

Experience

speaks volumes



Q&A SERIES

Joel Richler

Arbitrator

Joel Richler has extensive experience in arbitration, having served on many arbitral tribunals as an emergency arbitrator, sole arbitrator, chair, and party-appointed. His roles include numerous appointments by the International Chamber of Commerce (ICC) and the International Centre for Dispute Resolution (ICDR). Joel is also an experienced arbitrator in both domestic and international cases. With nearly 40 years at Blake, Cassels & Graydon LLP, he is now a Resident Arbitrator, known for his commitment to the creative, efficient, and fair conduct of arbitrations.

What are key factors when considering moving all or part of a dispute from court to arbitration?

The key attributes of arbitration are speed, procedural flexibility, and choice of decision-maker. But to work, all parties must agree to arbitrate. So, arbitration will not be available where a party objects or resists, or where strangers to the arbitration agreement have to be bound to a decision. Where arbitration is considered, the Parties should consider whether one or three arbitrators will be appointed and who the arbitrator will be. Some cases can benefit from arbitrators having particular subject-matter expertise, while other cases may be perfectly suited to an experienced arbitrator with general commercial experience.

Reflecting on your own experiences over the years, what advice would you offer to today's arbitration counsel?

It is fundamental that arbitration is not simply "litigation in a boardroom". Court rules should play no role. Counsel who are new to arbitration should speak with experienced colleagues before they first speak with their clients and the newly appointed arbitrator to become familiar with "best practices" and the types of procedures that arbitrators can offer. As important examples, exchanges of documents are done quite differently, direct evidence is almost always adduced in writing, hearings are shorter, and the rules of evidence are not strictly enforced.

What are important considerations for counsel arbitrating disputes in area of construction dispute?

Construction disputes are complex and fact intensive. Arbitrators with industry and arbitration experience should be appointed, and careful consideration should be given to whether three arbitrators will add needless costs and delays. Disputes that would take months in the courts can be successfully arbitrated in a matter of weeks, if appropriate and efficient procedures are adopted by experienced counsel and arbitrators working together collegially. To assist the arbitrators, evidence in chief must be in writing, and procedural wrangling must be avoided.

ARBITRATION PLACE

An all-encompassing approach