

# MED-ARB: EFFICIENCY OR JUSTICE COMPROMISED?

Learn from a distinguished group of practitioners, academics and judges how mediation-arbitration is becoming the “go-to” method of dispute resolution in a wide variety of practice areas. You will learn:

- What types of cases are/are not suitable for med-arb?
- Where is med-arb being used successfully?
- What are the ethical and practical issues that arise in med-arb?
- Does effective advocacy differ in med-arb?
- How does one develop a med-arb practice?

Register today at:

[osgoodepd.ca/med-arb](http://osgoodepd.ca/med-arb)



Eligible CPD/MCLE hours: LSUC (ON):  
6h 30m (2h Professionalism; 4h 30m Substantive)

## Program Co-Chairs

**Richard W. Shields, C. Arb.,  
C. Med. Cert. F.Arb., Cert. F. Med  
Lawyer Mediator Arbitrator Trainer**

**Michael Erdle, FCI Arb., C. Med. C.  
Arb., Practical Resolutions Inc.**

## Program Details

DATE AND TIME

**October 12, 2017**

9:00 a.m. – 4:30 p.m. EST

**In Person or Webcast**

LOCATION

**Osgoode Professional  
Development**

1 Dundas St. West, 26th Floor  
Toronto, ON

ONLINE REPLAY

**November 17, 2017**

DELEGATE FEE

**\$450 plus HST**

**\$395 Early Bird until July 12th**

# Med-Arb: Efficiency or Justice Compromised?

As a new and developing method of dispute resolution, Mediation-Arbitration is likely to play an expanded role in our justice system, requiring a special skill set and raising unique challenges for all those involved.

Developed as part of a unique partnership, this joint ADRIO/FDRIO/OsgoodePD program will provide a forum for discussion focusing on broadening the skills of those currently working in med-arb while also providing a wealth of information for those contemplating a career in med-arb or who simply work in dispute resolution and need a grounding of the concepts.

This is a unique gathering of experienced practitioners who will discuss the expanding role of med-arb in family law, commercial matters, contracts, banking, labour, real estate, etc. Ensure you are informed and equipped and don't miss this event.

## Who Should Attend?

- Mediators
- Arbitrators
- ADR Professionals
- Human Resources Professionals
- Anyone who deals with dispute resolution issues
- Lawyers who practice in: family, civil litigation, labour/employment, bankruptcy/insolvency, commercial, wills/estates
- Financial professionals including valuers, actuaries, forensic accountants
- Government Employees
- Business Leaders
- Union Representatives
- Counselors
- Parenting Coordinators

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## Planning Committee

**Susette Clunis, BSc., MA.**

Executive Director  
ADR Institute of Ontario

**Michael Erdle, FCI Arb.,  
C. Med., C. Arb.**

Practical Resolutions Inc.

**Cheryl Goldhart**

Goldhart & Associates

**Tommy Lam, BA (Hons)**

Professional Development  
and Events Coordinator  
ADR Institute of Ontario

**David McCutcheon, C. Arb.**

Dentons Canada LLP

**Elaine Newman, BA, LLB, LLM,**

Mediator and Arbitrator

**Richard W. Shields, C. Arb.,**

**C. Med. Cert. F. Arb., Cert. F. Med**  
Lawyer Mediator Arbitrator Trainer

**Lorne H. Wolfson**

Torkin Manes LLP

# Agenda

8:30

## Continental Breakfast and Registration

9:00

## Welcome & Introduction from the Chairs

**Richard W. Shields, C. Arb., C. Med. Cert. F.Arb., Cert. F. Med,** Lawyer Mediator Arbitrator Trainer

**Michael Erdle, FCI Arb., C. Med., C. Arb.** Practical Resolutions Inc.

9:05

## Morning Keynote Address:

*"Med-Arb – Pariah or Panacea?"*

## The Hon. Warren K. Winkler

**OC, O.Ont., QC,** Former Chief Justice of Ontario, Mediator & Arbitrator, Honorary Fellow and Lifetime Achievement Award, International Academy of Mediators

9:35

## What is The Future of Med-Arb?

### Moderator:

**Lorne H. Wolfson,** Torkin Manes LLP

### Panelists:

**Philip M. Epstein, QC,** Epstein Cole LLP

**Ian M. Hull,** Hull & Hull LLP

**David McCutcheon, C. Arb.,** Dentons Canada LLP

In this crystal ball session, three experienced practitioners will boldly predict the future of Med-Arb. They will:

- Examine the present trend to confine med-arb to specialized practice areas such as family law and estates
- Review the legal boundaries of med-arb practice including the value of med-arb agreements and potential liabilities for med-arb practitioners
- Identify probable dispute area expansion into commercial and construction practices
- Discuss the real and perceived barriers to the future use of med-arb including
  - the lack of well-trained practitioners
  - distrust of the med-arb process
  - the failure of med-arb agreements to protect practitioners against bias claims

- the restrictive scope of mediation practices to avoid bias claims
- the failure of the Court's reluctance to recognize med-arb practices and set appropriate limits on the mediator's toolbox

10:45

## Refreshment Break

11:00

## Ethical Issues in the Professional Practice of Med-Arb

### Moderator:

**Elaine Newman, BA, LLB, LLM,** Mediator and Arbitrator

### Panelists:

**Carol W. Hickman, QC, BA, LLB, LLM,** Accredited Mediator, Arbitrator and Parenting Coordinator, Quay Law Centre and West Coast ADR

**Richard W. Shields, C. Arb., C. Med. Cert. F.Arb., Cert. F. Med,** Lawyer Mediator Arbitrator Trainer

**Dr. Martha Simmons,** Winkler Professor of Dispute Resolution, Osgoode Hall Law School, York University

In med-arb, practitioners face the extraordinary challenge of maintaining neutrality while exercising evaluation and judgement. It is a minefield of ethical issues. In order to navigate the route safely, it is necessary to identify the issues, and to develop keen awareness of them. Then, it is critical to face them transparently and thoughtfully.

This panel will identify the ethical issues and discuss best practices in addressing them, including:

- How do mediation values conflict with arbitration values?
  - Self-determination vs fairness and justice?
  - Power balance vs adversarial advocacy?
- Problems of confidentiality in med-arb and how to address them
- Truth telling and determinations of credibility
- What do Codes of Conduct seek to do? To what extent do they achieve their goals?
- Conducting med-arb for the vulnerable client

12:15

## Networking Luncheon

1:15

## Afternoon Keynote Address: *"Med-Arb: Blessing or Curse?"*

**Stephen Morrison, LLB, C.Arb, C.Med, FCI Arb,** Mediator & Arbitrator, Stephen Richard Morrison ADR Inc.

1:45

## Effective Advocacy in Med-Arb

**Cheryl Goldhart,** Goldhart & Associates

**Safina Lakhani,** Crawley MacKewn Brush LLP

**Alexa Sulzenko,** Filion Wakely Thorup Angeletti LLP

In considering how the role of the advocate changes in med-arb, this panel will consider the following key issues:

- How to prepare your client and yourself
- Preparing the mediation brief
- Problem solving advocacy
- Anticipating potential problems
- Using the mediator
- How to document the settlement
- Using the failed settlement

3:00

## Refreshment Break

3:15

## Practical Issues & Practice Development

**Colm Brannigan,** Chartered Mediator, Chartered Arbitrator

**Lisa Feld,** Mediator

**Dr. Barbara Jo Fidler, PhD, CPsych, AccFM,** Registered Psychologist, Family Solutions

**Brahm D. Siegel,** Nathens, Siegel LLP

In this closing session on mediation-arbitration, a panel of experienced mediator-arbitrators will discuss practical issues including:

- The appropriateness of evaluation
- The use of caucus
- The provision of legal information
- Additional topics of interest to practitioners

4:30

## Closing Remarks

## Morning Keynote

**The Hon. Warren K. Winkler, OC, O.Ont., QC**

Former Chief Justice of Ontario, Mediator & Arbitrator,  
Honorary Fellow and Lifetime Achievement Award,  
International Academy of Mediators

## Afternoon Keynote

**Stephen Morrison, LLB, C.Arb, C.Med, CIArb**, Mediator  
& Arbitrator, Stephen Richard Morrison ADR Inc.

## Program Faculty Includes

**Colm Brannigan**

Chartered Mediator,  
Chartered Arbitrator

**Philip M. Epstein, QC**

Epstein Cole LLP

**Lisa Feld**, Mediator

**Dr. Barbara Jo Fidler**

**PhD, CPsych, AccFM**,  
Registered Psychologist,  
Family Solutions

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**Carol W. Hickman, QC,**

**BA, LLB, LLM**, Accredited  
Mediator, Arbitrator and  
Parenting Coordinator, Quay  
Law Centre and West Coast  
ADR

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Nathens, Siegel LLP

**Dr. Martha E. Simmons**

Winkler Professor of Dispute  
Resolution, Osgoode Hall  
Law School, York University

**Alexa Sulzenko**

Filion Wakely Thorup  
Angeletti LLP

**Lorne H. Wolfson**

Torkin Manes LLP

## Registration Details

**Fee per Delegate**

**\$450 plus HST**

**\$395 Early Bird until July 12th**

Fees include attendance, program materials, continental breakfast, lunch and break refreshments. Group discounts are available. Visit [www.osgoodepd.ca/groupdiscounts](http://www.osgoodepd.ca/groupdiscounts) for details. Please inquire about financial assistance.

**Program Changes**

We will make every effort to present the program as advertised, but it may be necessary to change the date, location, speakers or content with little or no notice. In the event of program cancellation, York University's and Osgoode Hall Law School's liability is limited to reimbursement of paid fees.

**Cancellations and Substitutions**

Substitution of registrants is permitted at any time. If you are unable to find a substitute, a full refund is available if a cancellation request is received in writing 14 days prior to the program date. If a cancellation request is made with less than 14 days notice, a \$75 administration fee will apply. No other refund is available.

**Parking Information**

There are several parking lots in/around 1 Dundas Street West. Please see [www.osgoodepd.ca/parking](http://www.osgoodepd.ca/parking) for additional details.



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ADR Institute of Ontario



Family Dispute Resolution  
Institute of Ontario



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