



Gomberg
mediation solutions inc.

Frank Kenneth Gomberg

BIO

Frank Kenneth Gomberg

BA JD LLM (ADR)



EDUCATION

- Called to the Ontario Bar (1979)
- Master of Laws (LL.M. in Alternative Dispute Resolution) Osgoode Hall Law School of York University (2011)
- Bachelor of Laws (LL.B.) now Juris Doctor (J.D.) Osgoode Hall Law School of York University (1977)
- Bachelor of Arts (B.A.) McGill University (1974)

MEDIATION EXPERIENCE

- Since 1995 has mediated over 4,500 civil disputes in the Ontario Superior Court of Justice including personal injury claims, medical and hospital malpractice cases, insurance disputes, lawyers' negligence cases, wrongful dismissal cases and professional liability claims.
- Appointed arbitrator of the Walkerton Contaminated Water Class Proceedings lawsuit by Order of Mr. Justice Paul Perell of the Ontario Superior Court dated July 21, 2016.
- Appointed arbitrator of the economic loss claim advanced by K. D. in the context of [The Walkerton Class Action](#). The appointment was made by order of Mr. Justice Paul Perell of the Ontario Superior Court dated November 2, 2016.

LITIGATION EXPERIENCE

- Numerous appearances as counsel and junior counsel in the District Court of Ontario, Supreme Court of Ontario, the Ontario Court of Justice (General Division) and the Ontario Superior Court of Justice in Judge alone and Jury matters.
- Appearances as counsel at Coroners' Inquests including the Inquest into three deaths on the Toronto Transit Commission Subway System on August 11, 1995 and the Inquest into the death of Lisa Shore at the Hospital for Sick Children on October 22, 1998.

Gomberg Mediation Solutions Inc.

70 Bond St | Suite 200 | Toronto
ON M5B 1X3 | Canada

D 416.865.5323

E fgomberg@gombergmediation.com

W www.gombergmediation.com

- Appearances before The Criminal Injuries Compensation Board, The Workers' Compensation Board, The Workers' Compensation Appeals Tribunal and in the Divisional Court and the Ontario Court of Appeal

REPORTED CASES

- Peake v Canadian Surety Co. et al (1993) 13 O.R. (3d) 344 (Dunnet J., Ontario Court of Justice (General Division))
- Bogoroch v. City of Toronto (1991) (Then J.), Ontario Court of Justice (General Division)
- Ortved v Bailey et al [1983] I.L.R. 1-1617 (Rutherford J., Ontario High Court of Justice)
- O.H.I.P. v D. and M. Transport (1982) 34 O.R. (2d) 611 (Krever J., Ontario High Court of Justice)
- Dudek v Brown (1981) 124 D.L.R. (3d) 629 (Van Camp J, Ontario High Court of Justice)
- Gould v Ariss Haulage (1980) 27 O.R. (2d) 291 | (Carruthers J., Ontario High Court of Justice)

EMPLOYMENT

- Gomberg Mediation Solutions Inc., Toronto, 2013 to present
- Teplitsky, Colson LLP, Barristers, Toronto, 1991 to present
- Thomson, Rogers, Barristers and Solicitors, Toronto, 1979–1991

PROFESSIONAL EXPERIENCE:

- Resigned as a Specialist in Civil Litigation in January 2005, given current Mediation involvement
- Awarded Specialist Certificate in Civil Litigation by the Law Society of Upper Canada (January 12, 1990, renewed for a five year term in 1995 and again in 2000)
- Appointed to the Board of Directors of The Advocates' Society for the term 1995–1997
- Elected to the Board of Directors of The Advocates' Society for the term 1992–1995

LEGAL ASSOCIATIONS, MEMBERSHIPS AND COMMITTEES

- The Advocates' Society
- Canadian Bar Association
- County of York Law Association
- Law Society of Ontario
- Medical Legal Society of Toronto

- Metropolitan Toronto Lawyers Association
- Ontario Bar Association

BOARDS OF DIRECTORS—LEGAL AND OTHER (VOLUNTARY)

- Daughters For Life Foundation (2013–2014) founded by Dr. Izzeldin Abuelaish
- Ontario Trial Lawyers' Association, Board of Directors (1996–1998)
- Ontario Centre for Advocacy Training (O.C.A.T) (1994–1996), Treasurer of O.C.A.T. (1995–1998)
- The Advocates' Society (1992–1997)
- Dunloe Childrens' Centre (1994–1996) President of Dunloe (1995–1996)

MAJOR AWARDS

- 2015 Gold Key Alumni Award for Service, Osgoode Hall Law School of York University
- 2013 Osgoode Professional Development Continuing Legal Education Contribution Award; in recognition of outstanding contribution to Osgoode Continuing Legal Education

Lectures, Teaching and Leadership Roles

Adjunct Professor of Law | Sessional Instructor—Trial Advocacy,
Osgoode Hall Law School of York University, Fall Term 1996–2018

CHAIR

The Advocates' Society, Toronto

- Court House Series, annually 1996–97
- Fall Convention Programme on Insurance and Negligence, 1994
- Bill 164 Programme, 1994

Law Society of Upper Canada

- *A Workshop for Litigators Who Represent Clients in Mediation* 2017
- Lexitel Programme—numerous telephone programmes on Personal Injury Law, 1988–89

Canadian Bar Association Ontario

- *Practical Approaches to Dispute Resolution* Annual Institute of Continuing Legal Education, 1986
- *How to Handle a Personal Injury Case: From Initial Client Interview to Judgment* Young Lawyers' Division Workshop, 1984

CO-CHAIR

- *Successful Advocacy in Tort and Personal Injury Mediations*, Osgoode Professional Development, Osgoode Hall Law School of York University, 2017
- *The Osgoode Short Course in Mediation Advocacy*, Osgoode Professional Development, Osgoode Hall Law School of York University, 2013-2015
- *The Law of the Jungle-In Paradise*, The Advocates' Society, Fall Convention, Paradise Island, Bahamas, 1997
- Ontario Trial Lawyers Association (O.T.L.A.), Fall Convention, Toronto, 1997
- Ontario Trial Lawyers Association (O.T.L.A.), Spring Convention, Toronto, 1997
- *Litigating in the '90s*, The Advocates' Society 1996 Fall Convention, Nassau, Bahamas 1996
- *Ethics and Advocacy-In a World Gone Mad*, The Advocates' Society, Fall Convention, Nassau, Bahamas 1995
- *Assessing Damages in Personal Injury Cases*, Law Society of Upper Canada, 1989

EVENT CO-ORGANIZER

The Ontario Centre for Advocacy Training, Toronto

- *Advocacy Training Revisited: Learning by Doing, But What Have We Been Doing?* A Conference to Address Issues in Advocacy Training Methods for Members of the Ontario Bench and Bar 1998
- *Teaching Advocacy: The Art of Listening; The Science of Communicating;* A Symposium on Teaching, Learning and Communication Skills for Members of the Ontario Bench and Bar 1997

FACULTY MEMBER | ADVISORY BOARD MEMBER

The Osgoode Certificate in Personal Injury Law & Practice, Professional Development CLE, Osgoode Hall Law School of York University, 2013

FACULTY MEMBER | GUEST FACULTY MEMBER

The Osgoode Certificate in Negotiation, The Value of an Apology at the Negotiation Table
Osgoode Hall Law School of York University, 2016, 2018

Intensive Trial Advocacy Workshop For Lawyers (I.T.A.W.) Osgoode Hall Law School of York
University, Team Leader: 1997-2002, 2018-2019, Guest Instructor: 1988-1996, 2012-2016

INSTRUCTOR | GUEST INSTRUCTOR

The Ontario Centre for Advocacy Training

- Examination-in-Chief & Cross-Examination Workshop, Timmins, 1999
- Examination-in-Chief & Cross-Examination Workshop, Toronto, 1998
- Examination for Discovery Workshop, Toronto, 1998
- Examination-in-Chief & Cross-Examination Workshop, University of Windsor, Faculty of Law, Windsor, 1998
- Examination-in-Chief and Cross-Examination Workshops, 1997
- Workshop on Practice and Theory, Toronto 1997
- Examination for Discovery Programme, Toronto, 1993-1996
- Clinic Training Program, Sault St., Marie 1996, Toronto, 1995, Kingston, 1993, London, 1993-1994

Metropolitan Toronto Police, C.O. Bick College

- *How a Police Investigation Can Affect a Civil Trial*, 1998-99

Osgoode Hall Law School of York University:

- Advanced Trial Advocacy training [LL.M. Program] (for Professor Garry D. Watson), 1998

Law Society of Upper Canada

- Negotiation and Resolution, Developing a Personal Injury Practice: Capitalizing on Expanding Opportunities, 1996
- Professional Responsibility, Bar Admission Course, 1990
- Profession of Law, Bar Admission Course, 1985-1990
- Workers' Compensation and the Right to Sue, Advanced Workers' Compensation Law-What's New and Hot, 1989

- Personal Injury for Legal Secretaries, Continuing Legal Education, 1987
- Practice Skills, Bar Admission Course, 1986–1987

The Advocates' Society Institute

- Developing the Loss of Homemaking Capacity Claim, Practical Strategies for Advocates VI Looking to the Future, 1996
- Workshop on Negotiations, 1992

Insight Educational Services

- *Advocacy Before Trial—A Comprehensive Litigation Techniques Workshops*, 1987–1989

JUDGE AND INSTRUCTOR

Canadian National Negotiation Competition, Osgoode Hall Law School of York University, 2019
 Mock Hearings, Seneca College of Applied Arts & Technology, Toronto, 1998 and 2000

MODERATOR

- Managing and Litigating Motor Vehicle Accident Claims, Damages Assessment Panel, Professional Development CLE, Osgoode Hall Law School of York University, 2010
- Personal Injury Law: Current Practices and Emerging Directions, Panel Discussion on Mediation, Special Lectures of the Law Society of Upper Canada, Toronto, 1998

PANELIST

- Insurance Defence Group Meeting, Lerner LLP Spring Retreat—Apologies and Mediations and Mediation Strategies, 2019
- 2nd Annual Joint Winkler/IAM Conference on Mediation—Mediation Issues and Strategies for Advanced Mediators and Counsel, Osgoode Professional Development, Osgoode Hall Law School of York University, 2015
- 10th Annual Conference on Evidence Law for the Civil Litigator—Ethical and Professional Issues Involving Witnesses and Evidence, Part 2, Professional Development, Osgoode Hall Law School of York University, 2013
- The Intensive Short Course on Fibromyalgia and Chronic Pain Claims—The Science, the Law, the Strategies, Professional Development CLE, Osgoode Hall Law School of York University, 2012



- Torts—The Law of Causation, Forseeability and More, Continuing Professional Development, The Law Society of Upper Canada, 2012
- Ethical and Other Issues Arising in Mediations, Tricks of the Trade 2012, Winning the Serious Case: Practical Strategies, Updates, and Tips, The Advocates' Society, 2012
- Mediation: Practical Strategies for Success, The 2012 Oatley-McLeish Guide to Motor Vehicle Litigation, Continuing Professional Development, The Law Society of Upper Canada, 2012
- Panel Discussion on Complexities of Mediating Motor Vehicle Accident Cases, Litigating Motor Vehicle Accident Claims, Gearing Up for Regime Reform, Insight Conference, Sept 30 2009
- 4th Annual Update, Personal Injury Law and Practice, Professional Development CLE, Osgoode Hall Law School of York University, 2008
- Mediation Strategies for Plaintiff and Defence Lawyers in Motor Vehicle Accident Litigation Cases, Managing and Litigating Motor Vehicle Accident Claims, Professional Development CLE, Osgoode Hall Law School of York University, 2008
- Damages Assessment Panel (with Brian Brock Q.C. and Ava Hillier), Dutton Brock LLP 2008 Insurance Law Seminar, 2008
- The Mediator's Role in Dispute Resolution—What Works and What Doesn't?, 3rd Annual Update—Personal Injury Law and Practice, Professional Development CLE, Osgoode Hall Law School of York University, 2007

SPEAKER | GUEST SPEAKER

- *The Lawyer as Advocate/The Lawyer-Client Relationship*, The Lawyer as a Conflict Resolver, University of Windsor, Faculty of Law, 2017, 2019
- *Theory and Practice of Mediation, Apology*, Osgoode Hall Law School of York University, 2018
- *Current and Emerging Issues In Sexual Assault Cases, Resolution Without Trial*, Osgoode Professional Development, Osgoode Hall Law School of York University, 2018
- *School of Justice & Emergency Services Mediation*, Alternative Dispute Resolution Program, Durham College, Oshawa, 2017
- *Advanced Trial Advocacy, Practice Tips, and Mediation*, Osgoode Professional Development Osgoode Hall Law School of York University, 2017

- *The Theory and Practice of Dispute Resolution, Contemporary Issues in Dispute Resolution*, LL.M. in Alternative Dispute Resolution Osgoode Professional Development Osgoode Hall Law School of York University, 2015, 2016
- *A Primer on Mediation: For Litigators*, Continuing Professional Development, The Law Society of Upper Canada, 2016
- *Mediation Advocacy, Mediation Clinic and Intensive Program*, Osgoode Hall Law School of York University, 2016
- *The Shadow a Mediation Casts on Negotiation and How That Changes the Negotiation Dynamics Working With Clients: The Challenges in Representative Negotiation*, The Osgoode Certificate in Negotiation, Osgoode Professional Development. Osgoode Hall Law School of York University, 2014
- *The Value of an Apology at the Negotiating Table*, Understanding Negotiation: The Basic Ingredients and the Process, The Osgoode Certificate in Negotiation, Osgoode Professional Development, Osgoode Hall Law School of York University, 2014
- *Ethical Considerations and Professionalism in Mediations*, Oatley McLeish Guide to Motor Vehicle Litigation, Continuing Professional Development, The Law Society of Upper Canada, 2014
- *Mediation Advocacy—Successfully Preparing for and Conducting Mediations*, Defending Auto Tort Claims in Ontario, Canadian Defence Lawyers, 2014
- *The Medical Malpractice Mediation: Tricks to Making Your Mediation More Successful Medical Malpractice: Building Your Case Through to a Jury Trial*, Ontario Trial Lawyers Association, 2014
- *Mediation Openings—What Works and What Doesn't!*, Tricks of the Trade 2014, In Pursuit of Excellence: Practical Tools to Enhance Your Practice, The Advocates' Society, 2014
- *The Shadow a Mediation Casts on the Negotiation and How that Changes the Negotiating Dynamics*, The Osgoode Certificate in Negotiation, Professional Development, Osgoode Hall Law School of York University, 2013
- *The Value of an Apology at the Negotiating Table*, The Osgoode Certificate in Negotiation, Osgoode Professional Development, Osgoode Hall Law School of York University, 2013
- *Mediation Strategies that Work*, Oatley McLeish Guide to Motor Vehicle Litigation, Continuing Professional Development, The Law Society of Upper Canada, 2013
- *Apology in the Context of Civil Litigation*, Dispute Analysis and Process Design, Professional Development LL.M. in Alternative Dispute Resolution, Osgoode Hall Law School of York University, 2013



- *Mediation Strategies that Work, The 2013 Oatley McLeish Guide to Motor Vehicle Litigation*, Continuing Professional Development, The Law Society of Upper Canada, 2013
- *Apology in the Context of Civil Litigation*, Dispute Analysis and Process Design, Professional Development LL.M. in Alternative Dispute Resolution, Osgoode Hall Law School of York University, 2013
- *Anatomy of a Child Wrongful Death Mediation: Practice and Theory*, Tricks of the Trade 2010, Practical Strategies for Settling Cases: The 98% Solution, Strategies for Settlement at Mediation, The Advocates' Society, 2010
- *A Mediator's Perspective*, 3rd Annual Hot Topics in Motor Vehicle Insurance, Ontario Bar Association, 2007
- *Effective Mediation—Tips from the Pit Bosses*, Annual General Meeting for 2006—Casino Legale, Canadian Defence Lawyers, Toronto, 2006
- *Pretrial Conference and Mediation: Is There a Difference?*, Piloting a Civil Action: From Take-off to Landing, Ontario Bar Association, Toronto, 2006
- *Live Issues at Death Inquiries: Successful Advocacy at Coroners' Inquests*, Ontario Bar Association Conference, Toronto, 2002
- *Effective Negotiation and Mediation of Personal Injury Claims*, Getting the Most out of the Mediation, The Law Society of Upper Canada, Continuing Legal Education, Toronto, 2002
- *Role of Counsel at an Inquest*, Coroners' Inquests, The Advocates' Society 2001 Fall Convention, Montego Bay, Jamaica, 2001
- *How to be an Expert when Choosing and Using Expert Witnesses and Reports*, Litigating Disability Insurance Claims, The Canadian Institute, Toronto, 2000
- *An Analysis of the Interface of Reflex Sympathetic Dystrophy and the Law*, Fifth Annual Reflex Sympathetic Dystrophy Seminar, International Conference, Toronto, 2000
- *Scarce Resources in Health Care: Is there Legal Recourse?* Canadian Bar Association Ontario, Toronto, 2000
- *The Keys to Successful Settlement of Long-Term Disability Cases*, Litigating Disability Insurance Claims, The Canadian Institute, Toronto, 1999
- Canadian Institute of Chartered Accountants, Alliance for Excellence in Investigative and Forensic Accounting of the Canadian Institute of Chartered Accountants, Toronto, 1999



- *Managing Harmful Clinical Notes and Records*, Ontario Trial Lawyers Association (O.T.L.A.), Fall Conference, Toronto, 1998
- *Maximizing and Minimizing Surveillance Evidence: "Is Seeing Believing?"*, Practical Strategies for Advocates VII, The Advocates' Society, Toronto, 1998
- Third Party Assessments Course for Medical Residents, Faculty of Medicine, University of Toronto, Division of Physiatry, Toronto, 1997
- *What do you tell a Client about Costs—When He or She Could Lose?*, The Six Minute Personal Injury Litigator: Plaintiffs Dilemmas, Law Society of Upper Canada, Toronto, 1997
- *Other Pecuniary Losses and Loss of Homemaking and Handyman Capacity Under Bill 59*, Damage Assessment and Development in a Personal Injury Action, Law Society of Upper Canada, Toronto, 1997
- *Effective Use of the Statement of Defence in Cross-Examination and In Closing*, Setting Up for Success: Winning Strategies for Presenting Future Economic Loss Claims, Ontario Trial Lawyers Association (O.T.L.A.), Toronto, 1996
- *Developing the Loss of Homemaking Capacity Claim*, Practical Strategies for Advocates VI: Looking to the Future, Sponsored by The Advocates' Society, Toronto, 1996
- *Acquired Brain Injury Claims, Managing Legal, Medical and Rehabilitation Issues Under the New Regime*, Insight Information Inc., Toronto, 1996
- *Negotiation and Resolution*, Developing a Personal Injury Practice: Capitalizing on Expanding Opportunities, Law Society of Upper Canada, Toronto, 1996
- *The Pretrial Conference from the Plaintiff's Perspective*, Courthouse Series in Toronto and Barrie, Ontario, The Advocates' Society, Toronto, 1996
- *The 3rd Investigative and Forensic Accounting Interest Group Conference—Personal Injury Damages*, Canadian Institute of Chartered Accountants, Toronto, 1995
- Bill 164 Programme, The Advocates' Society, London, 1995
- *Dealing With The No-Fault Threshold, from The Plaintiff's Perspective*, Current Issues in Personal Injury Litigation, Insight Educational Services, 1992
- *Civil Mediation; Is There Winning Without Warring?*, How to Prepare for a Mediation, Law Society of Upper Canada, 1991
- *The Insurance Statute Law Amendment Act, 1989 (Bill 68) and Its Application to Head Injury Claims; a Plaintiff's Perspective*, Head Injury in the 1990's; Litigation and the No-Fault Threshold , Insight Educational Services, 1990



- *Workers' Compensation and the Right to Sue*, Advanced Workers' Compensation Law—What's New and Hot, Law Society of Upper Canada, 1989
- *Personal Injury for Legal Secretaries*, Continuing Legal Education, Law Society of Upper Canada, 1997
- *You Are The Jury*, Plaintiff's Counsel, Canadian Institute of Actuaries, Younger Actuaries Meeting

Papers, Articles and Arbitration Awards

PAPERS



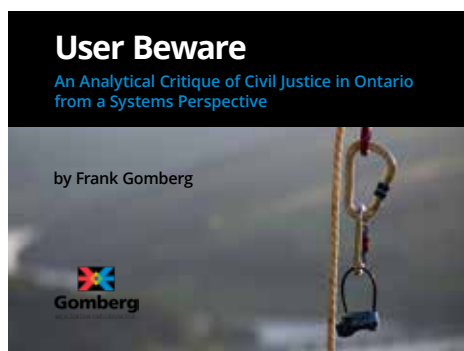
Improving apologies in healthcare deaths

This paper examines three child deaths and the challenge in getting healthcare professionals to offer sincere apologies to victims' families. The cauldron of emotion generated by child deaths makes this particular context for apology worth studying—for if we can distill the essence of good apology in these horrific situations, we can craft a template for success for apologies in all aspects of life.



Avoiding conflicts arising from cultural difference

Fractious relationships between Hasidic Jews and the neighbouring non-Jewish communities in Outremont, Quebec; New York City; and in Long Branch and Tenafly, New Jersey ultimately produced lawsuits in each of these jurisdictions. This paper examines the litigated claims and extracts lessons that can be learned from these failed relationships.



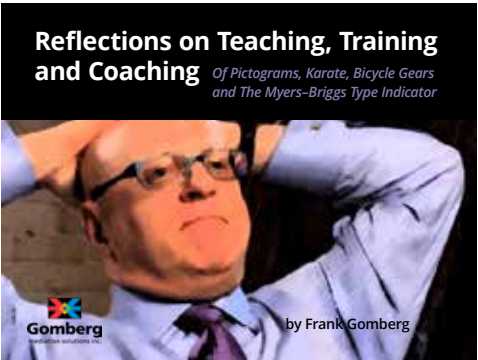
Analytical critique of civil justice

This paper uses the case of a victim who sustains a serious head injury while rock climbing to explore several issues including the need for subject matter expertise in Superior Court judges hearing civil cases; the dubious value of pre-trial conferences and the merits of mandatory mediation in certain Ontario jurisdictions.



Anatomy of a mediation in a child's wrongful death case

This paper, based on mediating 50 wrongful death cases and acting as counsel in others, analyses how mediation of a civil claim for the wrongful death of a child can and should hold the promise of making things better for the deceased child's family members. The idea that things can be made better does not arise from a naïve belief that anything good can emerge from a child's wrongful death case, but is more a reflection on mediation as a process that is less adversarial than a trial—one that at least may “do no harm” and perhaps do some good.



Reflections On Teaching, Training and Coaching

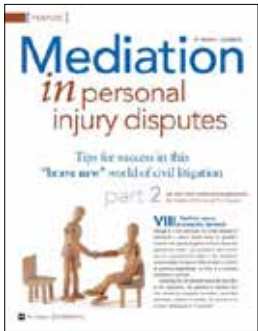
Successful learning demands a continuous communication loop that ensures both teacher and learner understand in real time whether the subject matter is being transmitted, received, processed, understood and retained. And the success of any given loop is greatly affected by each student's individual paradigm of how he or she takes in and processes information and sees and adapts to what is transmitted. This paper uses pictograms, karate, bicycle gears and the Myers-Briggs Type Indicator to argue for systems that accommodate a diversity of learning styles.

ARTICLES



The Displacement of Trial by Mediation in Personal Injury Disputes, Part 1

Tips for success in this “brave new” world of civil litigation
October 2012 issue *The Litigator* magazine.



The Displacement of Trial by Mediation in Personal Injury Disputes, Part 2

Tips for success in this “brave new” world of civil litigation
December 2012 issue of *The Litigator* magazine.

Personal Injury Litigation in Ontario at the Millennium. The Lawyers Weekly November 20, 1998, Butterworths Canada Ltd., Toronto, Ontario

Cross-Examination at Trial in a Civil Case: Musings on the Avoidance of Land Mines. Published in the book *Advocacy in Court... A Tribute to Arthur Maloney, Q.C.* Canada Law Book, 1987 (192 pages)

The Defence of Environmental Law Suits, with L. H. Mandel, Q.C. Paper presented to the Canadian Environmental Law Research Foundation (1980)

Co-Author of *A Discussion of the Legal, Ethical and Moral Questions that Confront the Critical Care Physician: How Does the Law Treat the Doctor?*, 129 Canadian Medical Association Journal 1034 (1983), Legal Medical Quarterly Volumes 5, 6, 7 (1981-1983) 160

Acceptance of Money Paid into Court by One of Several Defendants: Lawyer Beware, 1 Advocates' Quarterly 23 (1977-78)

John A. Olah's *The Art and Science of Advocacy*, Chapter 7A Mediation Advocacy: The New Battle Ground, Carswell

Contributor, Martha E. Simmons's *Mediation, A Comprehensive Guide to Effective Client Advocacy*, Emond Montgomery, Publications Limited 2016

ARBITRATION AWARDS

- Arbitration Award, Pilot Insurance (Applicant) and Zurich Insurance Company (Respondent) released February 11, 2009
- Reasons for Arbitrator's Decision Respecting Costs, Pilot Insurance (Applicant) and Zurich Insurance Company (Respondent) released July 21, 2009
- Arbitration Award, K.D. (Applicant) and [The Walkerton Compensation Plan](#) (The Administrator) released November 7, 2018

Gomberg Mediation Solutions Inc.

70 Bond St | Suite 200 | Toronto
ON M5B 1X3 | Canada

D 416.865.5323

E fgomberg@gombergmediation.com

W www.gombergmediation.com