

ARBITRATOR/MEDIATOR SPOTLIGHT

JEFFREY S. LEON

LSM, FCIArb



ARBITRATION PLACE
An all-encompassing approach

CAREER & BACKGROUND

I have served as an active mediator and arbitrator in a wide variety of business disputes. For more than 40 years, I have been a trial counsel and strategic advisor in a broad cross-section of business disputes, including class actions. Using a practical and common sense approach to litigation, I have advocated for companies and individuals in commercial, corporate, product liability, professional conduct and negligence, health care and administrative disputes, both domestic and international.

I am a Fellow of the Chartered Institute of Arbitrators. I have extensive experience in the conduct of hearings, having served as Co-Chair of the University of Toronto (Discipline) Tribunal and independent legal counsel to the Discipline Committee of the College of Physicians and Surgeons of Ontario and the Chiropractic Review Committee of the College of Chiropractors of Ontario. I have also been President of the American College of Trial Lawyers, The Advocates' Society, Pro Bono Ontario and The Sopinka Cup Society. Most recently, I served as Co-Lead Counsel to the Public Order Emergency Commission. I am a recipient of the Law Society Medal, the Ontario Bar Association Award of Excellence in Civil Litigation, the Benchmark (Canada) Hall of Fame Award, The Advocates' Society Catzman Award for Civility and Professionalism, and the Queen Elizabeth II Diamond Jubilee Medal.

ARBITRATOR/MEDIATOR PRACTICE

I am an arbitrator and mediator at Arbitration Place in Toronto and have been retained as an arbitrator through other international arbitral bodies. My approach to arbitration and mediation is informed by my significant experience as trial and arbitration counsel and business advisor.

As an arbitrator in international and domestic disputes, I bring to the table my strategic experience with business issues and apply a common sense and practical perspective to the process. I am well versed in the importance of efficient case management. I work with counsel to fashion a proportionate, timely and effective process – recognizing the important advantages that the arbitration process can provide in allowing parties to have their disputes resolved on a cost-efficient basis. Being an effective arbitrator requires both good judgment and an energetic approach applied in a manner that instills confidence in the parties, both with the process and the ultimate award.

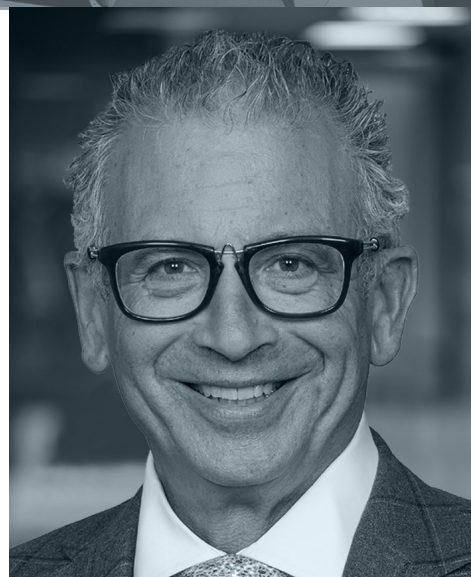
I have been involved as counsel in mediations since their very early introduction in Ontario. Having shifted more to the role of neutral over the past decade, I apply my judgment, as well as my understanding of and experience with business – and people – to successfully achieve resolutions, again on a timely and cost-efficient basis. The key is to focus both on the real issues of concern to the parties, as well as their underlying source or motivation, and then to work actively with the parties to move towards acceptable consensus and resolution. Settlements don't just happen – they are a product of an informed process.

BENEFITS OF ARBITRATION/MEDIATION

The benefits of alternative dispute resolution for parties and their counsel have been considered in various contexts. Mediation can provide an early resolution of disputes on a cost-effective basis. Mediation also has the benefit of injecting certainty into the dispute resolution process through a consensual outcome rather than leaving the result up to a random third-party decision maker.

The arbitration process has numerous advantages*, particularly in a business context for the resolution of disputes. These include: choice of decision maker; a private and confidential process; flexible procedures; speed in obtaining a timely result; finality in terms of no or limited appeal rights; neutrality; and efficiency leading to lower cost. As an arbitrator it is essential to work with the parties and their counsel to secure buy-in to a process that recognizes that an effective arbitration is not just a private trial – it is a dispute resolution process designed to accommodate the varied nature of business disputes.

*See: Leon and Beaulne "Making Up Your Mind: Trial Litigation Versus Arbitration in the Commercial World" The Advocates' Society Journal, (summer 2015) pp 11-21; Leon "Court vs. Commercial Arbitration After COVID: Adapting to the Virtual World (Law 360TM Canada (formerly The Lawyer's Daily), Friday, September 4, 2020)



TIPS FOR COUNSEL TO BE MORE EFFECTIVE IN ARBITRATION/MEDIATION

It follows from my prior comments, that it is important for counsel to consider from the outset how the arbitration process can best serve the needs of their client. Many advantages are available. Sometimes those advantages can be constrained where an arbitration is mandated by an agreement to arbitrate, so working with your corporate colleagues in drafting a suitable arbitration clause can promote and facilitate those advantages.

Keep an open mind. Work with your arbitrator in determining what makes most sense for the particular issue(s) in dispute. What type of hearing – virtual, in person or hybrid? What ground rules are appropriate for the scope of production of documents? Are oral examinations for discovery "really" necessary? Can evidence in chief go in by way of affidavit? What limits, if any, are appropriate on cross-examination (if necessary) and what type of cross examination is appropriate? What is the most efficient way to deal with documents at a hearing? Is oral argument necessary to supplement written argument? Particularly in the international context, remember that arbitrators from different backgrounds and different jurisdictions can have varied approaches and expectations in terms of all of the above. Figure this out in advance and make adjustments accordingly.