

ALTERNATE DISPUTE RESOLUTION STRATEGIES

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SERVING YOUR BUSINESS, TRAINING, SPORTING AND ENTERTAINMENT NEEDS

DEFINITION OF ADR

ADR refers to the dispute resolution processes and techniques that fall outside the judicial process.

WHY CHOOSE ADR OVER THE COURT SYSTEM

1. Increasing case loads
2. Fewer cost than litigation
3. Confidentiality
4. Parties select person to assist in resolving dispute, or to decide adjudicate in the dispute.

FEATURES OF ADR

Voluntarism – Third party involvement

● **ARBITRATION**

Arbitration is generally defined as a private, informal process by which all parties agree, in writing, to submit their disputes to one or more impartial persons authorized to resolve the controversy by rendering a final and binding award.

FEATURES OF ADR

MEDIATION

Mediation: the process by which parties submit their dispute to a neutral third party (the mediator) who works with the parties to reach a settlement of their dispute.

How Arbitration & Mediation Work

Role of the mediator and arbitrator

To clarify the issues, consider options, and reach a workable settlement that fits their needs:

- The third party listens to both sides and then renders a decision, which can be either binding or advisory.
- To be fully successful, mediators must be seen as impartial between the two parties.
- Disputants generally prefer mediation over arbitration, since it allows them to retain control over the final decision

MAJOR FEATURES OF ARBITRATION

1. A written agreement to resolve disputes by the use of impartial arbitration.
2. Informal procedures.
3. Final and binding awards which are enforceable in a court.

Advantages of Arbitration

- Confidential, no public record
- Limited exchange of documentation, information
- Quick, don't have to wait for a court date
- Arbitrators have expertise in the subject matter and are trained in conflict resolution
- Cheaper than litigation
- Preserves business relationships

Negatives of Arbitration

- It's a compromise, no 100 % winner
- Complex arbitration can be costly as the parties need to pay for the arbitrators.
- If not satisfied, you may litigate the arbitration Procedure
- Poor results with an unskilled arbitrator
- Both parties must agree to cooperate in the process
- Although usually thought to be speedier, when there are multiple arbitrators on the panel, juggling their schedules for hearing dates in long cases can lead to delays

ABRITRATION AND THE LAW

The Collective Agreement:

- Reasonableness and Fairness applies
- Fair – unbiased, just, equitable
- Reasonable – sound judgment, unbiased

Principles to be applied:

- All relevant matters must be taken into account
- No irrelevant matters may be considered

STANDARD ARBITRATION AGREEMENTS

We, the undersigned parties, hereby agree to submit to arbitration. We further agree that we will faithfully observe this agreement and the rules, and that we will abide by and perform any award rendered by the arbitrator(s) and that a judgment of the court having jurisdiction may be entered upon the award.

FOCUS OF MEDIATION

Mediation examines the underlying causes of the problem and looks at what solutions best suit your unique needs and satisfy your interests.

FOCUS OF MEDIATION

Benefits of Mediation:

- ✓ Neutral mediator can objectively suggest alternatives not considered before
- ✓ Parties are directly engaged in negotiating the settlement
- ✓ It is a less intimidatory process than going to court- no strict procedures –allows for flexibility by those involved in reaching an agreement
- ✓ Can be quicker than litigation
- ✓ Less costly than litigation
- ✓ Preserves business relationships. It looks to the future. It helps end the problem, not the relationship.
- ✓ Higher satisfaction : 85% of American Arbitration Association cases mediated find successful solutions. Because of their active involvement, they have a higher commitment to upholding the settlement than people who have a judge decide for them.
- ✓ Mediation deals with feelings: Each person is encouraged to tell his own story in his own way.
- ✓ Privacy: Unlike most court cases, which are matters of public record, most mediations are confidential.

FOCUS OF MEDIATION

Negatives of Mediation

- May not reach a binding decision
- Unskilled mediator

What Is the Relationship between Mediation and the Law?

- It doesn't rely on specific points of law.
- People solve their own problems by looking to the future instead of finding fault or blame

Processes Involved in Mediation

- Intake Interview
- Introduction Stage
- Identifying the Issues
- Exploring Solutions
- Caucus
- Writing an Agreement

Mediator Tactics

- Helping the parties to understand each other's positions, challenging them to come up with new ideas, and requesting their reactions to new ideas.
- When conflict is severe, mediators often have to be quite active and even pushy (e.g., telling disputants that their demands are unrealistic) in order to achieve agreement.
- When conflict is less intense, and the disputants are capable of talking productively with each other, it is best for mediators to be relatively inactive.
- When disputant discussions are unproductive it is best to separate the parties ("caucusing") and engage in problem solving with each of them.
- Compliance to the terms of an agreement is enhanced when the parties emerge from the mediation with a positive relationship and when they view the mediation process as a fair one in which all of the issues came out.
- Continued third-party attention to the conflict has been found to encourage compliance to agreements reached at the end of internal war (Hampson, 1996).
- When there is a continuing relationship between disputants, helping them find a settlement for their current disagreement is often not enough. New conflicts may arise or deeper issues resurface.

Summary

Mediation as opposed to Arbitration

- Collective bargaining between labour unions and management is one of the most familiar models of mediation. Workplace disputes between business partners, co-workers, or supervisor and employee can be mediated to correct particular problems and continue productive relationships.
- “Arbitrators are judges chosen by the parties to decide the matters submitted to them, finally and without appeal. As a mode of settling disputes it should receive every encouragement from the courts... a court will not set it aside for error either in law or fact.” (USA Supreme Court, **Buchell V. Marsh, 1855**)