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### **10 essential tips for any commercial mediation in Ontario**

1. Chose a mediator who is smart and empathic (or empathetic, if you prefer). The objective is to facilitate a mutually acceptable settlement that the parties will implement and which is enforceable.
2. Although rarely done, the mediator and counsel should have a pre-mediation conference call or meeting to discuss the mediation process. This will greatly improve the prospects for success on the day of the actual mediation.
3. The mediator must know how to—and want to—run an efficient, cost effective mediation proportionate to the issues. One size does not fit all.
4. The mediator must be committed to facilitating a settlement based on a principled analysis, while still having regard to the power dynamics (and imbalances) between the parties.
5. The mediator should be knowledgeable about the general issues in dispute. The mediator will be an active participant in the negotiations, contributing to the discussions based on their own expertise and experience.
6. The parties must bring the ultimate decision maker to the mediation. If, however, any settlement will require board approval or such like, this should be identified in advance (e.g., in the pre-mediation conference call). In this event counsel ideally must be shown to have the confidence of the board before the mediation proceeds.
7. Each mediation brief should be thorough and attach the crucial documents. The exchange of mediation briefs is the most important opportunity to persuade the other side of the error of their ways. It is also an appropriate forum to initiate creative settlement options. It is essential to let the other side think about such options before the mediation.
8. Have a realistic view on your client's best alternative to a negotiated agreement. A "walk away without costs" settlement six months before trial, while unappealing, is usually better than losing a three month trial with a devastating costs award.
9. Talk beforehand. Yes, you can settle without the help of a mediator.

10. Mediation: sooner or later in the litigation process? Sooner is usually better for the vast majority of cases, before each side has spent an unrecoverable, small fortune on legal fees.