

SOCIETY NEWS AND REVIEWS

A report from Terry Harris, President of the B.C. Mediator Roster Society



This past year marked the B.C. Mediator Roster Society's eighth anniversary and one of our most productive and exciting years ever. The many initiatives we have been involved in since September 2005 include the following:

- In September 2005, we were designated under Small Claims Rule 7.3 – which provides the Notice to Mediate process for Small Claims cases between \$10,000 and \$25,000 - as the body to which any party to an action may apply for the appointment of a mediator, where the parties are not able to agree on the selection of a mediator within the time required.
- In the spring of 2006, we began offering Roster members a number of new services to support their competency: monthly teleconferences on best practice issues; workshops – the first in this series was a full-day advanced family mediation workshop

offered in conjunction with the Family Justice Services Division, Ministry of Attorney General; and a lending library of books on conflict resolution.

- In May 2006, we completed a draft "Practice Advisory Process", intended to handle competency and ethical concerns about Roster members in an informal and collaborative manner. A consultation with Roster members regarding this Process is currently underway.
- In June 2006, we established a professional liability insurance program, providing mediators and arbitrators errors and omissions insurance at a group rate, for members of the Society's Civil and Family Rosters and its affiliate members of the Child Protection Mediation Program Roster ("CPMP").
- Throughout the year we provided a variety of support services to the CPMP, in partnership with the Dispute Resolution Office. These included organizing best practice teleconferences for members of the CPMP Roster, an orientation session for new members, and producing a bookmark for promoting mediation and the Rosters.

The coming year promises to be an even more exciting one. Over the next few months, the Ministry of Children and Family Development ("MCFD") will begin implementing a plan to increase the use of alternative dispute resolution in child welfare, in close consultation with the Dispute Resolution Office. This will be done through a director's policy, which is a "*presumption in favour of ADR*". It will establish mediation and family group conferencing as the preferred options for child welfare decision-making in British Columbia. The intention of the policy, which will take effect on October 30, 2006, is that families will be routinely referred to ADR processes by delegated social workers early in the case management continuum, and that most contested cases will be resolved using these collaborative processes. To enable the Society to support the success of this policy, we have received a grant for \$500,000 from MCFD. With these funds, we will work collaboratively with the Dispute Resolution Office, MCFD, the BC Dispute

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Thank you to Don W. Yule, Q.C.

During the spring of 2006, Don Yule, Q.C., of Guild, Yule and Company LLP in Vancouver, undertook an extensive review of a professional liability insurance policy being proposed by Lombard Canada for the Society's Civil and Family Roster members and affiliate members of the Child Protection Mediation Program Roster.

Our thanks go to Mr. Yule for his meticulous and comprehensive review, as well as the advice and guidance he provided to the Society. As a result of his work, a mediators and arbitrators errors and omissions insurance program is now available for Roster members at a group rate.

Information about Lombard Canada's insurance policy can be found at: <http://www.mediator-roster.bc.ca/whatsnew.html> ❖

Schedule of offerings for Roster members

The following best practice teleconferences and workshops for Roster members are scheduled for the fall of 2006. Registration information and other details are sent via e-mail:

- September 19: **Rudd v. Trossacs Investments Inc.: When Can Mediators Be Witnesses?** (John Kleefeld, Tele-conference Presenter; Jane Morley, Q.C., Facilitator)
(4 – 5 pm)
- October 3: **Developing Platforms – Victoria Session**
(All day) (Wayne Plenert, Workshop Instructor)
- October 19: **Managing the Client with Mental Health and Addiction Issues** (Bob Finlay, Teleconference Facilitator)
(4 – 5 pm)
- November 21: **Inside the Practice: Personal Injury Mediation**
(4 – 5 pm) (Gary Cullen, Doug Husband and James Vilvang, Q.C., Teleconference Panel Members; Facilitator TBA)
- November 30: **Developing Platforms – Vancouver Session**
(All day) (Wayne Plenert, Workshop Instructor)

Participants needed for TV series about disputes between neighbours

Roster members were recently advised that Vancouver's Force Four Entertainment (www.forcefour.com) is seeking a mediator and/or consultant for a new 13 part series about neighbours which they are developing for HGTV. In each half-hour episode, two neighbors in dispute over home and property issues learn how to co-exist and solve their problems - with the help of a mediating host and a team of experts. The experts, including a Designer, a Handyman and other specialists, will implement creative solutions for renovations and repairs to the home or property (at no cost to home owner) to aid in the resolution between the neighbours.

Force Four Entertainment is also looking for people to participate in the show. If you know a homeowner or renter, in the midst of a dispute with his/her neighbour, who might be interested in participating in the show, please let them know that if they e-mail their story to neighbours@forcefour.com, they could be chosen. ❖

New Roster Members

The Board of Directors is pleased to welcome the following recently admitted Roster members:

CIVIL ROSTER:

Thomas Fletcher, Q.C. (Vernon)
Kyra Hudson (Vancouver)
Catherine Watson-MacDonald (Bowser)

FAMILY ROSTER:

Dr. Judith Thompson (Burns Lake)



Correction:

In the Roster Report of March 2006, on page 2 under "New Roster Members (Civil Roster)", we misspelled Karmen L. Cozens' name. We apologize for the error and any inconvenience it may have caused.



Board of Directors

Terry Harris
(President and Chair of Roster Committee)
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Carole McKnight
(Vice Chair of Roster Committee)



The Roster Report is published twice a year by the B.C. Mediator Roster Society.

Editor: Susanna Jani, Roster Administrator

Additional copies of The Roster Report are available on request from the Society office.

A copy of this, and previous issues of The Roster Report, are posted on the Society website at:

www.mediator-roster.bc.ca/aboutus_newsletters.html

ON THE LINE:

Ron Smith talks about “protecting the integrity of the mediation process”

During the Society's recent best practice teleconferences Civil and Family Roster member and former board member, Ron Smith, spoke eloquently about the importance of mediators “protecting the integrity of the mediation process”. In this article - the first in our “On the Line” series exploring issues arising out of the teleconference discussions - we ask Ron to elaborate on this concept and how he applies it in his own practice:

Ron, when you talk about “protecting the integrity of the mediation process”, what does that mean to you?

“Protecting the integrity of the mediation process” means the same to me in the context of mediation as it would mean to me as a lawyer in the context of the legal profession. It means that I ensure that I mediate in a way that is congruent with the stated values of the mediation community. For example, I maintain my impartiality, interfere when I perceive that one of the parties is using “dirty tricks”, and ensure equal bargaining between the participants.

I believe that in any professional pursuit where we have “earned” the right to hold ourselves out as having special ability or knowledge that we can apply, we owe a duty to the profession that is over and above the duty to the parties who are in front of us at the time. If we say that we believe in the process of mediation and that we are specially trained to practice that profession, then we ought to do what we can to protect the profession for future parties who will require it for their purposes.

Protecting the integrity of the process is different than *guiding* the mediation process. As mediators, we guide the mediation process because that's what we were trained to do - to utilize the tools that we have acquired. We should protect the mediation process for the sake of the process itself.

How do you personally apply this concept in your own practice?

I don't have any hard and fast rules that I follow. I follow certain ethical standards that I may or may not clearly articulate when involved in a mediation. I know when the process is in jeopardy somewhat in the same way that Justice Potter Stewart of the United States Supreme Court recognized obscenity when he said that he could not define what he meant by the term but he knew it when he saw it.

An example of how I apply this concept took place recently in a personal injury dispute which I was mediating. One of the parties to the mediation totally missed a head of damages because their lawyer was not experienced in personal injury. It was a difficult

call to make but, with all parties in the room, I drew everyone's attention to the oversight by simply asking the question: “Has anyone considered the issue of?”

Have you ever been in a position where you felt you were not able to protect the integrity of the mediation process?

Yes, once. In this particular case, I ended the mediation without further comment. The parties were not happy with that and I don't think I gained any points as a mediator but I felt that I had to do so. To go on would have been unfair to one of the parties, and to explain why I was ending the mediation would have compromised confidentiality. I can envision other circumstances where I would explain why I am ending the mediation. It is my view that the mediation process should not be allowed to continue if the mediator is not in control of it. I, as mediator, am ultimately responsible for the process, and if I am not in control of it then I cannot be responsible.

Any final thoughts you would like to pass on to Roster members?

I think this is an issue deserving of further discussion. What we are doing here is trying to answer the question: “What do we, as self-governing professionals of a Roster of peers, expect of ourselves and our peers beyond the application of skills earned and acquired?” Every profession must answer this question because the answer defines the profession as something more than a trade.

Professional integrity requires an understanding and acceptance of shared values, and practice consistent with those values. We have developed ethical standards for this young profession and we should require ourselves and our peers to practice in a way that is consistent with those standards and the values they represent. ❖ *Interview by Susanna Jani*

TELL US WHAT YOU THINK...

Do you agree with Ron? Is it a mediator's responsibility to protect the integrity of the mediation process – or simply to guide it? Is a mediator's primary duty to the profession or to the parties? Send us your comments and we will consider them for publication in our next edition of the Roster Report: mediators@mediator-roster.bc.ca

Society News and Reviews

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Resolution Practicum Society, the Law Foundation and the Legal Services Society to implement the increased use of child welfare mediation around the province. Our primary focus will be to raise awareness of the CPMP and to provide services to support the competency of the CPMP mediators. While this work will be geared specifically to the CPMP, it will allow us to expand and diversify the overall capacity and numbers of mediators to serve British Columbians in all sectors of the province, and it should stimulate the Civil and Family Roster membership.

We will, of course, also be continuing with our existing best practice initiatives. Among our future offerings to Roster members will be teleconferences in new formats, workshops (*see page 2 for our fall schedule of offerings*), and an expanded library of conflict resolution books. We will also be exploring the feasibility of establishing a list of senior mediator “peer consultants” to assist Roster members with practice questions.

It is our great fortune to have a new director supporting us in this upcoming work. We are delighted to announce that **The Honourable Judge Marion Buller Bennett** joined our board of directors in June 2006. Provincial Court Judge Marion Buller Bennett, the only First Nations woman judge in B.C., brings eleven year’s experience as a judge and mediator. She is based in Port Coquitlam and presides in all Provincial Courts.

June 2006 brought several other changes to our board. **Jane Morley, Q.C.**, retired after serving as President for the last four years of her six-year term as a director. Jane’s contributions to the Society are, simply put, incalculable. Not only did she play a vital role in developing some of the Society’s most fundamental policies and values, but her expertise in policy issues relating to mediation and justice reform

was of crucial importance on many occasions. The Society is indebted to Jane for the willingness with which she shared her gift for consensus building and her ability to bring a broad perspective to the board’s discussions.

Also departing in June was **The Honourable Mr. Justice David Vickers**. Justice Vickers brought an invaluable, much-needed judicial perspective to the Society’s board. More than that, though, he also brought his unique brand of practical wisdom and knowledge – both of which were pivotal to resolving many of the complex issues dealt with over the years. His friendly, egalitarian and experienced perspective will truly be missed.

We also bid a fond farewell to **Catherine Morris**. A founding board member and long-term Roster Committee Chair, Catherine’s contributions are irreplaceable. Her clarity of focus and unfailing willingness to set and maintain high standards were crucial throughout the development and implementation of the Society’s standards for mediators. We are very grateful to Catherine for the generosity with which she shared her time and expertise during the past eight years.

Other changes to the board include **Wayne Plenert** being elected Vice President. Wayne has a general mediation practice in northeastern British Columbia. He helped establish a Collaborative Law group in the Peace River and a Victim Offender Reconciliation Program in Dawson Creek. He has taught at Menno Simons College in Winnipeg and currently offers workshops and courses on a variety of conflict resolution topics.

On behalf of the Society, thank you to the retired directors and welcome to our new board member. As your new President, I look forward to working with you all during the coming year. ❖