

ARBITRATOR/MEDIATOR SPOTLIGHT

The Honourable Robert A. Blair



CAREER & BACKGROUND

I was called to the Bar in 1970 and practiced as a civil litigator with an emphasis on corporate/commercial litigation and administrative law until my appointment to the Superior Court in 1991. There, I presided over civil and criminal cases generally, but with an emphasis on Commercial List cases including a number of high-profile restructurings, shareholder disputes and complex matters. For four years, I served as the Regional Senior Justice in Toronto, prior to my appointment to the Ontario Court of Appeal in 2003. I retired from the Court in 2017.

Following my retirement, I joined Arbitration Place, where I have pursued my interest in arbitration and mediation – primarily in the corporate/commercial area – as an effective alternative to the Courts for the timely resolution of civil disputes. As explained below, that interest began prior to my appointment to the Court and continued throughout my career as a judge.

ARBITRATOR/MEDIATOR PRACTICE

Although I am relatively new to the arbitration and mediation practice, I have had over 30 years of experience in resolving disputes, as explained above.

In 1990, prior to my appointment to the Court, I was one of the founders – along with the late David Stockwood Q.C. and the Honourable James Spence – of one of the first private dispute resolution facilities in the Toronto area, known (somewhat cheekily, I now confess) as the Private Court.

While a member of the Superior Court, I was Co-Chair of the Civil Justice Review, an initiative that conducted a broad review of the civil justice system in Ontario and made extensive recommendations for a series of reforms to that system. I was a member of the Steering Committee that oversaw the implementation of a Court-connected ADR Centre in Toronto and was involved in the introduction of case management and mediation into the Court system.

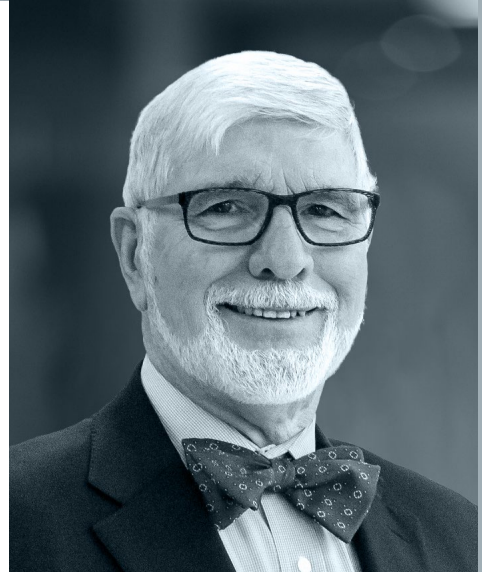
I am enjoying very much my arbitration/mediation practice through Arbitration Place – and as I have said on many occasions, I am learning again how much hard work it was to be a trial judge!

BENEFITS OF ARBITRATION/MEDIATION

To my mind, the primary benefit of arbitration and/or mediation is timeliness. Courts are terribly backlogged. While all dispute resolution/litigation takes time to work through, private dispute resolution is quicker. There are still legal fees and arbitrator/mediator fees, to be sure, but for businesses, time is money. In the mediation context, the potential to arrive at a resolution that meets the true interests of the parties (something that is often hidden behind the particular dispute in question), is particularly valuable.

Other advantages include the parties' ability to choose their own arbitrator or mediator, and with the current availability of large rosters of qualified arbitrators and mediators, there are many available. Also important, I believe, is the opportunity for the parties and counsel to develop a flexible procedure and hearing process to suit the needs of a particular case.

Needless to say, the availability of facilities such as those provided by Arbitration Place enhances these advantages as well.



TIPS FOR COUNSEL TO BE MORE EFFECTIVE IN ARBITRATION/MEDIATION

"Forget the Wind-up, Throw the Pitch": In that title to one of his many presentations on advocacy, my former colleague, the Honourable John I. Laskin, said it best.

Tell the court/tribunal/arbitrator what the point is you are seeking to establish right up front (it is not supposed to be a mystery) and then give the explanation and support. That way, the person being addressed has the context in which to consider the evidence and argument and is not required to muddle away trying to figure out what it is all about.

Organization and summaries that clarify and simplify are also important considerations. Chronologies help. Written submissions, as concise as practicable, are very important. So, of course, are clear oral submissions.

Finally, civility is paramount. Light banter often helps to ease tension, smooth things along, and make the proceedings more enjoyable. But members of tribunals charged with the responsibility of making decisions that affect peoples' livelihoods and rights will not respond positively to insults or unnecessary sarcasm directed at the other party or to counsel, or to comments that lightly impugn the integrity of others. This is particularly so, in my view, where those interchanges concern unwarranted allegations of bad faith or dishonesty in respect of a party's conduct.