

ARBITRATOR/MEDIATOR SPOTLIGHT

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CAREER & BACKGROUND

I practiced law from 1974 until 2018 with Dentons Canada LLP and its predecessors. My practice evolved from family, wrongful dismissal and motor vehicle cases to environmental law, construction law, a wide range of real estate disputes, telecom disputes, farm and agricultural disputes, farm products regulatory matters, shareholder/partner disputes, horse racing matters, and general commercial contract disputes. I was a two term President of the ADR Institute of Ontario, and a two term President of the ADR Institute of Canada. I also spent over ten years as a member of the management committee of the law firm dealing with a wide variety of business problems. In 1987 I resigned my law partnership and joined a real estate client for two years. That business experience and the insights gained in those two years transformed my approach to litigation, settlement, and ADR practices. I understood that business solutions and business interests are not always best served by the full litigation model prevailing in that era. Starting at age 31, I acted as arbitrator and counsel in many real estate disputes concerning lease renewals, ground lease renewals, rental issues, partnerships and financing and development issues. That practice led to acting as an arbitrator and mediator on a much wider range of disputes. I have some secondhand insight into the political process gained from my wife's experience as a City Solicitor and as a City of Toronto Councilor. I gained an appreciation that there are political elements in disputes that, like the business interests, are not always well served by the full litigation model.

ARBITRATOR/MEDIATOR PRACTICE

I joined Arbitration Place in 2018 as a resident arbitrator. My practice primarily consists of mediation and arbitration and Med-Arb or Arb-Med Arb. I have performed other roles such as advising counsel on arbitration matters being litigated, and neutral non-binding evaluations. My recent case list includes infrastructure disputes, construction matters, condominium issues, agricultural and farm disputes, real estate leasing and ground leasing, purchase and sale transactions, real estate and corporate valuation matters, procurement, contract interpretation, shareholder and partner disputes, franchise and distribution, and municipal related disputes.

BENEFITS OF ARBITRATION/MEDIATION

For users of ADR, the choice of an experienced and sometimes expert neutral to make decisions is a paramount consideration. The second major benefit to users is the reduction in time and expense to arrive at a solution. Business interests are seldom well served by a long, complicated, and expensive litigation process with unrecoverable business management and opportunity costs. Experienced arbitrators can make procedural orders and suggest shortcuts without compromising the process and the hearing. Similarly, an experienced mediator may be able to craft a settlement agreement on terms that are not within the jurisdiction of an arbitrator or the Court but meet the interests of the parties.



TIPS FOR COUNSEL TO BE MORE EFFECTIVE IN ARBITRATION/MEDIATION

There are many commonly suggested ways to get the best value from the Arbitration and Mediation process which I will not repeat. For this format I can highlight some areas where counsel have come up short. The first is the assumption that costs will be awarded as if the matter were being heard in a Court. Counsel often prefers to use the levels of costs in a well-known set of court rules as a guideline even when they may be entitled to claim almost full indemnity costs.

Secondly, counsel fails to agree at the outset on a process proportionate to the size and complexity of the dispute. By agreeing on an early procedural order, agreeing on evidence, submitting early legal issues for decision, dispensing with, or putting time limits on discovery, and on hearing examination and cross examination of witnesses, significant costs and time can be saved. Logistics are important.

In mediation, the mediator is often searching for motivation (interests), particularly where the motivation of the parties does not match. In those cases, the parties may be prepared to compromise issues but on different motivation. Be prepared to listen and not just talk.