

# **Arbitration and Mediation: As Alternatives**



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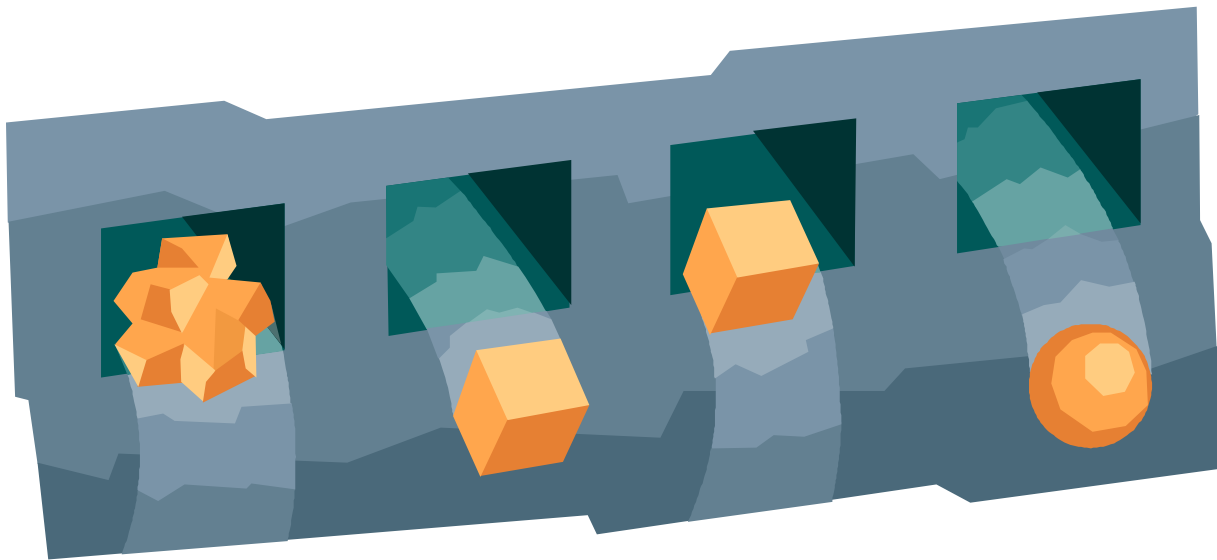
By Deborah M. Howes,  
C. Med., C. Arb.

High Clouds Incorporated



# Options in Disputes

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# Your Options in a Dispute

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- **Negotiate your own deal with the other person.**
- **Go to mediation.**
- **Use self-help methods or other agencies**
- **Go to arbitration.**
- **Go to court - either Provincial Court or Court of Queen's Bench.**



# Mediation

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- A process where an impartial 3rd party helps the disputing parties to negotiate their own resolution or settlement by facilitating the negotiating process for the parties.
- Done by agreement or by contract.



# Arbitration

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- A process where an impartial, knowledgeable 3rd person listens to the parties in the dispute and makes a final and binding decision for them.
- Done by agreement, by contract or under the Alberta Arbitration Act.



# Why Choose Mediation or Arbitration?

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## **Both**

- provide outside assistance.
- allow the parties to choose who helps them or who decides for them.
- are private and confidential.
- can be done almost anywhere.
- can be cheaper and faster than court processes.



# Why Choose Mediation or Arbitration?

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## **Both**

- are relatively informal.
- allow the parties to “control” the process.
- enhance satisfaction for the parties.
- allow for experts, advisors and counsel.
- **Mediation** preserves or enhances relationships.
- **Arbitration** ends the dispute.

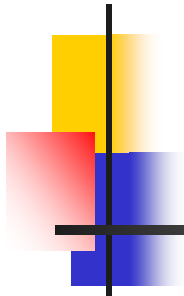


# Combining the Processes - Med-Arb

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- Mediation can be combined with arbitration.
- If the parties do not resolve all the disputed items using mediation, the mediator/arbitrator then makes a final decision on the outstanding items.





# Mediation

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# Objectives In Mediation

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## ■ Mediator

- safe and productive disclosure
- fair & informed decision making by the parties

## ■ Parties

- present respective positions, information and rationale
- satisfy their needs in the resolution



# Role of the Mediator

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- Schedule and Control
- Listen & Question
- Create safe environment
- Facilitate mutual expression & understanding
- Facilitate the parties' own resolution



# Mediation Process

- **Introduction & housekeeping by mediator**
- **Identifying the scope & nature of the dispute(s)**
- **Setting the agenda and priorities**
- **Sharing information and creating understanding on each item**
- **Brainstorming and assessing options**
- **Examining details for clarity in the resolution**





# At the Mediation You Will

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- Talk about what is important to you and why
- Listen to what is important to the other party and why
- Mutually develop ideas for resolution
- Detail the resolution
- Commit to the resolution you've developed if it works for both



# Preparing for Mediation

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- Gather all your information
- Think about what you want to achieve and why that is important to you (sometimes what we ask for is not really what we want in the end).
- Think about what the other person might want and why that is important to them.
- Think about other options for resolution.



# Choosing a Mediator

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



# Arbitration

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# Objectives In Arbitration

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## ■ Arbitrator

- fair hearing
- fair & informed decision

## ■ Parties

- present respective cases
- win their cases



# Role of the Arbitrator

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



# Arbitration Hearing Process

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- Opening remarks by arbitrator
- Opening statements by parties
- Preliminary objections
- Evidence
- Argument
- Closing remarks by arbitrator





# At the Arbitration You Will

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- Give a brief opening statement
- Present your case through documents and testimony of witnesses
- Challenge the other party's case by questioning their witnesses
- Give a final statement summarizing your case
- Answer the arbitrator's questions



# Preparing for Arbitration

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- Gather all your information (documents, pictures, diagrams, etc.)
- Write out your claim/response and what you want the arbitrator to do
- Contact your witnesses
- Research any precedents
- Follow the arbitrator's directions



# 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

# Starting Either Process





# Starting Either Process

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- Decide which process to use.
- If a formal process exists, access it (eg. ANHW, Better Business Bureau, contract, legislation)
- Investigate possible arbitrators or mediators.
- Contact the other party and suggest / require mediation or arbitration.





# Starting Either Process

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- Agree on the process to use.
- Agree on the mediator or arbitrator to use.
- If you can't agree on a name, attempt to agree on who can appoint (court, AAMS, etc.)
- Contact the mediator or arbitrator to confirm they will act.
- Follow the lead of the mediator or arbitrator.

# What is the Result?





# What You Get at the End of the Day

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## ■ **Mediation**

- a settlement (possibly)
- something to develop into a formal agreement
- a better understanding
- a relationship
- a model for next time

## ■ **Arbitration**

- a binding decision that can be enforced in the courts
- finality

# Where Are These Used?





# Where is Mediation or 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



# Where is Mediation or Arbitration Used?

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- Insurance – automobile, personal injury, benefits
- Consumer – purchases, warranties
- Family / personal – spouses, children, estate distribution
- Debts
- Sports
- International relations
- Aboriginal claims