

Index

accommodation

Accessibility for Ontarians with Disabilities Act, 99

advocating, 107-108

Autism Spectrum Disorder (ASD), 127-130

communication disabilities, 125-127

definition, 99

hearing loss, 108-114

intellectual disabilities, 118-120

learning disabilities, 130-131

mental health disabilities, 120-123

need for, 98-100

physical and mobility disabilities, 123-125

types of

generally, 100-101

people using service animals, 101-102

support persons, 102-103

timing of mediation and breaks, 101

vision disabilities, 114-118

advocacy for clients, zealous, 31-33, 69, 75, 196-199, 210, 213

Americans with Disabilities Act

ADA Mediation Guidelines, 88, 94

generally, 88

asymmetrical representation, see self-represented litigants

Autism Spectrum Disorder (ASD), accommodation and, 127-130

Best Alternative to a Negotiated Agreement (BATNA), 167-169, 195, 208, 215, 217

capacity to mediate

ADA Guidelines, 94

changing nature of, 94-95

Disability Accessibility Guidebook for Mediators, 93

generally, 93

presumption of capacity, 93-94

referral for assessment, 96

responsibility of mediator to assess, 94

Rules of Professional Conduct, Law Society of Ontario, 95-96

***Code of Professional Conduct, Canadian Bar Association*, 108**

***Code of Professional Conduct, Law Society of British Columbia*, 42**

collective bargaining

case study

choosing a mediator, 181-182

generally, 180-181

impasse, 186-188

negotiating issues, 184-186

preparation, 182-183

wages, 188-190

generally, 177-179, 191-192

“horse trading”, 190

mediator

content, 191

process, 191

unique features, 179-180

communication disabilities, accommodation and, 125-127

complexity theory, 14-16

critical disability theory

critiques of mediation

generally, 140-141

- informality, 143-146
- privacy, 141-143
- protection of vulnerable parties, 146-149
- defining and conceptualizing disability, 137-140
- democratic values in mediation
 - citizenship, 155-157
 - generally, 149-151
 - participation, 151-152
 - personal autonomy, 153-155
- generally, 133-137, 158-160

Disability Accessibility Guidebook for Mediators, 87, 93

disability, parties with, *see* **parties with disabilities, accommodation**

ethical advocacy in multi-party mediation, *see* **multi-party mediation**

ethics and practice of mediation, impact of self-represented litigants on

- benefits of mediation, 64-69, 73
- generally, 61-62, 84
- improvement of mediation process, 73-77
- lawyer as, 77-84
- multi-party mediation
- perils of mediation, 69-70
- self-representation
 - interaction with opposing counsel, 70-73
 - rise of, 62-64

fairness in mixed representation mediation, 28-30

Family Unbundling Toolkit, British Columbia, 51-55

hearing loss, accommodation and, 108-114

Human Rights Code (Ont.)

- accommodation of disability, 98
- disability, definition, 89

informed consent, self-represented litigants, 33-34

intellectual disabilities, accommodation and, 118-120

lawyer as mediator, 77-84, *see also* mediator

learning disabilities, accommodation and, 130-131

legal coaching, 42, 47, 51, 58-59

limited scope legal services, *see* unbundled legal services

mandatory mediation

generally, 5-6, 7, 135, 136, 163

unbundled legal services, and, 40

mediation, generally

accessibility of mediation for self-represented litigants, 20

benefits of mediation, 64-69, 73

complexity, 14-16

definitions

mediation, 3, 64, 134

mediator, 3

effectiveness of mediator, indicators, 4-5

history, 8-9

improvement of mediation process, 73-77

mandatory, where mediation is, 5-6, 7

perils of, 69-70

representation in

generally, 9-11

opportunity for client participation, 11-12

preparation, 12-14

types of mediation, 6

mediator, *see also* collective bargaining

awareness of unequal bargaining power between parties, 82-83

definition, 3

effectiveness of mediator, indicators, 4-5

flexibility, 80-81

lawyer as, 77-84

neutrality, 77-81

responsibility of mediator to assess capacity of parties, 94

role of, 77

- scope of intervention in unfair settlements, 83-84
- selection of mediator or team of mediators in multi-party mediation, 166-167

mental health disabilities, accommodation and, 120-123

Model Code of the Canadian Federation of Law Societies, 199-200, 201-203, 209, 212, 214, 217

multi-party mediation, *see also* **collective bargaining**

- advocacy in, 209-216

- agreement

- communication strategy, 176

- create value, 175

- know the rules, 175-176

- ethical advocacy in

- Codes of Conduct, 200-205

- considerations for lawyers in mediation, 215

- ethical, definition, 198-200

- generally, 193-198, 216-217

- Model Code of the Canadian Federation of Law Societies*, 199-200, 201-203, 209, 212, 214, 217

- questions lawyers should ask themselves to ensure ethical process, 214-215

- generally, 163-165, 176

- mediation session

- coalition development, 172-174

- cooperation and coordination, 171-172

- generally, 170

- leadership, 171

- preparation

- Best Alternative to a Negotiated Agreement (BATNA), 167-169

- charting relationships, 169-170

- generally, 165-166

- selection of mediator or team of mediators, 166-167

- unique features of, 206-209

National Self-Represented Litigants Network, 47

National Self-Represented Litigants Project, 25, 44

parties with disabilities, *see also* accommodation, critical disability theory

agreement

capacity, duress and undue influence, 104-105

format, 105

generally, 103-104, 106

disability, definition, *Human Rights Code* (Ont.), 89

mediation session

accommodation

need for, 98-100

types of, 100-103

barriers to participation, 96-97

preparation

capacity to mediate, 93-96

disclosure of disability, 91-93

generally, 87-91

visible and invisible disability, 90

representation, asymmetrical, *see* self-represented litigants

Rules of Professional Conduct, Law Society of Ontario, 25, 95-96

self-represented litigants, *see also* unbundled legal services

accessibility of mediation for, 20

agreement

drafting settlement agreements, 36-37

enforcement and compliance issues, 34-36

informed consent, 33-34

generally, 19-22, 37-38

interaction with opposing counsel, 70-73

mediation session

fairness in mixed representation mediation, 28-30

generally, 27-28

zealous advocacy for clients, 31-33

preparation

generally, 22-23

initial communication, 25-26

materials, 23-24

preparing clients, 26-27

unbundled legal services

access to justice, 43-45

defined, 41-43

framework for unbundling, 51-57

generally, 39-41, 59

legal coaching, 42, 58

new business models, 45-46

research and reports on, 46-47

selection of mediator, 57-58

support for effective mediation advocacy, as

generally, 47-48

representation in mediation, 48-49

unbundled legal services in mediation, 49-51

zealous advocacy for clients, 31-33, 69, 75, 196-199, 210, 213

