

ARBITRATOR/MEDIATOR SPOTLIGHT

The Honourable Colin McKinnon, K.C.



CAREER & BACKGROUND

I began my legal career as a crown prosecutor, then gravitated toward civil litigation, eventually holding specialty certificates in both criminal law and civil litigation. I also practiced before administrative tribunals. I was fortunate to appear and plead before every level of court at both the trial and appellate levels. I like to believe I was an authentic "old school" type barrister, ready to take on any issue in any forum. "Have robe, will travel!" was my motto. I also had the good fortune to teach trial advocacy and evidence at uOttawa's law school for eight years. I was a trial lawyer for 25 years, including serving as a Bencher of the law Society for eight years before being appointed to the superior court, where I presided as a judge for 23 years. As a trial judge I presided over every imaginable case, both jury and non jury, criminal, civil, family, and sat regularly in the Divisional Court and on occasion in the court of appeal. I believe that my experience as a judge was as complete as possible. I also served as President of the Ontario Superior Court Judges' Association, which afforded me the opportunity to interact with every judge in the province

ARBITRATOR/MEDIATOR PRACTICE

In December 2022 I was inaugurated into the Canadian Academy of Distinguished Neutrals, an invitation only, peer reviewed group of Mediators and Arbitrators. As a trial judge I had the good fortune to conduct countless settlement conferences throughout Ontario, in all branches of law. On occasion I was sent to various centers, including Toronto, to conduct civil settlement conferences. Upon my appointment to the court I was invited to join a small group of judges in Ottawa designated to approve Infant Settlements. These cases typically involved serious personal injury, including medical malpractice cases, and I dealt with hundreds of such cases until my retirement from the court. As a result of my long experience, I feel comfortable dealing with almost any issue by way of mediation or arbitration.

BENEFITS OF ARBITRATION/MEDIATION

Every experienced and honest lawyer will tell you that taking a case to court is a crap shoot. The litigants might appear before a judge they like, or one they don't. They might be treated fairly or unfairly. Depending on the judge, they might get swift justice, or delayed justice. They might get fulsome reasons, or deficient reasons. And depending upon the dispute, it might invite the scrutiny of the media. On the other hand, when litigants opt to have their issues dealt with by mediation or arbitration, they can sleep soundly with the knowledge that they know exactly who will be presiding over their case, that the person selected will treat all parties with respect, (if for no other reason that the litigants are paying the bill), and that the decision they will receive will be issued promptly and will be well reasoned. Better still, they can be secure in the knowledge that the proceedings will be entirely confidential.



TIPS FOR COUNSEL TO BE MORE EFFECTIVE IN ARBITRATION/MEDIATION

My 25 years as a barrister, 23 years as a judge, and 5 years conducting mediations and arbitrations have taught me that the most effective counsel all share similar qualities. They are all well prepared. They choose their words carefully. Their examinations in chief and cross examinations are well planned and well executed. They treat witnesses, their fellow counsel and the presiding judge with respect. They listen intently. They do not needlessly interrupt. They stand their ground when necessary. They are capable of appreciating humour when appropriate. They tell the judge what they are going to say; they say it; then they tell the judge what they have said, (without being verbose), and sit down. When engaged in mediations, they are realistic about the merits of their case. They appreciate that to achieve a settlement usually involves putting some water in their wine.