

ARBITRATOR/MEDIATOR SPOTLIGHT

Douglas Harrison



ARBITRATION PLACE

An all-encompassing approach

CAREER & BACKGROUND

I established my practice as an independent commercial arbitrator and mediator in 2018 following a 30-plus-year, broad-based commercial litigation career at Stikeman Elliott LLP in Toronto. I am a Fellow of the Chartered Institute of Arbitrators, a member of the CPR Panel of Distinguished Neutrals, and on the arbitration rosters of the ADR Institute of Canada, ICC Canada and ICDR Canada, among others. I am a Co-Chair of the University of Toronto Tribunal. I also maintain a legal advisory and opinion practice.

I am the chair of the Toronto Commercial Arbitration Society as well as being the Director and one of the faculty members of the society's Gold Standard Course on Commercial Arbitration. I am actively involved in promoting and improving arbitration through my participation on the organizing committee of CanArbWeek and the Arbitration Committee of the ADR Institute of Canada. I co-host Canadians Here & There, a monthly Zoom call of ICC Canada Arbitration Committee members. I also participate as an arbitrator in the Vis Moot.

I have been recognized for international and commercial arbitration by *Who's Who Legal*, *Lexpert* and *Best Lawyers in Canada*, and I regularly write and speak about arbitration issues, including the history of arbitration.

ARBITRATOR/MEDIATOR PRACTICE

I have served as a tribunal chair, a party-appointed arbitrator and a sole arbitrator in numerous ad hoc arbitrations, as well as those conducted under the rules of the Arbitration Institute of the Stockholm Chamber of Commerce, ICDR, ICDR Canada and the National Automobile Dealer Arbitration Program. These arbitrations have involved both domestic and international disputes arising from a variety of commercial agreements, including supply agreements, license agreements, distributorships, franchises, shareholder agreements, consulting agreements, construction contracts and commercial tenancies. They have covered a range of sectors, including energy, financial services, automotive, consumer products, heavy manufacturing and pharmaceuticals.

In addition to contractual disputes, my recent mediation mandates have also included environmental issues, law firm partnerships, co-operatives, defamation, insurance coverage and cryptocurrency mining.

In my former litigation practice, I acted as counsel in many arbitrations. In addition to the types of cases mentioned above, I handled disputes in the mining, aerospace, chemicals, food processing, logistics and media industries. My cases encompassed not only contractual disputes but also product liability, insolvency, professional liability, and directors and officers' insurance.

BENEFITS OF ARBITRATION/MEDIATION

Choosing to arbitrate or mediate a dispute allows parties to have both a process and a procedure that are appropriate to their unique problem and circumstances, and to keep their matter confidential. Parties can select an arbitrator or mediator with the expertise and experience they consider appropriate. When they can't agree on someone, parties can ask an appointing authority to make the selection without the need for court intervention.

In my experience, the ability of parties in an arbitration to set the rules and the schedule results in a process that is faster – often much faster – than a comparable litigation proceeding in court. Arbitrators work hard to deliver awards in a timely fashion. As well, there is usually less opportunity for parties to engage in gamesmanship. Since arbitration is a contractual process, parties have a duty to perform their obligations in good faith.

An arbitration will result in a final and binding award that can be enforced like a court judgment across Canada. An important consideration in deciding to arbitrate cross-border disputes is the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, a multilateral treaty that has been accepted by over 170 countries. The Convention allows for the enforcement of arbitral agreements. It also allows for the enforcement of Canadian arbitral awards abroad, and of foreign awards in Canada, far more easily than the enforcement of a foreign court judgment.

Mediation lets parties act creatively in developing consensual solutions to their problems, going beyond the relief available in court proceedings.



TIPS FOR COUNSEL TO BE MORE EFFECTIVE IN ARBITRATION/MEDIATION

My two top tips for arbitrations:

1. *Don't pass up the opportunity to design or adopt an arbitral process and procedure that particularly suits your dispute and can deliver the benefits of efficiency and speed; and*
2. *Schedule regular case management conferences, to help stay on schedule and to avoid problems from festering.*

My two top tips for mediations:

1. *Don't simply repeat your pleading in your mediation brief – bring all that's been learned in the case to bear, and be open about prior offers and settlement discussions; and*
2. *Holding pre-mediation caucuses with the mediator allows the mediation to be much more efficient and productive.*