

Experience

— speaks volumes —

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

In my experience as a mediator and arbitrator the two key factors are confidentiality and certainty. Clients who are concerned about litigation in the public court system are highly motivated to have their disputes resolved Confidentially. The delays in the court system, coupled with the prospect of appeals, motivates parties to resolve their disputes through mediation or arbitration with absolute finality in a relatively short period of time.

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

It is never too soon to try to mediate a case. Many cases can be resolved prior to discovery since very little actually changes at the discovery stage in a lot of cases.

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

Counsel should consider educating the mediator well in advance of the mediation or arbitration. In today's mediation world this should mean having at least one pre-hearing or pre mediation meeting with the mediator or arbitrator to educate them and possibly narrow the issues. This is not done often enough in my view.



Q&A SERIES

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Alan D'Silva, a senior partner in the Litigation & Dispute Resolution Group at Stikeman Elliott LLP in Toronto, is a top Canadian litigation lawyer with over 30 years of experience. He specializes in corporate/commercial, securities, shareholder oppression, large insurance litigation, professional negligence, sports law, and class actions. Alan also serves as an arbitrator and mediator for disputes both in Canada and internationally, including those in corporate/commercial, insurance, international trade, estates, construction, employment, and human rights. Additionally, he arbitrates Olympic and professional sports disputes as an appointed judge on the International Court of Arbitration for Sport and is certified as a mediator through The Advocates' Society/Harvard Law Program.

ARBITRATION PLACE

An all-encompassing approach