

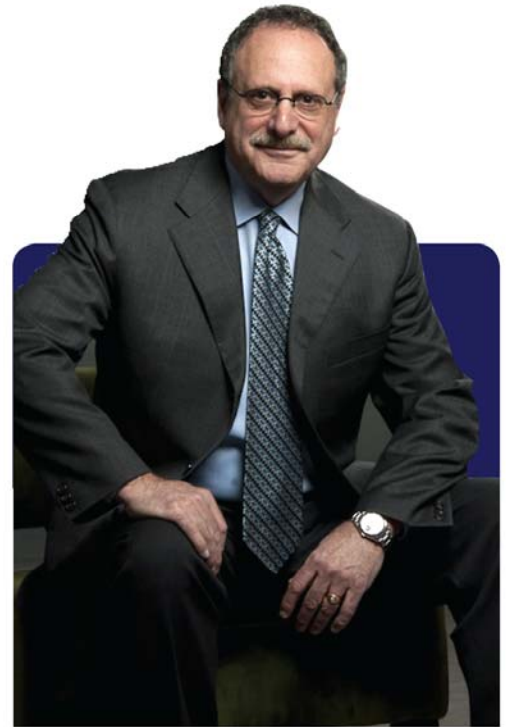
Newsletter # 6

Several years ago a sizeable group of lawyers and judges attended a course on Mediation offered at Harvard. Among us were a number of local family law lawyers, including Lorne Wolfson, Jack Straitman, Debra McNairn and myself. There was quite a lot of discussion about mediation being the “be all and end all”, and very little about arbitration. It was the considered opinion of most of the Canadian contingent that at least in a family law context, mediation wasn’t nearly as effective as was mediation/arbitration. We made the argument that the implicit threat of arbitration following a failed mediation compelled the parties to negotiate honestly and fairly in a sincere effort to achieve a negotiated resolution of the issues in dispute, else the mediator would then don his arbitrator’s cap and make a binding decision.

The highly-educated crowd - both staff and students (as one would expect at Harvard) wasn’t impressed. Mediation was trumpeted as the preferred methodology for problem-solving, and mediation/arbitration need not enter into the equation. After all, it was widely held, arbitration is merely litigation in another guise, and resorting to it is merely either an admission of failure on the part of the mediator, or the parties demonstrating obduracy.

Since my course at Harvard, I continue to receive their weekly emailed publications on topics relating to mediation generally, and sure enough, the A word seems to now be regularly entering the lexicon. With more and more frequency, the words mediation and arbitration appear together in their discussions regarding “negotiated” settlements. I haven’t yet seen an acknowledgment of the contribution of the Canadian contingent to Harvard’s volte-face, but we know, and now so too do you.

Stay tuned. In coming issues we’ll discuss the function of the Dispute Resolution Officer (DRO) as mediator.



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Warren Mediation Group provides Alternative Dispute Resolution, Family Mediation/Arbitration, Estate Law Mediation/Arbitration, Commercial Mediation/Arbitration and other ADR services in the Greater Toronto Area, York, Simcoe, Peel and Durham Regions.