

# **How ADR helped a Little City Lawyer have a National Practice**

**Barry B. Fisher**  
**Barrister, Arbitrator & Mediator**  
**393 University Ave., Suite 2000**  
**Toronto, Ontario**  
**M5R 1E6**  
**Tel: 416 585 2330**  
[barryfisher@rogers.com](mailto:barryfisher@rogers.com)  
[www.barryfisher.ca](http://www.barryfisher.ca)

I am a sole practitioner whose law practice is exclusively in the area of employment law. Many of my employer clients have branches or offices in other Canadian provinces, and as such they often have legal problems arising in those places. I have always provided advice to those clients about their non-Ontario employment problems, however in the past when a matter became litigious, I always told the client that they needed to retain local counsel. Sometimes I would have a hand in either choosing local counsel and coordinating the defense, but more often than not these large employers already had contacts in other provinces and would simply use their regular local lawyers and leave me out in the cold.

Needless to say this was not a satisfactory situation for me as I lost the billings over that particular file. However it was also not a satisfactory situation for my Toronto based clients. They now had to deal with two lawyers for employment matters, thereby losing the efficiency of dealing with one lawyer on all matters. They would rarely have an opportunity to meet their out of province lawyer face to face, except when the litigation had already progressed to either the discovery stage or the actual trial. The out of province lawyer would generally not be knowledgeable with the overall corporate philosophy of the client with respect to employment matters. In other words the out of province lawyer would tend to view the matter as simply involving the one particular file. However, the client may see the management of this file as part of an overall human resource strategy that made the particular outcome of this one file either more important or less important than would normally appear to be the case.

As I started to expand my ADR practice, both as a neutral and an advocate, I began to realize that I could use ADR to both expand my law practice across provincial borders and better serve my existing clients. There would appear to be no requirement to be licensed in other provinces in order to appear on either a mediation or an arbitration, as you do not even have to be a lawyer to appear either on a mediation or an arbitration. Needless to say, you can only properly represent your clients in other provinces where you are knowledgeable in the area of law. Employment law is by its very nature mostly based on the common law, which is very similar across Canada. To the degree that local

statutes affect the case, they are usually statutes that are very similar to ones we have in Ontario like the Employment Standards Act or the Human Rights Code.

With this idea in mind, I started to recommend to my employer clients that we try to mediate our non-Ontario cases, as we were already doing so in Ontario on a regular basis. My clients were quite enthusiastic about the idea, as they saw it as an effective and less expensive way of solving the problem than litigating in an out of province jurisdiction. With respect to the cost issue, although there were undoubtedly extra disbursements (travel and hotel) the big savings were that the preparation could take place in Toronto, thereby saving both direct expenses and executive time.

To date, I have attended on mediations in Edmonton and Vancouver. I am scheduled in the near future to go to Halifax and Calgary. So far, the success rate for out of province mediations is comparable to the ones I attend in Ontario. The opposing lawyer and his or her client are without exception pleased that my client and I take the matter so seriously that we are prepared to jump on a plane, come to their city and work to resolve the conflict. Our mere presence goes along way to dispelling the feeling that “those people in the Toronto head office don’t care about us out here in the West (or East).”

I have also been involved in one out of province arbitration of a wrongful dismissal action which took place in Vancouver. The case had originally started out as a traditional lawsuit in which local counsel had been retained to represent my employer client. However, arising out of an unsuccessful settlement meeting, the parties agreed to arbitrate rather than litigate the case. At that point local counsel took the back seat and I became the lead advocate. We proceeded to complete the arbitration in three days, and although the results were “mixed”, my clients were quite satisfied with the process.

Now that I have used ADR for out of province cases, I can offer these few words of wisdom to others that wish to try.

- Make sure that you have a local lawyer on retainer to help you with matters such as filing documents, advising you of local mediators and arbitrators, giving you the lowdown on your worthy opponent and providing you with advice about procedural matters like costs, interest, local court backlogs and the like.
- Use a local mediator or arbitrator as you are the stranger in the strange land. I usually ask my opponent to propose a few names to me, and I then check out the person by speaking to my local counsel and by speaking to the ADR provider myself. I also review the mediators’ or arbitrators’ resume.
- Most procedural matters can be addressed by way of a telephone conference or written submission, so make sure the arbitration agreement allows for that process and that the arbitrator feels comfortable with that mechanism.
- Schedule a complete day for the mediation, so arrive the night before and plan to leave the morning after. You do not want to blow the mediation because you have to catch a flight at 7:00 PM on the day of the mediation.

In conclusion, the incorporation of ADR in your practice can help you expand your practice beyond your local city, province, country and perhaps the world! Sole practitioners and small firms need not surrender their foreign files to foreign lawyers.

ADR has universal application and can be practiced by any competent advocate who is prepared to look beyond the traditional borders of their own practice.