

ARBITRATOR/MEDIATOR SPOTLIGHT

The Honourable Edward C. Chiasson, K.C., FCIArb



CAREER & BACKGROUND

I practised as a commercial litigator for 40 years before being appointed to the Court of Appeal for British Columbia. During that time, in addition to appearing in all the courts of B.C, Alberta and Yukon, the Federal Court, appeal and trial divisions, and the Supreme Court of Canada, I appeared as counsel on many domestic and international arbitrations, in many locales with many different contractual governing laws. The arbitrations were administered by a number of different institutions. For over 20 years before going to the bench and subsequent to retiring from it, I served as an arbitrator, usually the chair, in arbitrations also very diverse in law, subject matter and procedural regimes. I was the first Chair of the Canadian ICC Arbitration Committee and served for many years before handing the mantle to David Haigh when I went to Hong Kong for one year as the Hunter Professor of Arbitration and Dispute Resolution. For approximately 12 years I taught a course on ADR at the University of British Columbia. I am a trained mediator. In 2016, I rejoined Borden Ladner Gervais LLP as a consultant and advise lawyers on many legal issues including the practice and procedure of arbitration.

ARBITRATOR/MEDIATOR PRACTICE

Like my litigation and judicial experience, my arbitration practice has been and is eclectic involving many, many different legal and procedural issues. My work as a mediator has been similar. I sat as an arbitrator under the NAFTA and in an ICSID dispute and have advised on a number of investor, state matters.

BENEFITS OF ARBITRATION/MEDIATION

My mantra over the years has been not to describe arbitration as a panacea for perceived shortcomings of litigation: length, procedural complexity and cost. An arbitration may not be faster or cheaper and a process without rules is a recipe for chaos. Arbitration and mediation should be used because they are the most appropriate dispute resolving process to address any given dispute. Relevant to the decision which process to use are among other things: the nationality of the parties; the need for discovery processes; appeal rights; ability to select the decision maker; the need for precedent; ability to enforce effective compliance with the process; ability to enforce the result.



TIPS FOR COUNSEL TO BE MORE EFFECTIVE IN ARBITRATION/MEDIATION

My mantra also has been that parties are entitled to their legitimate procedural expectations. The emphasis is on the word "legitimate". Counsel should avoid pressing for procedures that are anathema or not understood by the other side or the arbitrators and should not seek to prevent procedures that they know are important in the legal tradition of the other side and expected by the arbitrators. Parties also should take advantage of the flexibility of procedure in arbitration and should avoid a rigid adherence to only what is familiar to them. Above all, be courteous. Tribunals, court or arbitration, are not assisted by the squabbles of counsel.