

Newsletter # 9

Mediation/arbitration (med/arb) is alive, well and thriving in Toronto, but not so much in the 905 regions. The effects of that circumstance are apparent to anyone who brings a Motion outside of Toronto. Motions proceed in Toronto smoothly and the delay in getting before a judge is minimal. The wait times in the 905, particularly Newmarket, are unacceptable and it is not all that unusual to wait all day and not get heard.

The obvious solution is for more med/arb in York, Peel and Durham regions – so why isn't it happening? The answer is simple – counsel, and in particular family law counsel, aren't using it. The reasons for that circumstance are a bit more complex. The excuses I've heard range from "I don't understand how it works" to "I'll make less money if cases resolve quickly".

Anyone who has participated in a DRO session or a Settlement Conference knows how mediation works. It's not rocket science. The DRO or judge is there to, amongst other things, assist the parties in achieving a solution without further litigation. Arbitration is merely a private trial. Simple.

The second complaint is a bit more problematic. Firstly, all of the corollary procedures of litigation such as questioning and motions are available in the arbitration process, and case conferences and settlement conferences are replaced by mediation sessions. Secondly, my view is that our role as counsel is to find a solution to our client's dispute in the most economical way possible. Without intending to be pejorative, it oughtn't to be about lining our pockets.

In the main, my experience is that most counsel use best efforts to be economical in reaching a satisfactory dispute resolution for their clients, and med/arb is surely a much more cost-efficient way to accomplish that than is litigation. Once counsel in the 905 accept that proposition, the court system, to which one must occasionally have recourse, will operate more efficiently.

Go Jays in 2013!



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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.