

Frequently Asked Questions

- 1. What is ADR?**

It means Appropriate Dispute Resolution. When considering a conflict there are a number of different options along a continuum that one can choose to resolve the dispute. These options should all be considered to ascertain what is appropriate in the circumstances.
- 2. When can I use ADR?**

As early as possible, whenever a potential conflict arises and re-assessed if the dispute escalates.
- 3. What are my choices?**

To resolve a dispute one can consider a range of appropriate processes – negotiation, mediation, arbitration or adjudication (litigation or a hearing). More than one can go on at the same time.
- 4. Can I choose more than one of these ADR options?**

Yes. For example, mediation can proceed without prejudicing a party's right to arbitrate, litigate or to proceed with a hearing. However, if one chooses binding arbitration, one may not have a right to litigate or appeal the decision of the arbitrator, except on a point of law.
- 5. What is a position (wants) versus an interest (needs)?**

A position is your solution to a problem

An interest is the reasons or “whys” that drive your position. Interests include concerns, hopes, expectations, assumptions, priorities or preferences, beliefs, fears, values or needs.
- 6. How do I plan for a negotiation?**

See the Negotiation Planner Tool
- 7. What is mediation?**

Mediation is a relatively informal process that allows disputants, with the assistance of a mediator, to explore the interests or reasons for their dispute in a confidential manner in order to resolve a dispute.
- 8. What is an interest-based mediator?**

An interest based mediator tries to facilitate the disputants in developing a resolution the disputants believe is a fair outcome. This type of mediator is also called a facilitative mediator. This mediator is a third party neutral who will assist with the communication process, ask both disputants questions to assist with the examination of the dispute from different perspectives to develop a range of solutions.
- 9. What is an evaluative mediator?**

Evaluative mediators try to lead the disputant to a resolution that the mediator believes is a fair outcome. This mediator relies on his or her expertise and experience to assess situations and attempts to assist the disputants in examining the relative merits/risks of the positions the disputants are presenting.

10. **How does mediation vary from arbitration?**

Mediation is a relatively informal process that allows disputants to explore the reasons for the dispute in a “confidential” environment. Typically it results in the disputants having a better understanding of the other disputant’s perspective in respect of the dispute and results in a non-binding solution. The non-binding solution can be made binding through the execution of a formal agreement. The formal agreement outlines the resolution to the dispute. Once the formal agreement is executed, it becomes binding and enforceable in accordance with its terms just like any other contract.

Arbitration is a more formal process that typically has rules concerning its process. These rules are not as formal as those that apply if the dispute is handled through the courts. Through this process, a neutral third party provides a solution to the parties after having heard all the “evidence” and arguments presented by the disputants. Whether the decision of the arbitrator is binding or not will depend upon what the disputants agreed to prior to commencement of the arbitration or what is required in an existing contract between the disputants.

11. **Where can I find qualified mediators?**

Check the website links that have been provided on this website.

- AAMS
- ADR Institute of Canada, Inc.
- AEUB Roster
- Certus Strategies
- Enersolve
- C2C Website Participants List

12. **How do I prepare for mediation?**

Consider all your and your company’s concerns, hopes, expectations, assumptions, preferences or priorities, beliefs, fears, values and needs that surround the events that gave rise to the dispute. These are the underlying interests behind the dispute, the information that drives your position or solution to the problem. Examine and have available all documentation to assist you with this endeavour.

Consider all the concerns, hopes, expectations, assumptions, priorities or preferences, beliefs, fears, values and needs of the other individual(s) and other company(ies) involved in the dispute. Be aware of how your own professional needs and assumptions may differ from those of your company, the other individuals and companies involved in the dispute. Be aware of your negotiating style.

Then brainstorm a number of possible solutions to the dispute without examining the merit of that potential solution. Once all potential solutions are developed, compare them against the interests of all disputants to determine if any of them meet the respective interests of the disputants and could be considered a “fair” outcome.

13. **What is my negotiating style?**

The common styles are: Avoider, Accommodator, Compromiser, Competitor and Collaborator.

“Avoider” “Do not wake a sleeping dog” or a denial there is a problem or matter to be resolved.

“Accommodator”	“Whatever works for them”. Meet the needs of the other at the expense of your needs or your company’s.
“Compromiser”	“Split the difference”. “Meet some of your needs and your company’s and some of the other party and its company”.
“Competitor”	“Might makes right”. “My way or the highway”. Ignore the needs of others and insist on your solution to the problem, at whatever cost.
“Collaborator”	Consider the needs of all to develop a creative solution.

14. **What is a Preliminary ADR Meeting (PADR)?**

It is an initial meeting with either a service company provider or mediator that assists the parties in understanding the appropriate dispute resolution process and what is at dispute in an “objective” manner. This process will assist the disputants in understanding what the “issues” are.

It enables the disputants to design according to their needs, the appropriate dispute resolution option.

It does not deal with substantive issues and deals with process and appropriate logistics of resolving the dispute.

15. **What can I expect from mediation?**

A better understanding of the reasons behind the dispute. The likelihood of reaching a “fair” resolution is dependent upon how committed the disputants are to the process. It is important that disputants freely disclose on a “confidential” basis their interests and have the “full” authority to resolve a dispute.

16. **What can I expect with arbitration?**

A solution for the dispute which is determined by the third party neutral after hearing the evidence and arguments of disputants. Confidentiality is maintained because it is not a public forum.

17. **How does ADR relate to the hearing?**

It is an alternative that can be used prior to the hearing and in parallel with the hearing process but will not delay the hearing.

18. **If the agreement requires arbitration what are my options?**
You may still have the option of negotiating or mediating an agreement with a party. If neither is successful, arbitration can proceed.
19. **What are ICC Rules and how does that relate to arbitration?**
There is one type of arbitration rules that can be used in the context of arbitration.
20. **What is an ADR service provider?**
It is an organization that will explain the ADR options, help you identify the issues, and assist you with managing your ADR process including, mediator/arbitrator/facilitator selection, issues identification, negotiation planning and logistics. Please refer yourself the ADR Service Provider sheet for more detailed information.
21. **Where can I get training?**
Mount Royal College, University of Calgary, AAMS and private trainers.
22. **What are the ADR Institute National Rules?**
These are made in Canada Arbitration Rules which are incorporated into the proposed CAPL dispute resolution provision referred to in Chapter 1, Area A of this Handbook.