



MCKENZIE LAKE
LAWYERS

2 - 3

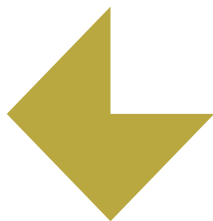
ARTICLES
Preparing for
Mediation
A Great Hike

4

RECIPE
Cranberry Streusel
Coffee Cake

4

INFORMATION
Block fees
Malcolm Bennett



Introducing *The Mediator's Brief*

A friendly guide to the pleasures and perils
of alternative dispute resolution

I have devoted a lot of time, energy, and cost in training, to become an effective mediator and arbitrator. I believe strongly in the mediation process. In my view, it offers a more personal, respectful and effective opportunity for conflict resolution.

I decided to start a newsletter to offer the opportunity for dialogue and information and to hopefully

provide some value to counsel and parties who use, or are thinking of using, mediation and/or arbitration. I also plan to include some personal interest material.

I hope you find this newsletter helpful and interesting. I welcome any feedback you might have, and I ask for your assistance in circulating this newsletter to others it might be of benefit to.



by

Malcolm Bennett

McKenzie Lake Lawyers LLP

140 Fullarton Street, Suite 1800, London, ON N6A 5P2

Preparing for Mediation

Here are some suggestions that I hope you will find helpful when preparing for a Mediation



1. Know Your Mediator

All mediators have their own style that often is a reflection of their personality and experience. The scale ranges from those that take a totally neutral role to those that tend to be more authoritative and yes, sometimes dictatorial.

My advice would be to choose a mediator with whom your clients are most likely to connect. The clients must have trust and faith in the mediator to recognize and act on their interests and needs. It is essential that a mediator be able to build a rapport with the clients.

2. Know the Parties

Ask yourself whether the parties are good candidates for Mediation. Do you think they will be able to participate in a process that is engaging and interactive? Are they ready emotionally to look to resolution of their case?

Take the time to have this discussion with your client and assess whether the time is right.

3. Explain the Mediation Process

The various options and processes available to deal with the case should form part of the first discussion you have with your client.

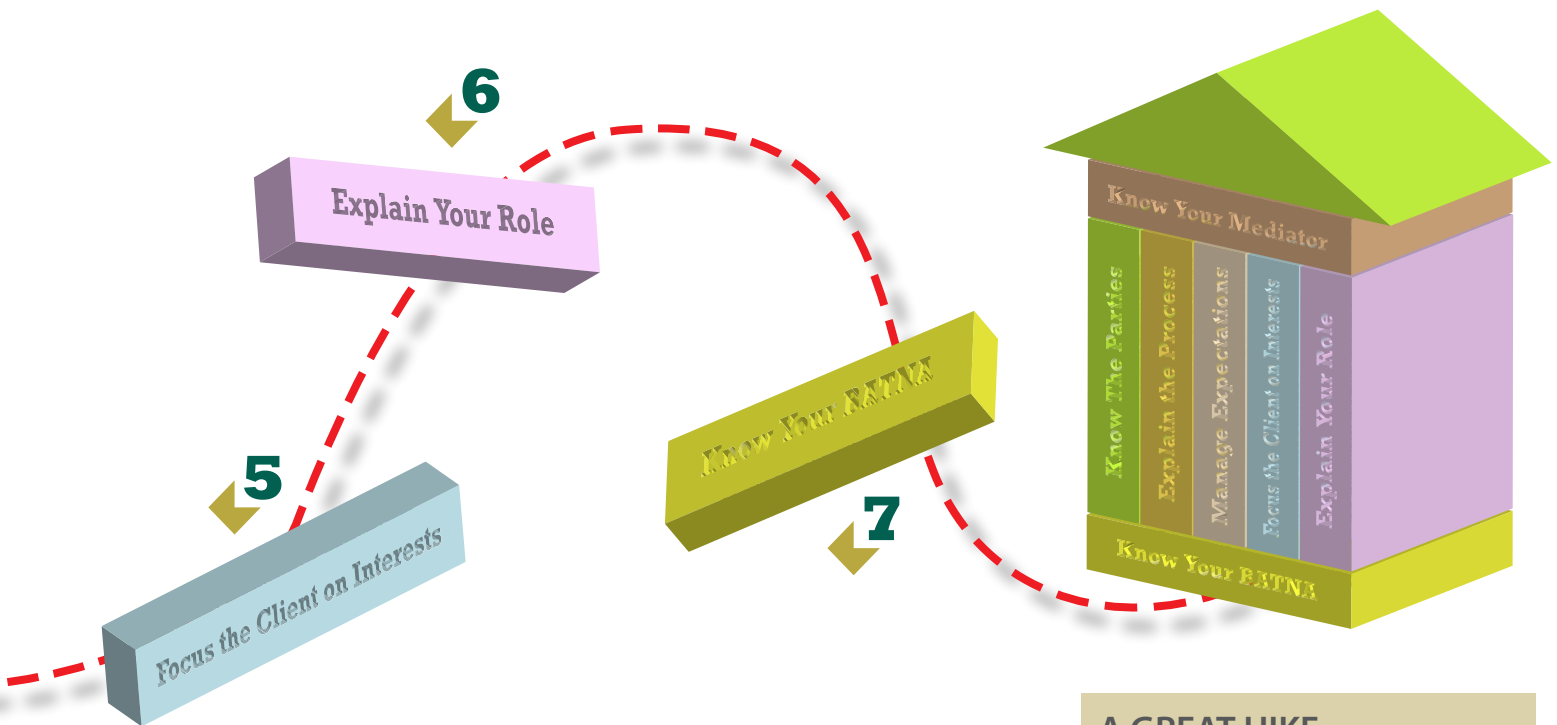
When explaining the option of Mediation let them know **(a)** that it is a voluntary process; **(b)** it is a private and confidential process; **(c)** that it is an interest-and-needs-based negotiation, it focuses on interests, not positions; **(d)** it requires compromise; **(e)** the mediator will assist the parties in generating options for settlement and facilitate the parties at arriving at their own agreement; **(f)** that it is usually closed mediation, so it offers the opportunity for discussion, interaction and compromise on a without

prejudice basis.

4. Manage Expectations

From my experience, a real impediment to resolution can be the client with unrealistic expectations. As a mediator, I know I have to work a lot harder when one or both parties come in to mediation with an unrealistic expectation of their position or expected outcome.

It is extremely important that the lawyer take the time to review with the client their expectations and provide input with respect to those expectations. Review with the client the likely range of settlement, the strengths and weaknesses of your case as well as the other party's. Know your BATNA (best alternative to a negotiated agreement), and explain it to the client. Suggest that your client keep an open mind during the process and listen to what the other side has to



say, so as to fully comprehend their interests / needs. Be open to all ideas and consider all options that may be generated for resolution. Be an active, engaged participant in the process.

Finally, as I tell the parties at the start of mediation, both myself and their lawyers are there to assist them to come to their own agreement.

5. Focus the Client on Interests not Positions

In training as a mediator, we are taught to uncover the interests and needs of the parties. Parties come to mediation with positions, and it is our role to move them from positions to interests. By using interest-based negotiation and moving away from positional bargaining, we hope to be able to reach an agreement that meets as many of the parties' interests / needs as possible.

6. Explain Your Role in Mediation

Whether the lawyer attends the mediation with the client or not, your role is to advise the client and to be supportive in their efforts to reach a mutually acceptable agreement. You will assist the client in generating options for settlement, assessing risk and generating offers. There is certainly advocacy in mediation but it takes a different form that is less combative. Mediation focuses on the future not the past.

7. Know Your Client's BATNA

You must know your best alternative to a negotiated agreement (BATNA). If the final results of negotiation, after exploring all options, offer less value than you are certain to get by going to court / arbitration, then the negotiations may need to be terminated.

A GREAT HIKE

We spent six days in June, hiking in Newfoundland's Gros Morne National Park, a UNESCO World Heritage Site.

For a challenge, try the Green Gardens hike. It's a 15.5 km loop that takes you through woods and plush green meadows overlooking the ocean. There are two small creeks / rivers (depending on the season) to ford so you will have wet feet. There are magnificent off-shore sea stacks so be sure to take your camera.

The hike took us about 6 hours so lots of water, food, and snacks are necessary. Layering your clothing is best as you might encounter wind, rain or possibly sun!

If you are planning a trip there I would be pleased to share our itinerary and accommodation recommendations.

Cranberry Streusel Coffee Cake

I hope you enjoy this family favourite!

Streusel

3/4 cup lightly packed brown sugar
1/2 cup all purpose flour
1 teaspoon cinnamon
1/4 cup butter
Mix and cream together sugar, flour and cinnamon. Cut in butter until crumbly.

Cake

1/2 cup soft butter
1 cup sugar
2 eggs
1 teaspoon vanilla
2 cups all purpose flour
1 teaspoon baking powder
1 teaspoon baking soda
1/2 teaspoon salt
1 cup sour cream
2 cups cranberries (1 bag)*
* If cranberries are frozen, pre-heat them at 350 degrees for 20 minutes.

Cream butter with sugar and eggs and vanilla.
Sift dry ingredients and add flour mixture with creamed mixture- alternating with adding sour cream. Grease and flour a 10-inch spring form pan.
Add 1/2 batter, then 1/2 streusel, then 1/2 cranberries, then batter, cranberries and streusel.
Bake at 350 degrees for 1 hour.
Cool 10 minutes before releasing sides.

Block Fee Schedule

To assist counsel who wish to divert their Family Law cases to mediation or arbitration, Malcolm Bennett Acc. FM is offering the following block fee schedule:

MEDIATION

1. A block fee of \$5,000 for a one-day Mediation which includes intake interviews of parties, screening, all preparation and teleconferences with counsel prior to mediation.
2. If a further mediation session(s) is required, a block fee of \$1,500 for a half day and \$2,500 for a full day.

ARBITRATION

1. All interim motions up to a maximum of \$500.
2. Pre-arbitration conference \$100.
3. Each day of arbitration \$2,500 (includes all preparation by the arbitrator).
4. Providing arbitrator's written award up to a fee of \$1,500 (\$300 /hr.).

Note: Fees do not include HST.

Please call 519-672-5666 or email Lacey Dotterman at Dotterman@mckenzielake.com for further information.

Malcolm Bennett Acc. FM

Malcolm Bennett graduated from the University of Western Ontario and was called to the Bar in 1975. With over 30 years of experience, he restricts his practice to family law, estate litigation, and mediation and arbitration for both family law and estate matters. Mr. Bennett is a member of the Law Society of Upper Canada, the Canadian Bar Association, the Ontario Bar Association, the Middlesex Family Law Association, the ADR Institute of Ontario, the Ontario Association of Family Mediators, the Academy of Professional Family Mediators (London), and the Collaborative Family Law Group of London.

