

# ARBITRATOR/MEDIATOR SPOTLIGHT

## The Honourable Barry Leon, FCIArb



### CAREER & BACKGROUND

For over 25 years, I have been involved in arbitration and mediation in Canada and internationally, initially as counsel. I have been a full-time independent arbitrator and mediator since 2018, when my 3-year term as Presiding Judge of BVI's Commercial Court ended. As Commercial Court Judge, I presided over complex, high-stakes international commercial disputes, including shareholder, corporate and contract disputes, insolvency, fraud, and asset recovery proceedings, judgment and award enforcement, and arbitration assistance. I am a Fellow, Chartered Institute of Arbitrators (FCIArb); International Mediation Institute (IMI) Certified Mediator; and Fellow, International Academy of Trial Lawyers. From 2009 – 2015, I was Partner and Head of International Arbitration with Perley-Robertson, Hill & McDougall, and until 2009, Partner in Torsys Litigation and Dispute Resolution Practice, and for many years, Practice Coordinator. I have been involved in Canadian and international arbitration and ADR organizations and activities, and in writing, speaking, and teaching, including Chair, ICC Canada Arbitration Committee; CanArbWeek Executive Committee; International Law Association's Canadian Branch Board; Co-Chair, 2023 Canadian Arbitration Report; ICC Commission on Arbitration and ADR; Executive Editor, Canadian Journal of Commercial Arbitration; Arbitration Act Review Committee, Toronto Commercial Arbitration Society; BVI Arbitration Group's governing Committee; Vice-Chair, Caribbean Branch, Chartered Institute of Arbitrators; Co-Chair, Institute for Transnational Arbitration's Caribbean Task Force; Co-moderator, OGEMID; International Trust Arbitration Organisation; Campaign for Greener Arbitrations; International Arbitration Club of New York; New York International Arbitration Center; and London Court of International Arbitration. Among my recognitions, in 2022 I was shortlisted by Global Arbitration Review as 'best prepared' arbitrator award. Previously I received CPR's "Award for Outstanding Contribution to Diversity in ADR".

### ARBITRATOR/MEDIATOR PRACTICE

My work covers Canadian and international disputes in a wide range of subjects, industries, and sectors. It focuses on disputing 'partners', particularly where oppression is alleged. They manifest themselves as corporate, shareholder, partnership, or joint venture disputes, and sometimes executive employment disputes. Often, they involve contract interpretation, and alleged contract breaches and non-contractual wrongs (business torts; fraudulent conduct). My work also covers disputes between contracting business parties, involving alleged contract interpretation and breaches. These disputes arise in all industries and sectors: financial services, energy, natural resources, insurance, reinsurance, IP, technology, transportation, hospitality, manufacturing, and construction. I am an arbitrator/mediator with Arbitration Place, 33 Bedford Row Chambers (London), Caribbean Arbitrators, and Wyeth Thomas Mediation (UK), and on several panels including American Arbitration Association, Cayman International Mediation & Arbitration Centre, Jamaica International Arbitration Centre, and Vancouver International Arbitration Centre.

### BENEFITS OF ARBITRATION/MEDIATION

Consider, given the serious court delays, moving your entire case to arbitration, having it heard faster, using either court rules, or arbitration's procedural efficiencies and privacy. Using arbitration has significant advantages—whether for trials or motions—instead of waiting for court dates and incurring the consequent expenses. Consider a mediator to assist the parties to agree to move all or part of their dispute, or motions, to arbitration. Consider innovative ways to use arbitrators / mediators for your client's benefit, such as 'mock' arbitrations to prepare and 'road test' your cases. Consider a mediator to help reach a commercial agreement. Consider "dispute avoidance" processes—engaging a mediator at the outset of longer-term contracts (construction, IT, product development, supply relationships, management contacts, distribution agreements) to nip disputes in the bud. Consider appointing a mediator at the outset of litigation / arbitration to follow along, with a mandate to intervene, upon request, to help get things back on track.



### TIPS FOR COUNSEL TO BE MORE EFFECTIVE IN ARBITRATION/MEDIATION

*Consider that in-house counsel should play an active role in disputes, ensuring dispute and settlement strategies align with business objectives for the dispute, and necessary assistance is provided to outside counsel.*

*Consider a client protocol about what gets communicated, and when your client wants input.*

*Consider a "settlement team" focused on settling the dispute.*

*Consider, in an arbitration timetable, including "mediation windows", so mediation is considered automatically. Forget the "right time" to mediate—sometimes early mediation has advantages. The longer a dispute continues, the greater the "sunk costs", making settling more difficult.*

*Consider helping your mediator with information about real impediments to settlement, including your client's real concerns, the other party, and the other party's lawyer.*

*Consider drafting a mediation settlement agreement in advance to ensure that all matters are resolved, and all necessary provisions included before signing.*