

ARBITRATOR/MEDIATOR SPOTLIGHT

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CAREER & BACKGROUND

I have been a disputes lawyer for over 45 years, initially as a commercial litigator for 35 years with Stikeman Elliott, acting as counsel in a broad range of commercial & administrative disputes, working with leading counsel of the day, the late John Sopinka QC and Sydney Lederman QC, before their appointments to the Bench. My first appointment as an international arbitrator came in 2000. I was appointed as a party nominee for a German company in a large ICC arbitration, sitting with one of the world's top international arbitrators, the late Johnny Veeder QC of Essex Court Chambers, London. Through that case and with encouragement from Mr. Veeder, I was introduced to the dynamic, expanding world of international arbitration. Other arbitrator appointments soon followed. With those appointments, I was convinced that arbitration provided a far more effective and efficient process for the resolution of commercial disputes than was offered by the Ontario courts.

With a view to advancing arbitration in Toronto, I worked closely with arbitration colleagues Bill Horton and Robert Wisner to create the Arbitration Roundtable of Toronto, which, in time, morphed into the Toronto Commercial Arbitration Society.

As my arbitrator practice expanded, I left Stikemans in 2013 to avoid the limitations of frustrating conflicts and become a resident arbitrator at Arbitration Place in Toronto. I also joined a leading barristers chambers in London, 39 Essex Chambers, to advance my international work since London was and is very much the global centre for international arbitration. After 8 years as a member of 39 Essex Chamber, I moved to Arbitra International, a new London chambers for arbitrators while remaining a member of Arbitration Place.

ARBITRATOR/MEDIATOR PRACTICE

My practice is now limited to arbitration, both international and domestic. The arbitral process has been a fundamental pillar of support for the expanding globalization of business and commercial issues as this globalization continues to evolve. While experienced in managing ad hoc arbitrations which are so popular in Canada, I have also handled arbitrations under the leading institutions, including the International Chamber of Commerce, the London Court of International Arbitration, the International Centre for Dispute Resolution (of the AAA), the Singapore International Arbitration Centre, and domestic institutions like the ADR Institute of Canada and the Vancouver International Arbitration Centre. My arbitrations cover a wide variety of industries and sectors. In the mining sector, these have involved claims of individual prospectors through to claims involving the largest global mining companies operating the largest mines in the world. I have sat on a similar breadth of arbitrations in the oil and gas sector involving the largest oil and gas multi-nationals for major projects not only in Canada, but also in the United States, South America, the Middle East, Africa and Asia. The new world of crypto currency is also now generating arbitral disputes. Of course, the construction/engineering area has generated appointments for very large infrastructure arbitrations, both internationally and domestically. I am also now chair of some Dispute Boards, a newer innovation in ADR for ongoing infrastructure projects. The subject matter ranges from royalty disputes, shareholder disputes, technology and construction/engineering disputes to investment disputes involving states and state-owned entities.

BENEFITS OF ARBITRATION/MEDIATION

The benefits of arbitration over court litigation are now well known, recognized by most large businesses, particularly those doing significant business internationally. However, most of benefits are equally available to purely domestic parties and disputes. These benefits include the following:

- The ability of the parties to select their decision maker with the appropriate experience and expertise best suited for their dispute;
- Flexibility of the arbitral process which enables the parties, by their agreement or with a tribunal, to develop the most efficient process for the conduct of their arbitration which invariably is far more expeditious than court litigation which is readily susceptible to substantial procedural delays, with the prospect of additional delays through appeals;
- Privacy and confidentiality of the process in contrast to the public court process; and
- Ease of enforcement of an arbitral award throughout much of the world through the New York Convention, in stark contrast to the much more difficult process for enforcement of court judgements in other jurisdictions.



TIPS FOR COUNSEL TO BE MORE EFFECTIVE IN ARBITRATION/MEDIATION

With a basic understanding of the jurisdictional basis of arbitration and some of the usual arbitration practices, counsel can learn the techniques for persuasive advocacy before an arbitral tribunal and forego those tactics and strategies often successful in litigation which can completely undermine the credibility of both counsel and a party before an arbitrator. While the court process is susceptible to procedural delay tactics often adopted by one party to delay trial and increase costs, the arbitral process is designed to move efficiently with the benefit of proper case management by the arbitrators throughout the dispute process. I have had arbitrations of major cases completed within 6 months to a year from commencement, far shorter than the extensive delays in court.

The importance of early preparation to gather and organize the evidence and develop the case strategy cannot be overstated. The evidence in chief for both parties will usually be submitted in writing through witness statements. Ensuring that those statements reflect the evidence, and language, of each witness is critical. A focus on the written advocacy of the memorials/submissions enable the arbitrators to fully understand the case of both parties prior to the hearing when those cases are tested with cross examination. A host of other tips on arbitral advocacy may be found in my chapter on "Advocacy in Commercial Arbitration" in *A Practitioner's Guide to Commercial Arbitration*, edited by Marvin Huberman, 2017.