

CURRICULUM VITAE

JULIAN POLIKA, Q.C., J.D., F.C.I. Arb.

JULIAN POLIKA, Q.C., J.D., F.C.I.Arb.

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- PRESENT POSITION:** Mediator, Arbitrator, Neutral and Referee
- JUDICIAL POSITION:** Case Management Master, Ontario Superior Court of Justice
Appointed April 7, 1997, Retired February 8, 2013
- EDUCATION:** Public and Secondary Schools, Toronto Ontario
Undergraduate 1959-62, University of British Columbia, Faculty of Arts and Science
LL.B. now a J.D. University of Toronto, School of Law, 1965
Additional undergraduate courses in Computer Science, York University, Atkinson College
Successful completion of requirements for Part II Examination and Supervised Training qualification for Fellowship in The Chartered Institute of Arbitrators - International Arbitration Centre, London, England (completed at Cambridge, Mass., U.S.A. April, 1994)
Harvard Mediation Training (Advocates' Society summer '95)
Advanced Harvard Mediation Training (Advocates' Society winter '96)
Negotiation: The Foundation of JDR/Settlement Conferencing, National Judicial Institute, Vancouver April 21-23, 2004
- PROFESSIONAL:** Articled with Malcolm Robb, Q.C. (dec'd) 1965-66,
(criminal and civil litigation)
Called to the Bar in Ontario on March 17, 1967
Queen's Counsel December 27, 1978
Her Majesty's Proctor in Divorce for Ontario 1976-84
Fellow of the Chartered Institute of Arbitrators, London, England 1994
- PROFESSIONAL RATINGS:** Certified by the Law Society of Upper Canada
as a Specialist in Civil Litigation (in abeyance when appointed as a Case Management Master)
Martindale-Hubbell Rating, "a v" (highest, as of April 7, 1997)
- PRACTICE** Of counsel, Macdonald Porter Drees (six lawyer downtown Toronto)

HISTORY:

firm) February 1996 to April 7, 1997; litigation and dispute resolution
Previously of counsel, Raymond & Honsberger (eighteen lawyer firm downtown Toronto) litigation and dispute resolution
Previously member of Chernos, Conway (ten lawyer downtown Toronto litigation firm) from May 1986 to September 1991; litigation
Director of the Crown Law Office - Civil Law of the Ministry of the Attorney General for Ontario 1976 to May 1986 and Crown Law Officer with the Ministry of the Attorney General for Ontario 1973 to 1976 civil and criminal litigation with an emphasis on civil, administrative, appellate and constitutional law
Sole practitioner Toronto 1967-73 civil and criminal litigation

COMMITTEES:

Various committees relating to the Masters' Office in the Superior Court of Justice
Former Member of the Joint Committee On Court Reform
Former Member of Toronto Region E-Filing Pilot Project Steering Committee

**TEACHING,
SEMINARS,
& ARTICLES:**

- Prior to 1997 for a number of years instructor in the Bar Admission Course of the Law Society of Upper Canada in Administrative Law and Charter of Rights and Civil Procedure I;
- *Institute 2013- CONSTRUCTION LAW - Hot Topics, Tips and Tactics to Build Your Construction Law Toolkit – Construction Claims Choices*, OBA, February 7, 2013, speaker;
- *Institute 2010 - Civil Litigation Brave New World: New Rules and New Technology – Judicial Perspective On technology Issues*, OBA, February 16, 2010, speaker;
- *An Evening with the Construction Lien Masters*, OBA, November 20, 2012, Speaker;
- *An Evening with the Construction Lien Masters*, OBA, November 23, 2010, speaker;
- *An Evening with the Construction Lien Masters*, OBA, November 25, 2008, speaker;
- *Central East Advocacy Conference 2007- What Can We Learn From Construction Lien Trials?*, OBA, March 3, 2007, speaker;
- *An Evening with the Construction Lien Masters*, OBA, November 23, 2006, speaker;
- *An Evening with the Construction Lien Masters*, OBA, October 22, 2002, speaker;
- *Advanced Civil Procedure*, The Canadian Institute, April 8-9, 2002, Panellist on The View From The Bench: How To Prepare and Argue an Effective Motion;
- *Civil Litigation 100% Case Management Alert*, Joint OBA, Law Society of Upper Canada, Advocates' Society and Metropolitan Toronto Lawyers Association CLE program, May 31 and September 28, 2001, speaker on Settlement Conferences;
- *LEXPRT – Legal technology Conference and Exposition*, November 11 -12, 1999, Co-Chair and Speaker;
- *Electronic Evidence*, OBA, October 28, 1999, speaker;

- *Meet the Masters*, OBA, April 27, 1999, speaker;
- In Service case management for Visiting Masters from Supreme Court of Trinidad and Tobago, Summer 1998;
- *LSUC Special Lectures - Personal Injury Current Practices and Emerging Directions*, Civil Justice Reform Panel, June 11 and 12, 1998;
- *Using Software Tools In Case Management*, CBAO Civil Litigation Section Dinner, March 26, 1998;
- *Civil Case Management in Toronto: An Update*, program by CBAO, LSUC and MTLA, March 2, 1998;
- The Advocates' Brief, Techno-Brief Column 1996-97;
- *Project Engineering and Information Technology in Civil Litigation and Dispute Resolution*, Lecture to Osgoode Hall Law School Part-Time LL.M. class, June 13, 1996;
- *Technology For Lawyers '96*, Program Chair;
- *How to Win - Win In A Win World, Exercising Your Advocacy Skills In An ADR Session*, Panel Moderator, Advocates' Society October 22, 1995;
- *Technology For Lawyers '95*, Program Chair;
- *Technology For Lawyers '95 - Doing Law In '95 on the Computing Superhighway*, CSALT NEWS, January 1995;
- *Litigation Lawyer's Toolbox - A Review*, CSALT Review, Volume 8, Issue 2, Fall/Winter 1994;
- *Technology For Lawyers '94*, Program Chair;
- Conferences/Conferences/Conferences, CSALT NEWS, January 1994;
- *Using Technology to Maintain Cash Flow In A Recession*, joint session with Richard L. Mount, Technology For Lawyers '93, May 8, 1993;
- *Techshow '93*, CSALT NEWS, March 1993;
- *Notebooks Have Wings*, CSALT NEWS, March/April 1992;
- *Comdex The Notebook/Palmtop Lawyer*, Technology For Lawyers '92, May 28, 1992;
- *ABA Fall '91 - A Lawyer's Perspective*, CSALT NEWS, December 1991;
- *The Note Book Lawyer - Portable Computing At It's Lightest*, Technology For Lawyers '91, April 20, 1991;
- *Civil Case Management*, CSALT NEWS, June/ July, 1990;
- *Automation In The Courts for the Litigator, the Judiciary and the Client*, Technology For lawyers '90, April 20, 1990;
- *Honing The Search -Taxonomy/Database Record Structure Design*, CSALT NEWS, Volume 2, Issue 3, 1987;
- *Honing The Search - Establishment of An Archival Subsystem*, CSALT NEWS, Volume 2, Issue 2, 1986;
- *CSALT Submission to the Zuber Inquiry Into the Courts of Ontario*, October 31, 1986;
- *Honing The Search - To Compute or Not To Compute*, CSALT NEWS, Volume 2. Issue 1, 1986;
- *Wordprocessing Hands-On Session*, Automating The Law Office, Law Society of Upper Canada, May 11, 1985;
- *Reviewing Wang Word Processing System*,

- Planning For The Law Office of the Future, Law Society of Upper Canada, June 1, 1984;
- *From DEST to Disk*, Using Computers To Practice Law, Volume 1, Number 1, May 1, 1985

ASSOCIATIONS:

The Ontario Masters' Association (Founding director, past officer and past President)
 Law Society of Upper Canada (membership in abeyance by statute on appointment as a Case Management Master)
 Advocates' Society (Director from June 15, 1995 to April 7, 1997)
 The Chartered Institute of Arbitrators
 Canadian Bar Association
 The ADR Institute
 Association of Trial Lawyers of America (judicial member)
 Royal Canadian Military Institute

PERSONAL:

Born Toronto, Ontario
 Married with one daughter

INTERESTS:

SCUBA (diving since age 15)
 Sailing, Aviation
 Digital still and video photography
 Computers (hardware and software)
 Constructing and repairing automobiles, buildings and things

LANGUAGES:

English, working knowledge of spoken and written French, Ukrainian and Russian

FORMER PRACTICE AREAS:

- Civil litigation with an emphasis on commercial litigation
- Mediation, arbitration and other alternate dispute resolution proceedings
- Quasi-criminal and criminal litigation
- Proceedings for and/or against all three levels of government
- Motion and appellate proceedings in all levels of Court
- Administrative law including appearances before tribunals and on appeals from and applications for judicial review of their decisions
- Professional discipline proceedings (Legal, Medical, etc.)
- Debtor/creditor, insolvency and mortgage litigation
- Other areas of civil litigation: environmental, wrongful dismissal, commercial landlord and tenant, rent review, negligence, intellectual property, etc.
- Counsel work at trial and on appeal

CAREER NARRATIVE

As A Case Management Master

During the latter part of 1996 I applied for the position of the first case management master for the

Toronto Region of the Ontario Court (General Division) and was successful in an open competition. When I reviewed the Ontario rules outlining case management coupled with the proposed initiative of mandatory mediation I concluded that they presented an opportunity to address the ongoing complaints of litigants centred on delay and the high cost of litigation. I felt that with my past civil and other litigation experience, my skills in mediation and arbitration, my organizational skills and most importantly my problem solving skills, I could contribute to the success of case management.

Since then I have fulfilled the duties and responsibilities of a case management master which are a subset of the jurisdiction of a federally appointed judge in civil matters. I have established practices in an area which was new and un-trodden. From April 1997 to December 1998 I was the sole case management master responsible for 25% of the civil litigation intake in the Toronto Region which was streamed into case management. For these actions I dealt with all case management issues including telephone and in person case conferences, all motions within master's jurisdiction both short and long, pre-trials and timetabled and fixed all long motions before judges. Additionally, I served on a number of Superior Court committees struck to implement and monitor case management and mandatory mediation.

My duties originally encompassed hearing motions, conducting references, and conducting case conferences, pre-trials, settlement conferences and trial management conferences by appearance, in writing and by telephone. In addition from 2001 a third of my sitting time was spent on construction lien matters until 2005 when I became the sole full time master dealing with construction lien matters. This included both motions and trials. In Toronto counsel have chosen to have most construction lien trials conducted by a master by way of reference pursuant to section 58 of the *Construction Lien Act*. In 2006 I was joined by another full-time construction lien master.

In case managed actions and construction lien references, case conferences/pre-trials for directions serve to address the timetable for the proceeding but in addition, can and usually addresses other issues such as trial together, bringing related proceedings into case management/reference, directing that the proceedings advance on common timetables, consolidation of proceedings, and virtually any other issue which can be decided by motion as well as crystallizing the issues and settlement. The fundamental objective is to minimize costs and to bring the action/reference to a just and speedy resolution. In the process discovery and interlocutory proceedings are addressed to ensure they are completed in the most expeditious and cost effective manner to facilitate a meaningful settlement conference and failing settlement the trial. Case conferences/pre-trials for directions of themselves at times result in the resolution of the proceeding.

Case management contemplates early mediation by an outside mediator failing which the proceeding is prepared for the settlement conference and trial by completing the discovery process. Construction lien references have a similar objective. Settlement conferences are case management's and construction lien references' successor to pre-trials. They amount to a rights based judicial evaluation of the proceeding, that is what the likely result will be based on the facts as submitted by the parties as well as a review of what the costs will be if the proceeding goes to trial, all with a view to bringing the parties to a settlement. If settlement does not result then a trial date is fixed at the settlement conference whereas in construction lien references it likely has already been fixed at a prior pre-trial for directions. Fixing a trial date requires a trial management exercise to determine not only how long the trial will take but the most appropriate trial to ensure that the action or reference is completed in a cost effective manner and just manner.

Conducting references in construction lien actions is an extension of case management the major difference being that not only am I as the referee responsible for ensuring that an action is ready for trial in a timely and cost effective manner but that I decide on the method of trial and try the action by way of

reference with all of the jurisdiction of a federally appointed judge. In addition in construction lien references I along with the other full time sitting construction lien master were instrumental in setting up and implementing a settlement conference procedure which has about a ninety percentile success rate. As of 2012 I have conducted over 400 construction lien reference involving over two thousand construction lien claims.

Pre - 1973

My articles were spent with Malcolm Robb whose practice consisted of civil and criminal litigation at the Supreme Court of Ontario and indictable offence level, respectively. I received a solid grounding in pleading diverse civil matters as well as exposure to trial, motion and appellate work in both civil and criminal matters.

From my call to the bar until April of 1973 I practised as a sole practitioner in the City of Toronto with an emphasis on both civil and criminal litigation. I appeared in all levels of court to and including the Supreme Court of Canada as well as before various administrative tribunals. I conducted both civil and criminal jury trials. I successfully argued my first Supreme Court of Canada appeal in 1972.

Counsel Crown Law Office - Civil Law

In 1973 I joined the Crown Law Office - Civil Law of the Ministry of the Attorney General for the Province of Ontario as a Crown Law Officer. At that time, although my primary responsibility was in civil litigation because of my experience in private practice, I took on both criminal and quasi-criminal work as well. The criminal work involved filling in for Crown Attorneys, taking trials and assisting in police prosecutions. The quasi-criminal work involved conducting prosecutions under various provincial statutes which in some cases called for the laying of related criminal charges.

The civil work involved both counsel and solicitor's work. The solicitor's work was carried out for those ministries and government agencies to which no lawyers had been seconded. The counsel work involved the whole range of civil actions from contract and commercial through to constitutional matters. I also devoted a substantial portion of my time to matters involving administrative law, statutory application and interpretation, and constitutional law. I appeared in all types of proceedings including applications for judicial review, urgent motions and appeals on behalf of various government ministries, boards and tribunals. My appearances were in all levels of court in Ontario, before the Federal Court, and the Supreme Court of Canada and before various administrative tribunals in both the provincial and federal systems. Included as my client boards were the Ontario Municipal Board, the Ontario Highway Transport Board, coroners, the Criminal Injuries Compensation Board and the Ontario Human Rights Commission.

Director Crown Law Office - Civil Law

In 1976 I was appointed Director of the Crown Law Office - Civil Law and Her Majesty's Proctor in Divorce. I continued my counsel work but with particular emphasis on administrative, constitutional and Charter of Rights proceedings in addition to my managerial responsibilities.

In the late 1970's anticipating Ontario's initiatives respecting the use of the French language in the courts and in government, I took French language training. I encouraged my staff to follow suit. Given that at both the federal and provincial levels both language versions of the statutes are now equally authoritative, this decision has stood me in good stead in relation to many of the litigious proceedings in which I have acted.

As the director, I was responsible for the review of all applications for judicial review brought in

the province. Statutorily all such applications had to be served upon the Attorney General and it was my function to determine whether the Attorney General would intervene and/or act for a named party. Coupled with my direct counsel experience in this area and my experience as a legal advisor to various ministries, boards and tribunals across government, I obtained an expertise second to none in administrative law including the conduct of public inquiries under the *Public Inquiries Act*.

I directly assigned all files in the Crown Law Office - Civil Law. Assignment required an analysis of the legal and factual issues involved, consideration of the interest of the ministry, board or tribunal directly involved and the interest of the government as a whole and assignment to the counsel most suited for the particular file having regard to counsel's expertise and experience and the importance of the file.

Additionally, on a day to day basis, I gave telephone advice to the various branches of government as well as its officials, elected and appointed, and its administrative boards and tribunals. For example, I had extensive dealings with the Ontario Municipal Board, the Ontario Highway Transport Board, the Ontario Police Commission, the Ontario Human Rights Commission, Coroners and the Criminal Injuries Compensation Board. In the environmental area in addition to appearing on applications for judicial review involving environmental issues, I consulted in respect of proposed changes to environmental legislation and assisted in the direction of Ontario's litigious initiatives in the U.S.A. in relation to acid rain.

Administratively, at the time of my leaving I was responsible for a law office composed of approximately thirty-five counsel and forty support staff whose primary responsibility was the provision of litigation and counsel services to the province of Ontario. I was responsible for all administrative matters from budget through staff relations to and including office management and organization. I introduced computer based docketing to the office which was used for office accountability, budgetary and staffing planning purposes, bills of costs in civil proceedings and promotional and salary decisions.

Notwithstanding my administrative responsibilities I maintained a large file load. I acted on a regular basis in urgent weekly court applications and in applications for judicial review. I dealt with most applications involving the Minister of Housing in *Planning Act* matters and in rent review matters. I dealt with all applications for judicial review relating to the listing of drugs under the *Drug Benefit Act* and the listing of generic drugs as interchangeable with originator products. I also handled a steady stream of constitutional interventions, Charter matters as well as other diverse matters. At the time of my resignation I was directly responsible for the defence of the government's actions in the Crown Trust takeover and the defence of the *Theatres Act* in Charter of Rights litigation relating to censorship.

Private Practice After 1986

In May 1986 I resigned as Director to return to private practice. After my resignation I was retained by Ontario to carry on with a number of on-going administrative and Charter proceedings. I was also retained to act in human rights complaints against the province, applications for judicial review particularly in drug product and intellectual property matters relating thereto and occupational health and safety matters. I appeared on behalf of Ontario at the first ever hearing before the Patent Medicine Price Review Board. In addition to my government retainers which continued until my appointment as a case management master, I was involved in a wide range of litigious matters involving commercial, planning, landlord and tenant, professional misconduct, rent review, bankruptcy, corporate, provincial offences relating to the workplace and environment, wrongful dismissal and environmental issues. I acted as counsel for individuals, corporations, and government at the trial and appellate levels of court as well as before administrative tribunals and court review of their actions.

Contribution To The Profession

Throughout my career I have been involved with various professional organizations. I was an active participant in the Joint Committee on Court Reform's sub-committee on court administration and I was one of the authors of the Joint Committee's position paper on the administration of the Ontario courts. Subsequently I joined the steering committee for the Toronto E-Filing Pilot Project. Additionally I was a member of the Alternate Dispute Resolution and Rules subcommittees of the Advocates' Society as well as chair of the Technology subcommittee.

In respect of legal education I have been a participant in numerous continuing education programs. I was chairperson of Technology For Lawyers '94, '95 and '96. In addition for a number of years I served as an instructor in the Law Society of Upper Canada's Bar Admission Course in Civil Procedure I and Administrative and Constitutional Law (Public Law). I also contributed to the Bar Admission Course's Family Law materials.

Technology and Law

I have always had a deep and active interest in the application of technology to the practice of law and the courts. My involvement started while a sole practitioner and continues to the present. In government I was directly involved in the use of computers for litigation support and the creation of lawyer work product databases. At the personal computer level I started using an Osborne (a suitcase sized portable) and have continued to use a personal computer to the present.

To further my interest and to benefit the profession I joined with a number of others and founded the Canadian Society For The Advancement of Legal Technology. I was active in CSALT over the years as a director, an officer and I was the Chairman of the Board of Directors for several years. CSALT together with the Law Society of Upper Canada each year held a two day conference on various issues relating to the application of computer technology to the practice of law and the courts. I was chairperson of the 1994, 1995 and 1996 conferences. For my contribution I was awarded a lifetime membership.

As a consequence of the expertise I developed in the application of technology to the practise of law, particularly litigation, when I returned to private practice I was retained by Ontario as a consultant in relation to technology matters, which arose out of initiatives in relation to litigation support in the Crown Trust takeover litigation. Subsequently, I was retained to consult in respect of litigation support in ongoing litigation.

Alternate Dispute Resolution

The consideration of different methods of resolving litigious matters, in which I acted, was of primary concern to me. I am committed to the most expeditious and cost effective method of dispute resolution whether by way of negotiation, mediation, arbitration or litigation in the courts. My first experience with the arbitral process was in the area of government labour relations when I undertook an initiative to bring much of that practise back in-house. The Crown Law Office - Civil Law from that time was involved in government labour relation matters relating to its various ministries, bodies and tribunals including the Ontario Provincial Police. I am a strong believer in the use of negotiation and/or mediation and failing that in the use of arbitration or the public courts to resolve disputes as may be appropriate. I have furthered my own knowledge and qualifications in the area by taking the Special Fellowship Course put on by The Chartered Institute of Arbitrators in Cambridge, Massachusetts in April 1994, which I successfully completed. This was followed by Harvard mediation training, at both the introductory and advanced levels and subsequently by a course given by the National Judicial Institute on negotiating in the

context of judicial dispute resolution. .

Summary

In summary, to date I have had broad counsel experience in a wide range of civil, criminal and quasi-criminal litigious matters at all levels of court and before various administrative tribunals. My extensive experience in litigious matters has given me expertise in negotiation and conflict resolution. As a counsel who has acted on both sides, that is as a prosecutor and for the accused and for both plaintiff and defendant, I have gained the capacity to understand different and at times very diverse points of view. I have also been intensely involved in dealing with the public on behalf of Ontario particularly when complaints and claims have been advanced against the government. I am completely familiar with statutory, constitutional, Charter, administrative, intellectual property and procedural matters. I have particular experience in the area of judicial review, the tribunal and court aspects of planning, regulatory and environmental matters. The cases I have argued have been extensively reported. I have a complete knowledge of government bureaucracy in general and of the Ontario bureaucracy in particular. In addition I have skills in administration, management and the use of computers in law and in the office. I have contributed to my profession by being a member of its various professional organizations and by assisting in legal education. Now, I have also had over fifteen years of judicial experience as a case management master, with seven of those years devoted exclusively to the resolution of construction contract claims.