PLLC, Mt Clemens, Michigan*

- Does the “unsettable case” really exist?
- How can you identify it? What does it look like?
- Insights and lessons learned from government, political and other high profile cases
- Dealing with difficult lawyers and/or clients
- How to avoid the “train wreck”
- Knowing when to pull the plug

10:15

Break

10:30

The “Unsetttable” Case - Counsel’s Perspective

Moderator:

SANDRA A. FORBES, *Davies Ward Phillips & Vineberg LLP*

Panelists:

TOM CURRY, *Lenczner Slight Royce Smith Griffin LLP*
JESSICA KIMMEL, *Goodmans LLP*

- Are you really going to mediation to try and settle the case?
 - What are the ulterior motives and why?
- Check your ego at the door
- Being aware of outside issues - a look at opposing counsel
- Being nice to people you do not want to be nice to
- “Hard sell v. soft sell” approaches - which is right and in what circumstances?
- Recognizing whose case is it and what your client’s interests are

11:30

How Do You Settle Multi-Party Cases?

PATRICK C. COUGHLAN, *Conflict Solutions, Raymond, Maine*

In this unique session, Patrick C. Coughlin will share his extensive experience as one of the few mediators dealing internationally with

substantial multi-party construction, catastrophic case, mass tort and insurance coverage cases. Through his unique practice he will share:

- Lessons learned - successful strategies and theories from the most difficult cases
- Be prepared - know the facts, the law and each party’s perspective
- Bringing those divergent points of view together
- Building trust with all mediation participants - ensuring everyone’s voice is heard
- Practice tips to counsel - what mediators are looking for
- Practice tips to mediators - from neutrality, civility and beyond
- Providing insight to participants - focus on the risk of litigation

12:00

Luncheon and Keynote Speaker

THE HON. GEORGE H. BROWN JR., *Resolute Systems, LLC, Memphis, Tennessee*

“Dealing with Diversity in the ADR World”

1:30

Ethical Considerations in Resolving Large and/or Difficult Disputes

Moderator:

DR. JENNIFER SCHULZ, *Associate Professor, Faculty of Law, University of Manitoba*

Panelists:

THE HON. GEORGE H. BROWN JR., *Resolute Systems, LLC, Memphis, Tennessee*
ALAN L. W. D’SILVA, *Stikeman Elliott LLP*

- Class actions and lawyers’ fees - cause for concern?
- Cross border disputes - obligations and practice management tips
- Recognizing cultural issues - from the outset through settlement
- Difficult participants in the mediation - dealing with aggressive and rude behaviour
- Power imbalances - does the mediator have an obligation to level the playing field?
- Protection of minors or persons under a disability

2:15

Break

2:30

It’s Not All About the Money: Strategies for Successfully Navigating the Non-Financial Issues

Moderator:

PAUL TORRIE, *Global Resolutions Inc.*

AGENDA (Cont'd)

Panelists:

EUGENE C. MOSCOVITCH, *Judicate West, Alternative Dispute Resolution, L.A., President-Elect, IAM*

ADRIAN C. LANG, *Associate General Counsel, BMO Financial Group*

GENEVIEVE A. CHORNENKI, *Estate Mediation Group*

- How savvy businesses navigate the non-financial issues: staying out of the courtroom
- It's not necessarily about the money: recognizing interests vs. positions
- The impact/significant of the emotional piece

3:15

The Evolution of Mediation: Where Do We Go From Here?

THE HON. WARREN K. WINKLER, QC, *Former Chief Justice of Ontario, Mediator and Arbitrator*

DR. JENNIFER L. SCHULZ, *Associate Professor, Faculty of Law, University of Manitoba*

- Is the civil trial case on its death bed?
- What happens if we mediate too much? - the effect on developing jurisprudence and
- the training of future trial lawyers
- The future of mandatory mediation - it's spread across the country
- Judicial mediation - will it change the role of the Judge?

4:00

Conference Concludes



OsgoodePD has been approved as an Accredited Provider of Professionalism Content by the LSUC.



Eligible CPD/MCLE hours:

LSUC (ON): 6.0 CPD hours (3.0 Substantive; 3.0 Professionalism)

OsgoodePD programs may be eligible for CPD/MCLE credits in other Canadian jurisdictions. To inquire about credit eligibility, please contact cpd@osgoode.yorku.ca

REGISTRATION

Please complete all registrant information.

"The Unsettling Case"

Advanced Strategies for Senior Counsel and Mediators

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\$545 plus HST

Early Bird Price: \$495 until Feb. 29, 2016

Fees include attendance, program materials, continental breakfast, lunch and break refreshments. Group discounts are available. Visit www.osgoodepd.ca/groupdiscounts for details. Please inquire about financial assistance.

Date & Time

May 12, 2016

9:00 a.m. - 4:00 p.m. EDT

Please arrive a half hour early for sign-in and material pick-up.

Dress is business casual.

Location

Osgoode Professional Development
Downtown Toronto Conference Centre
1 Dundas St. W., 26th Floor
Toronto, ON M5G 1Z3

Program Changes

We will make every effort to present the program as advertised, but it may be necessary to change the date, location, speakers or content with little or no notice. In the event of program cancellation, York University's and Osgoode Hall Law School's liability is limited to reimbursement of paid fees.

Cancellations and Substitutions

Substitution of registrants is permitted at any time. If you are unable to find a substitute, a full refund (less \$75 administration fee) is available if a cancellation request is received in writing 5 days prior to the program date. No other refund is available.

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