

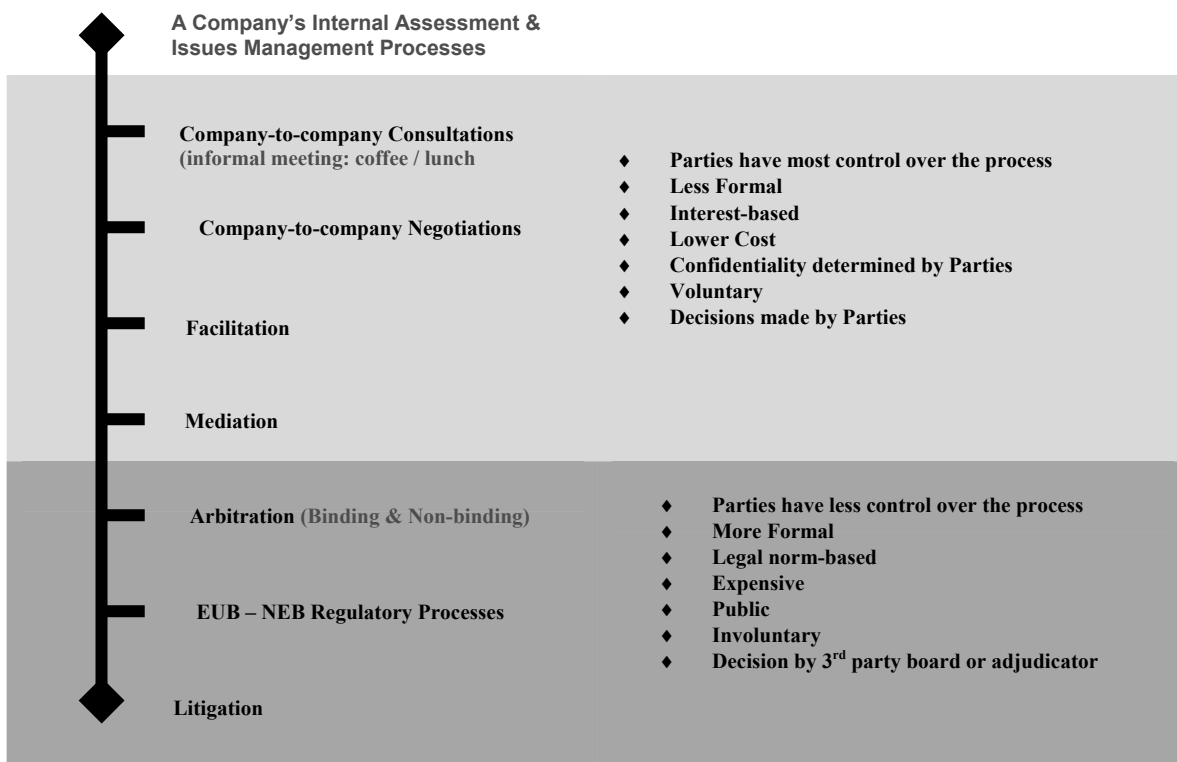
Using ADR: Dimensions of Conflict

Company-to-Company Process Options

*As the scenarios shared earlier suggested, finding a suitable ADR Option includes assessment, analysis and a basic understanding of the choices and services available. This section provides a brief explanation of Appropriate Dispute Resolution processes identified in the **Oil & Gas Industry Conflict Management Continuum**.*

The Oil & Gas Industry

Conflict Management Continuum



Informal Consultations – Getting ahead of conflicts

The simplest and surprisingly the most often overlooked way to resolve disputes, is to talk to the other party. Talk informally, perhaps over lunch or golf. Many disagreements between companies result from miscommunication or incorrect information. They tend to drag out over time and the conflict grows quietly. Direct communication results in early identification of disagreements. Spend at least the time required to have lunch with the other party or parties.

Parties in dispute



And so what can you do about it?

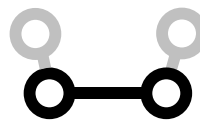
Informal consultations require preparation. Involve people with direct responsibility or authority over the issue in dispute. Focus on bases of your business relationship — trust and respect. Informal consultations may avoid significant costs or damage to business relationships and reputation.

Negotiations

Negotiations, formal or not, frequently involve competitive tactics, which may result in unsatisfactory outcomes for either or both parties. Collaborative or interest-based negotiation aims to identify mutual objectives. The parties talk through the issues. They explore the reasons for the position(s) advanced. They develop potential resolutions that are aimed at developing an agreement.

Interest-based negotiations, involving, if desired, technical advisors or legal counsel, may be an appropriate resolution option.

*Technical advisors,
Company personnel
and/or legal counsel*



**Interest-based
Negotiations**

So you tried talking directly and it didn't work, what now then?

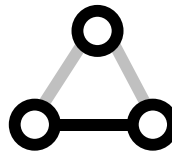
Preparation for any negotiation is key. Choose the people to be involved, and the venue, carefully. Prepare. Prepare. Follow the *Cost Benefit Analysis* outlined in the case study or

use the cost benefit analysis worksheet in the resource section. Complex negotiations dealing with several interwoven issues, a common situation in the oil and gas sector, often require the support of technical advisors (e.g. accountants, landmen, operators, geologists, engineers) or legal counsel. Clearly define interests and objectives for the negotiations and set achievable goals. Develop tentative “decision points” for the achievement of objectives.

Facilitation

As in mediation, facilitation involves a third party, the "facilitator", who helps the parties discuss the issues, and, if possible, reach agreement. The facilitator, a neutral, works to bring the parties together. Facilitations are generally less structured and may have less clearly defined objectives than mediation. Facilitation may simply try to discover the extent or nature of the issue or issues and brainstorm potential solutions. In landowner/company disputes, trained EUB staff often act as facilitators. Facilitation might also be used to discuss other ADR Options (for details, see the description of the Situation Assessment Meeting at the end of this section).

Facilitator or Mediator



Next steps, considerations & cautions

Agree on a facilitator. Choose one trained in interest-based ADR approaches. Consider a facilitator who is familiar with the terminology and issues encountered in the oil and gas industry.

Mediation

In mediation, a third party, preferably trained in dispute resolution, conducts a meeting between the parties. The meeting is private, flexible and informal. Mediation differs from facilitation in adopting a process in which the mediator and the parties work together to find a solution that is acceptable to the parties. *Each party has a veto; not the mediator.*

The role of the mediator is to focus the parties on a fair and effective process, the goals of which are designed to lead to agreement on:

- the issues to be resolved;
- an understanding of each party's interests [motivators, reasons for position(s), opportunity cost(s)]; and
- generation of a wide range of options from which the parties can select a mutually agreeable solution.

Next steps, considerations & cautions

After appointment, the mediator will work with the parties to determine ground rules, scope of discussion, confidentiality matters, costs, etc. The mediator may suggest an initial meeting [Situation Assessment Meeting (SAM)] to establish the approach the parties wish to take to the matter.

Parties have the option to choose an appropriate mediator (facilitative or evaluative) who is interest-based and who may or may not be knowledgeable about the subject matter of the dispute. An evaluative mediator is one who may examine the relative merits of the dispute and lead the parties to a solution the mediator believes is fair. As an example, ADR processes ‘sponsored’ by the AEUB average approximately \$6800 each, including Preliminary ADR meeting (PADR) and mediation(s). That statistic incorporates landowner cases requiring travel outside of Calgary. In 2002, 71% of the industry/industry cases dealt with by the AEUB were fully resolved using ADR methods.

More information on using mediation to resolve a disagreement may be obtained by contacting a C2C task force member (C2Cwebsite) or going to the AEUB's website on ADR (www.eub.gov.ab.ca/BBS/public/ADR/index.htm)

Custom Design

Custom design allows the parties to create their own approach to resolving the dispute. It may involve a mix of ADR approaches such as mediation, facilitation and/or arbitration. It also may involve the development of internal or inter-company processes and conflict management systems with the assistance of an ADR service provider.

By way of illustration, there may be one aspect of a disputed matter (for example a specific clause of an operating agreement) of which one party wants an arbitrated or legal interpretation before discussing broader issues (e.g. pool drainage). Custom design allows for creativity and provides the possibility of an arbitration to decide the legal question followed by mediation on the pool question.

How does this type of process unfold?

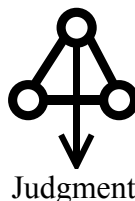
A custom design approach usually involves a multi-stage process such as described above, developed and coordinated by a conflict management specialist after discussion with either or both parties. More information about custom design may be obtained by contacting a C2C task force member or an ADR service provider.

Arbitration

Arbitration is a binding or non-binding adjudicative process that is typically governed by Provincial Arbitration Legislation, often supplemented by rules of various professional bodies or organizations. These by the parties to create an for the conduct of the arbitration. an arbitrator provides a solution to having heard the “evidence” from

Arbitrator, regulatory board or judge

rules can be modified appropriate process Through this process, the parties after the disputants.



What about the Hearing process?

Regulatory Hearing

Parties may enter into agreements concerning matters that don't require regulatory approval. Parties may not, however, limit the jurisdiction of the NEB-AEUB to rule on applications and objections, or another Board's ADR option.

As a sponsor of the C2C initiative, the EUB expects that companies coming before it on a company-to-company dispute first, before going to a hearing, attempt to resolve the issue through an ADR approach. The Preliminary ADR meeting (PADR) provides an opportunity to identify the issues and a process for resolving them.

Litigation

Taking the other party to court provides legal finality in resolving disputed issues. In so doing, however, parties may risk damaging existing and future corporate relationships. They are also likely to incur significant costs. In some situations the decision of a judge may be the most appropriate and best resolution option. Parties should first explore ADR Options which may offer workable and lower cost solutions.

Next steps, considerations & cautions

In addition to the services provided by in-house or external legal counsel, companies may wish to consider consulting a conflict management specialist. It is important to determine whether the issue in dispute is symptomatic of an on-going systemic conflict. A qualified ADR service provider, in collaboration with in-house and outside legal counsel, may assist in this process. A cost benefit risk analysis is a beneficial tool in assisting in preparation for resolution of disputes.

***Situation Assessment Meeting (SAM)**

When a dispute results in a breakdown in company-to-company communications or negotiations, a Situation Assessment Meeting (SAM), facilitated by a qualified and impartial conflict management specialist, may help break the impasse. A SAM provides a quick, cost-effective opportunity for all parties to discuss the nature and extent of a dispute. It also provides the means to explore possible ADR Options.

A Situation Assessment Meeting usually is:

- a small time commitment;
- low cost (split between the parties);

- facilitated by a qualified, knowledgeable and impartial conflict management specialist;
- similar to a Preliminary ADR Meeting (PADR).

Worth noting, the AEUB requires that a PADR meeting be held as part of its Industry-to-Industry ADR Program.

A Situation Assessment Meeting may address:

- the variety of ADR Options;
- the appropriate participants;
- the level of authority needed to make decisions or reach an agreement;
- potential barriers to negotiation and options to break the impasse;
- the role of technical experts, legal counsel or regulators;
- required information and the process for obtaining and exchanging it;
- identification and clarification of facts and issues;
- how to engage a mediator or other ADR professional;
- the costs associated with the various ADR Options and how payment will be made;
- how privacy, confidentiality and disclosure of information will be handled;
- logistics of the preferred ADR Option, including timing, duration and location;
- the form of any settlement agreement that may be reached and how it can be enforced.