



IFW NEWSLETTER

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[Interview with Peter Israel, CADN Ontario Chapter, of the National Academy of Distinguished Neutrals – 2024 Retreat](#)

MEDIATOR’S CORNER BY PETER ISRAEL, CO-FOUNDING PARTNER OF ISRAEL FOULON WONG LLP

We all know that Mediations in employment law matters in Toronto are mandatory. We must go through the process as a next step on the way to trial. The selection of the Mediator is not mandated, and the parties have the right to consensually select one from a roster maintained by the Government or from private practice.

There are various styles of Mediation, the most common of which are evaluative and facilitative approaches. In my view, evaluative mediation is most suited to employment law matters where the issue most often is between a single employee and an employer. Therefore, the relationship is at an end and there is no need to focus on repairing an existing relationship (which is more common in a facilitative approach). An evaluative approach is best handled by a professional with expertise in the legal subject area in dispute and can therefore guide the parties separately in individual rooms through a risk analysis from their perspective of the matter legally (in terms of decided legal precedent, relevant decisions and outcomes in similar fact situations), financial risks, credibility,

the vagaries of proof, reputational and other more personal or emotionally based risks, timeline realities, the public disclosure in a public trial, costs etc. So a mediator can offer and analyze risk in each room and then hopefully provide certainty through analysis and the parties' own work solution in crafting a party based private and confidential solution as opposed to a more draconian all or nothing solution to be imposed by a court after 2 or more years of litigation and expense, in Ontario and in a publicly disclosed judgement. In other words. an experienced Mediator can provide a neutral reality check in each room highlighting that party's risks on all the above criteria and then hopefully be able to offer certainty crafted by the parties for their unique needs and desires at very substantially reduced cost and timeline.

Mediation can only have an upside since it is mandated and must be had and since it is confidential. Thus, the worst that can happen is that it does not resolve, remains totally confidential, and the parties continue their lawsuit. Mediations have a very high resolution rate (high 80's low 90's, percentage wise), allow the parties to craft their own solution in a confidential manner, being able to take advantage of the spin and utilize tax savings when appropriate. When successful it can also facilitate in resolving or at least putting salve on the emotional fallout of the broken relationship. It really is, when done correctly, an expert led negotiation for the parties offering a win/win when successful.

I was recently interviewed at the National Academy of Distinguished Neutrals' conference in Montreal and attach a video above of that interview. Please advise whether you would like to receive more articles like this relating to Mediation in further Newsletters.

LET'S TALK

Israel Foulon Wong LLP is one of Canada's leading employment and labour law firms. The firm's partners, Peter Israel, Chris Foulon, Carita Wong, Alex Van Kralingen, Krista Kais-Prial, Behzad Hassibi, Katherine Chau, Mark Repath and their associates, Vibhu Gairola and Domenica Moran, have over 125 years of collective experience in assisting clients with employment and labour law issues.

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