

ARBITRATOR/MEDIATOR SPOTLIGHT

Joel Richler



ARBITRATION PLACE

An all-encompassing approach

CAREER & BACKGROUND

I graduated law school at McGill in 1979 with common and civil law degrees and then practiced as a dispute resolution lawyer at Blake, Cassels & Graydon LLP in Toronto. At Blakes, I had a broad-ranging commercial litigation/arbitration practice, with some emphasis on construction, partnership, corporate and shareholder disputes. In 2005 I completed an international arbitration course offered by the CIArb and acted as counsel in a wide variety of domestic and international arbitrations. In 2015, I retired from counsel practice and joined Bay Street Chambers and then Arbitration Place as an arbitrator, adjudicator, neutral evaluator and mediator. Since then, I have been appointed as sole arbitrator, tribunal chair or party-appointee in over 120 arbitrations and have issued over 55 awards.

ARBITRATOR/MEDIATOR PRACTICE

My ADR practice is very broad. I have been appointed to arbitrate and mediate disputes involving construction/infrastructure, complex delay & productivity claims, partnership dissolution, contract interpretation, real estate, shareholder & oppression, joint ventures, share & asset purchases, franchise, breaches of contract, mining/energy, artwork valuations, maritime & carriage, condominium and procurement matters. I have also acted as a construction adjudicator and as chair of dispute resolution boards on several large and complex infrastructure projects. While similar to arbitrations, adjudications/resolution board matters require quick resolution, as they often take place during the course of contract performance.

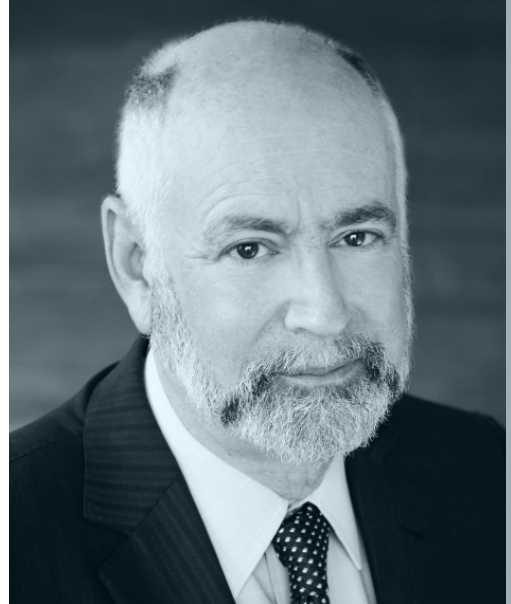
My primary objective in all my appointments is to ensure efficient, fair, and final dispute resolution so parties can move on from their disputes and devote themselves to more productive business opportunities. As to arbitration in particular, I endeavor to offer a meaningful alternative to court litigation. Rather than simply mirroring court procedures, I encourage counsel to engage in an efficient process that entails ongoing case management and the sharing of evidence throughout the process that culminates in an efficient hearing.

BENEFITS OF ARBITRATION/MEDIATION

Traditional litigation is burdened by costly and inefficient procedures that do not serve the interests of parties who want to resolve their disputes and move on to more productive activities. A properly-run arbitration will avoid unnecessary procedures like formalistic pleadings and extensive discovery. Skilled arbitrators will have parties file their detailed evidence in writing and supported by documentary evidence as the initial arbitral steps. Where oral or documentary discovery is required, the parties will explain precisely what they need, and why they need it. Hearing will be limited to cross-examinations (and possibly oral closing arguments); they will take place within a few months of the start of the arbitrations, and they will be completed in days, rather than months. A very important benefit of arbitration is that the arbitrator will manage and monitor the case, and will be reviewing the evidence, from start to finish.

Adjudications and neutral evaluations usually take place on construction projects and offer additional advantages. As mentioned, adjudications occur while the parties are performing their contracts and they produce decisions that are temporarily binding. Once decisions are made, parties continue to perform, and where necessary, arbitrations follow the completion of the projects.

Parties mediate their differences to avoid arbitration and litigation. Skilled mediators will listen to the parties and identify areas of common interest that will help the parties come to terms and settle their disputes.



TIPS FOR COUNSEL TO BE MORE EFFECTIVE IN ARBITRATION/MEDIATION

When parties agree to arbitrate, they agree to engage in a consensual approach to dispute resolution. While arbitration will always be an adversarial process, delay and other similar tactics will not be permitted. Counsel must bear this in mind in their dealings with each other and with the arbitrator.

This means that what may work in a courtroom will not necessarily work in an arbitration. Arbitrators will expect counsel to cooperate in the formulation of case procedures and in complying with procedural orders that may be made. As examples, counsel should:

- Act civilly throughout the case;
- Provide realistic time estimates and comply with all case deadlines;
- Narrow issues to be decided;
- Limit number of witnesses;
- Provide evidence that focuses on the issues; ensure they do not burden arbitrators and adverse parties with unnecessary documentary evidence;
- Avoid unnecessary reliance on formal rules of evidence; ensure requests for documents and discovery are directed to issues relevant and material to issues that have to be decided;
- Limit cross examinations to material issues; and
- Avoid needless objections at the hearings