

ARBITRATOR/MEDIATOR SPOTLIGHT

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CAREER & BACKGROUND

Farley Cohen brings a different background than most ADR practitioners at Arbitration Place. Farley is a Chartered Professional Accountant (CPA) with over 40 year's experience. During his career Farley has been an auditor, a Trustee in Bankruptcy, a business valuator, a forensic accountant and an ADR practitioner. The past 35 years have focused on litigation matters, acting as expert witness, arbitrator and mediator. Farley has appeared more than 100 times in Canadian, US and UK Courts as an expert witness in business valuation, damages quantification and forensic accounting cases. In addition, he has assisted in the settlement of hundreds of cases that did not proceed to trial. Farley has been awarded his Fellowship designations by the Chartered Institute of Arbitrators, CPA Canada and the Canadian Institute of Chartered Business Valuators. Farley brings subject matter expertise and assists parties to resolve their differences by listening, understanding differences in detail and helping to bridge the gaps and/or decide the issues.

ARBITRATOR/MEDIATOR PRACTICE

Farley's ADR practice includes both mediation and arbitration. To date, his involvement has included being retained as the mediator, as well as both a single arbitrator and a member of an arbitration panel. In arbitration panel situations, other panel members have included individuals with legal backgrounds and retired judges thereby providing a fully informed decision-making panel with both legal and subject matter expertise to draw upon. Subject area expertise lends itself to cases involving business valuation and damages quantification issues – shareholder disputes and buyouts, oppression matters, breach of contract cases, shareholder dissent cases, matrimonial disputes regarding property and income issues, post acquisition disputes, and income tax disputes.

BENEFITS OF ARBITRATION/MEDIATION

ADR brings many advantages to the parties – timing, approach, confidentiality, terms, selection of participating individuals and location. A mediation or arbitration can reduce the overall timetable required, the number of appearances, the cost and potentially the formality of proceedings. In addition, and more important in some cases, the use of a mediator or arbitrator with subject matter expertise can enhance the process and be very beneficial for the parties. The use of a subject matter expert or an arbitration panel with individuals from legal and financial backgrounds allows for a more streamlined and focused process often resulting in significant time and cost savings, and a better resolution.



TIPS FOR COUNSEL TO BE MORE EFFECTIVE IN ARBITRATION/MEDIATION

In order to get the most out of a mediation or arbitration, Counsel should ensure that adequate attention is given to choosing the right individual(s) to help, setting down reasonable timing parameters and being open to less formal proceedings. Up front agreed on summaries of issues can help to focus discussions and facilitate quicker resolutions. Parties should also consider creative suggestions from the mediator as to alternative types of settlement. Mediation requires compromise in order to be effective; Counsel should not agree to a mediation just for their clients to gather intel for subsequent proceedings. A successful mediation concludes with Minutes of Settlement, signed by all parties – a must to avoid confusion and second guessing. Arbitrations require more structure and documentation – limits should be agreed to in order to ensure these are not too onerous. Agreed upon processes and timing for disclosure, expert reports, hearing schedules and costs determination are essential. Consideration needs to be given to the expertise, experience and qualifications of the selected mediator or arbitrator(s) in order to attempt to get the best outcome for all parties involved, including serious consideration of using a subject matter expert when appropriate.