



# Arbitration

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**A Presentation to the ADR Class  
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# Arbitration

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- An ADR process - a final and binding decision - (a private judge)
- Entered into by agreement, by contract or by legislation – voluntary or mandatory
- Process and powers under the Alberta Arbitration Act or other statutory process.

# Goals & Objectives Of Arbitration

- **Arbitrator**
  - fair hearing
  - fair & informed decision
  
- **Parties**
  - present respective cases
  - win their cases





# Risks & Benefits to Client

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- Formality
- Perceptions
- Conflicts
- Rules of evidence
- Privacy and confidentiality
- flexibility
- Time and Location
- Cost
- Choices – arbitrator & process
- Representation styles
- Arbitrator powers
- Satisfaction levels



# Choosing an Arbitrator

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- Qualifications: education and experience
- Content knowledge and experience
- Cost
- Availability
- Conflicts of interest
- Agreement of the other party
- Rosters

# Role of the Arbitrator

- Schedule and Control
- Listen
- Make findings of fact
- Make a Decision
- Prepare and Issue a written decision





# What can Arbitrators Do?

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- Interpret and apply statutes
- Interpret and apply contracts
- Determine facts
- Direct procedure
- Order costs
- Order preservation of property and documents
- Order attendance of witnesses & production of documents
- Require expert evidence
- Make interim and final awards



# What can Arbitrators Do?

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- Mediate if the parties agree
- Decide matters in accordance with the arbitration agreement and the contract
- Consider any applicable usages of trade
- Decide matters in accordance with law, including equity
- Order specific performance, injunctions and other equitable remedies
- Award damages
- Award costs of the arbitration (including the arbitrator's fees and disbursements)
- Correct mistakes in their awards or expand reasons if requested



# Arbitration Hearing Process

- **Pre-hearing meeting**
  - Procedural matters
  - Preliminary objections
- **Hearing**
  - Opening remarks by arbitrator
  - Opening statements by parties
  - Preliminary objections
  - Evidence
  - Argument
  - Closing remarks by arbitrator
- (like a court trial)





# The Arbitration Act

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- 1991 version – last updated 2003
- 55 sections – empowering vs detail
- Covers:
  - Commencing arbitration
  - Powers and authority of arbitrator
  - Court supervision, assistance and powers
  - Notices, service, costs
  - Remedies
  - Taxation of the arbitrator's fees



# Determining When Arbitration is Appropriate

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- Nature of dispute
- Nature of decision required
- Decision maker expertise required
- Clients' goals
- Counsels' style
- Speed, cost, control, privacy
- Likelihood of appeal or j.r.
- Flexibility desired
- Ability to convert to mediation

# Where is Arbitration Used?





# Where is Arbitration Used?

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- Labour and employment – statute, contract, consensual
- Property – condominium, construction, purchase & sale, renovation
- Business – leases, franchise agreements, contracts (customers and suppliers)
- Technology
- Patents and Trademarks
- Trade – national, provincial and international



# Where is Arbitration Used?

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- Insurance – automobile, personal injury, benefits
- Consumer – purchases, warranties, credit cards
- Family – estate distribution
- Debts
- Sports
- International relations
- Aboriginal claims
- Municipal – revenue sharing, inter-municipal relations, tax payer disputes

# Arbitration vs. Mediation

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# Mediation

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- A process - impartial 3rd party - negotiate their own resolution or settlement - facilitating the negotiating process for the parties.
- Entered into by agreement, by contract or by law.
- Process and powers by contract or specific statutory process.





# Key Differences – Arbitration - Mediation

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- Role of neutral
- Objectives of the parties
- Panels or teams
- Process
- Caucuses with parties
- Disclosure
- Fair process
- Outcome
- Enforceability of outcome



# Combining the Processes - Med-Arb

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- Mediation can be combined with arbitration.
  
- Challenges present –
  - Different levels of disclosed information by the parties
  - Ability of neutral to meet separately with a party
  - Clarity of roles and differences
  - Which started first



# Combining the Processes - Med-Arb

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- Sections 35 and 36 of the Arbitration Act
  - If the parties reach a settlement, the arbitrator turns it into a written decision (consent decision)
  - If the parties do not resolve all the disputed items using mediation, the arbitrator then makes a final decision on the outstanding items.



# Legal Concepts in Settlement

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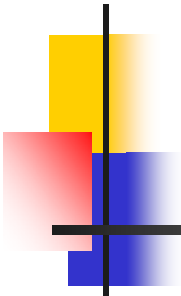
- Mediation – the outcome is a contract between the parties which then has to be enforced as a contract
- Arbitration – the outcome is a final and binding decision which can be filed and enforced as a court order – limited appeal or review



# Role of the ADR Institute of Canada

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- National professional association
- Designations of Chartered Arbitrator and Chartered Mediator
- Distance learning – provincial bodies local training (eg. AAMS)
- Standards, insurance, code of conduct, renewal
- Continuing education
- National Arbitration and Mediation Rules
- An ADR case management service
- <http://www.adrcanada.ca>



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Deborah M. Howes is a Chartered Arbitrator and Chartered Mediator with the ADR Institute of Canada. She is the President of High Clouds Incorporated, a Canadian company providing seminars and dispute resolution services. Ms. Howes holds Certificates in Arbitration and Conflict Management from the Alberta Arbitration and Mediation Society, and Bachelor Degrees in Law and Arts.

Deborah is a well known facilitator, arbitrator, mediator, and trainer. She has over 30 years experience in all aspects of dispute resolution, labour relations and condominium. She is a highly sought after speaker on dispute resolution and condominium matters at provincial, national and international levels. Ms. Howes was a Vice Chair with the Alberta Labour Relations Board and practiced law with the Edmonton firm of Duncan & Craig. In 2007 she was appointed as a public member on the Public Service Labour Relations Board.

Ms. Howes is a past President of the Canadian Condominium Institute (National) and of the CCI North Alberta Chapter. She has been a condominium owner and director and practiced law in condominium. She has been an Associate of the Canadian Condominium Institute since 1991 and a Fellow of CCI since 1999. Currently Deborah serves on the Affordable Housing Advisory Committee for Strathcona County.

Since 2000, Deborah Howes has been a member of the Minister's Advisory Committee on the Condominium Property Act. She is the co-author and editor of Condominium Management 100 - 300. Ms. Howes was an advisor for Alberta Human Resources and Employment on the "Let's Talk" publication – a workplace guide to resolving disputes using an interest based model.

Deborah Howes is a member of the Law Society of Alberta; Canadian Industrial Relations Associations (North and South Alberta), Alberta Arbitration & Mediation Society; ADR Institute of Canada Inc.; Conflict Resolution Network, Council of Canadian Administrative Tribunals; Foundation of Administrative Justice and Canadian Condominium Institute.