

MED-ARB RULES

ADRIC

Leading Dispute Resolution
In Canada Since 1974



ADR Institute of Canada
Institut d'arbitrage et
de médiation du Canada

SUITE 407, 234 EGLINTON AVENUE EAST
TORONTO, ON, CANADA M4P 1K5
TOLL FREE: 1-877-475-4353
PHONE: 416-487-4733



ADRIC.CA

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ABOUT THE ADR INSTITUTE OF CANADA

In 1974, the **Arbitrator's Institute of Canada (AIC)**, was incorporated as a non-profit public service organization to provide the public with the means to resolve disputes of all kinds through arbitration, mediation and other voluntary methods, and to act as a national centre of information, education and research on arbitration and mediation.

In 1984 discussions between AIC and various leaders within the regions¹ led to restructure and AIC was re-named the **Arbitration and Mediation Institute of Canada (AMIC)**.

The Creation of ADRIC: the Union of AMIC and CFDR

The **Canadian Foundation for Dispute Resolution** was incorporated in August 1994 as a non-profit alliance of business corporations, an association of general counsel and law firms working together to promote the creative resolution of business disputes.

The members of CFDR (with membership of 61 organizations) and AMIC (with 1500 members) approved a consolidation of the two organizations in 2000 to integrate ADR neutrals *and* parties as the **ADR Institute of Canada (ADRIC)**.

ADRIC is recognized as Canada's preeminent self-regulatory professional Dispute Resolution organization.

ADRIC sets the standard for best practices for ADR in Canada and provides leadership, value and support to our individual and corporate members and to our clients. We promote ethical standards and professional competency, and advocate for all forms of ADR for commercial, personal and international disputes. With over 2300 members we have the neutrals to assist in any dispute in every province and territory.

ADRIC's bilingual dispute resolution services are available à la carte: we can assist from filing to closing as the appointing authority, fundholder (CDN and other currencies) as well as full administrative services to support parties in an efficient, fair, impartial, and economical manner.

ADRIC's Rules are state of the art; Canada's first and foremost for the Canadian jurisdiction. The ADRIC Arbitration Rules (which include expedited arbitration), Mediation Rules and Med-Arb Rules: designed to integrate seamlessly.

ADRIC also provides dispute resolution services such as ADR systems design, roster development, education, training and certification, and issues publications for practitioners, parties and counsel.

ADRIC Med-Arb Rules

Published by the ADR Institute of Canada

407-234 Eglinton Avenue East

Toronto, ON M4P 1K5

416-487-4733 / 1-877-475-4353

arb-admin@adric.ca

ADRIC.ca

Version 1 - 1 June 2020

You are welcome to use and modify these Rules.

We request that ADRIC be acknowledged.

¹ Through the efforts of AIC members within the regions, regional Institutes started forming in the late 1970's: Quebec (1977), British Columbia (1980), Alberta (1982), Saskatchewan (1987), Manitoba (1989), Nova Scotia (about the same time, later becoming the ADR Atlantic Institute), Ontario (2002).

THE ADRIC MED-ARB RULES

ADRIC is pleased to have the ADRIC Med-Arb Rules take their place alongside ADRIC's other flagship ADR rules.

The ADRIC Med-Arb Rules originated with ADRIC's Med-Arb Task Force, a dedicated group of med-arb professionals, and were then referred to the ADRIC Rules Committee which met regularly over the course of 11 months to review every aspect of the ADRIC Med-Arb Rules.

As it did with the existing Rules, the Committee consulted with ADRIC's members and others regarding the ADRIC Med-Arb Rules and received extensive and very helpful feedback. It presented a discussion draft of the ADRIC Med-Arb Rules at ADRIC's Annual Conference in November 2019 and received additional feedback. The Committee carefully considered all feedback and incorporated much of it into the result. The feedback will also be useful in the Committee's review of both the arbitration and the mediation rules.

If you wish to provide feedback, please send to executivedirector@adric.ca

ADRIC is grateful for the exceptional work of the following contributors who gave so generously of their time and expertise:

ADRIC MED-ARB TASK FORCE:

Anik Béland

Colm Brannigan, FCI Arb, C. Arb, C. Med

Genevieve Chornenki, C. Arb, C. Med

Martina Faith

Arlene Henry, Q.C., C. Med

Gerry Nera, C. Med, Q. Arb

Elton Simoes, C. Med, Q. Arb (Chair)

Marjorie Lee Thompson

Rick Weiler

Michael Welsh, Q.C., FCI Arb, C. Med, Q. Arb

ADRIC ARBITRATION RULES COMMITTEE:

Glen Bell, C. Arb

Olivier Després, C. Med, C. Arb

Barry Effler

Louise Novinger Grant, Q.C.

Angus Gunn, Q.C. (Chair)

Jim McCartney, C. Arb, C. Med

David McCutcheon, C. Arb

ADRIC MEDIATION RULES COMMITTEE:

Sara Ahlstrom, C. Med (Chair)

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ADR INSTITUTE OF CANADA, INC.
ADRIC MED-ARB RULES

I. MODEL DISPUTE RESOLUTION CLAUSE

Parties who agree to submit disputes under the Med-Arb Rules may use this clause in their agreement:

All disputes arising out of or in connection with this agreement, or in respect of any legal relationship associated with or derived from this agreement, will be finally resolved by Med-Arb under the Med-Arb Rules of the ADR Institute of Canada, Inc. The Seat of Arbitration under the ADRI Arbitration Rules will be [specify]. The language of the Med-Arb will be [specify].

II. TYPES OF DISPUTES TO WHICH THE MED-ARB RULES APPLY

Although the Med-Arb Rules were drafted to assist in resolving domestic commercial disputes, parties may want to apply them to international or non-commercial disputes.¹

Parties should examine the Med-Arb Rules to ensure that their provisions are appropriate and conform with applicable legislation.

For Rules updates, see:

<https://adric.ca/rules-codes/adric-med-arb-rules/>

¹ In Québec, Article 2639 of the Civil Code of Québec, CQLR, c. CCQ-1991, provides that disputes over the status and capacity of persons, family matters, or other matters of public order may not be submitted to arbitration.

1. INTERPRETATION

1.1 In the Med-Arb Rules:

ADRIC means the ADR Institute of Canada, Inc.

Med-Arb means a dispute resolution process in which the parties commit that they will:

- (a) attempt to settle their dispute through mediation (the mediation phase); and
- (b) use binding arbitration to resolve any issues remaining after mediation (the arbitration phase).

Med-Arb Agreement means an agreement between the parties to submit a dispute to Med-Arb.

Med-Arbitrator means a person appointed under a Med-Arb Agreement to conduct the mediation and arbitration phases.

Med-Arb Rules means these Med-Arb Rules as amended by ADRIC from time to time.

Notice of Request for Med-Arb means the Notice of Request for Med-Arb delivered under Rule 3.1.

1.2 A capitalized term not defined in the Med-Arb Rules has the meaning given to it by the ADRIC Arbitration Rules.

2. WHEN THE MED-ARB RULES APPLY

2.1 The Med-Arb Rules apply where:

- (a) the parties agree the Med-Arb Rules apply; or
- (b) the parties agree to ADRIC-administered Med-Arb.

2.2 If the parties agree to submit their dispute to a Med-Arb under the Med-Arb Rules, the parties are deemed to have incorporated the Med-Arb Rules into their Med-Arb Agreement.

2.3 ADRIC may amend the Med-Arb Rules. Unless the parties agree otherwise, the version of the Med-Arb Rules that applies in a Med-Arb is the version in effect on the date the Notice of Request for Med-Arb is delivered to the first respondent to receive delivery of it.

2.4 If there is a conflict between the Med-Arb Rules and legislation that applies in respect of a Med-Arb, the Med-Arb Rules apply except to the extent that they conflict with any legislative provision that cannot be varied or excluded by agreement.

2.5 A failure to comply with the Med-Arb Rules is an irregularity and does not nullify a Med-Arb or a step, settlement, award, ruling, order, or decision in the Med-Arb.

2.6 The parties may agree to vary or exclude any of the Med-Arb Rules except Med-Arb Rules 2, 5.1 (b), 6.1, and 6.2.

2.7 The Med-Arb Rules prevail over the ADRIC Mediation Rules if they conflict. The ADRIC Arbitration Rules prevail over the Med-Arb Rules if they conflict.

3. HOW TO COMMENCE A MED-ARB

3.1 If a Med-Arb Agreement requires or permits Med-Arb of a dispute, a party may submit that dispute to Med-Arb by delivering a written Notice of Request for Med-Arb to every other party to the dispute at:

- (a) the address specified by that party under Med-Arb Agreement; or
- (b) if no address was specified, the last known mailing address or place of business of that party.

3.2 The Notice of Request for Med-Arb must contain:

- (a) the name, place of business (if any), and mailing address, telephone number, fax number, and email address of each party to the dispute, if known;
- (b) an address, fax number (if any), and email address (if any) for delivery of documents to the claimant;
- (c) a brief description of the matters in dispute or a Statement of Claim;
- (d) a request to submit the dispute to Med-Arb;
- (e) an estimate of the amount claimed or, if that is not available, of the value of what is in issue in the dispute. If the claimant cannot estimate this value, it must explain the reason;
- (f) a statement of what remedy the claimant is seeking;
- (g) a statement of how many Med-Arbitrators there will be, if the parties have agreed;
- (h) the name of any agreed Med-Arbitrator;
- (i) any agreed qualifications of the Med-Arbitrator(s);
- (j) the proposed language of the Med-Arb;
- (k) a statement of any variations or exclusions of the Med-Arb Rules to which the parties have agreed in writing; and
- (l) a statement as to whether the parties have agreed to have the Med-Arb administered by ADRIC.

3.3 A Notice of Request for Med-Arb must append:

- (a) a copy of the Med-Arb clause in their Med-Arb Agreement if any; and
- (b) a copy of the contract (s) (if any) related to the dispute.

3.4 For purposes of Rule 2.3 of the ADRIC Arbitration Rules, a Notice of Request for Med-Arb is deemed to be a Notice of Request to Arbitrate or a Notice of Submission to Arbitration.

- 3.5 ADRIC sets fees for its administering services and may change the fees from time to time. The fees in effect when ADRIC provides the service apply. The current fees are set out in Schedule A. The fees are payable at the time set out in Schedule A.

4. APPOINTMENT OF THE MED-ARBITRATOR(S)

- 4.1 ADRIC must appoint a Med-Arbitrator under Med-Arb Rule 4.2 if:
- (a) all parties agree to have ADRIC make the appointment; or
 - (b) the parties have not appointed a Med-Arbitrator within 21 days after delivery of the Notice of Request for Med-Arb to the last party to whom it must be delivered and a party asks ADRIC to make the appointment.
- 4.2 If ADRIC is asked to appoint a Med-Arbitrator, the following procedure applies:
- (a) ADRIC must deliver identical lists of names to the parties;
 - (b) the list must contain at least three names, unless the parties agree otherwise or ADRIC determines otherwise;
 - (c) within 10 days following delivery of the list, each party must deliver it back to ADRIC after:
 - (i) deleting any name(s) to which the party objects; and
 - (ii) numbering the remaining names on the list in descending order of preference, where 1 is the party's first choice;
 - (d) if a party does not tell ADRIC that it objects to any of the listed names within 10 days, the party is deemed not to object to those names;
 - (e) after all lists are delivered back or else after 10 days, ADRIC must appoint a Med-Arbitrator from among the names that remain on all lists delivered back to it; and
 - (f) ADRIC may deliver to the parties one more list of names, and the procedures set out in Rules 4.2 (a) to 4.2 (e) applies to that list.
- 4.3 ADRIC may extend the deadlines in Med-Arb Rules 4.1 and 4.2.
- 4.4 In appointing a Med-Arbitrator, ADRIC must consider:
- (a) the parties' orders of preference;
 - (b) the parties' requested qualifications;
 - (c) the nature and circumstances of the dispute; and
 - (d) anything else ADRIC considers relevant to appointing a qualified, independent, and impartial Med-Arbitrator.
- 4.5 If no names remain on all lists delivered back to ADRIC after two lists of names have been delivered, ADRIC must appoint a Med-Arbitrator to whom none of the parties has objected.

5. MED-ARBITRATOR INDEPENDENCE AND IMPARTIALITY

- 5.1 A Med-Arbitrator must:
- (a) remain independent, unless the parties agree otherwise;
 - (b) remain impartial and not advocate for any party; and
 - (c) sign and deliver a written statement to the parties, on or before accepting an appointment as Med-Arbitrator, stating that they:
 - (i) know of no circumstances likely to give rise to justifiable doubts about their independence or impartiality; and
 - (ii) will disclose to the parties any such circumstance that arises after the appointment and before the Med-Arb concludes.
- 5.2 The parties agree that no procedural unfairness or loss of jurisdiction arises solely because the Med-Arbitrator:
- (a) acts as mediator in the mediation phase for any issues referred to arbitration;
 - (b) meets separately with a party during the mediation phase;
 - (c) questions the merits of a party's position during the mediation phase; or
 - (d) uses information in accordance with Med-Arb Rule 6.6.

6. THE MED-ARB PHASES AND TRANSITION BETWEEN THEM

- 6.1 The ADRIC Mediation Rules govern the mediation phase.
- 6.2 The ADRIC Arbitration Rules govern the arbitration phase.
- 6.3 The mediation phase ends and the arbitration phase begins when the first of these occurs:
- (a) any agreed-to time limit for the mediation phase expires;
 - (b) the parties settle all disputed issues;
 - (c) the parties agree in writing to end the mediation phase;
 - (d) the Med-Arbitrator declares that continuing the mediation phase is unlikely to settle further issues; or
 - (e) the Med-Arbitrator declares it is appropriate to move issues to the arbitration phase.

- 6.4 When the mediation phase ends, the parties:
- (a) must confirm which issues have been resolved and will be included in a settlement agreement or a consent award;
 - (b) must identify the unresolved issues for the arbitration phase by the Med-Arbitrator's deadline, or the Med-Arbitrator will identify the issues if the parties cannot agree; and
 - (c) consent to continuing the arbitration with the Med-Arbitrator under Article 620 of the Quebec Code of Civil Procedure, CQLR, c.C-25.01, if relevant.
- 6.5 At the beginning of the arbitration phase:
- (a) the Med-Arbitrator must decide any challenge to the Med-Arbitrator based on the mediation phase before continuing with the arbitration;
 - (b) a party that does not object under Rule 6.5 (a) waives any challenge to the Med-Arbitrator based on the mediation phase; and
 - (c) any other objection to the Med-Arbitrator must be resolved under the ADRIC Arbitration Rules.
- 6.6 During the arbitration phase, the Med-Arbitrator must not use information from the mediation phase unless it becomes evidence in the arbitration or the parties consent to its use.

SCHEDULE A

SERVICES PROVIDED BY ADRIC¹

The fees for ADRIC's administration services consist of:

1. **Administration of Med-Arb Commencement Fee**[†] (determined by reference to the amount of the claim)
Payable upon delivery of the Notice of Request for Med-Arb, subject to refund if the arbitration phase does not proceed.
2. **Case Service Fee**
Payable upon delivery of the statement of defence, or statement of defence to counter-claim, subject to refund if delivered before the arbitration phase begins and the arbitration phase does not proceed.
3. **Appointment of Med-Arbitrator** only (included in Administration Services Fee)
Payable by requesting party or parties due upon submission of request.
ADRIC does not charge fees for hearings, postponements, and miscellaneous expenses. The Commencement Fee and Case Service Fee are non-refundable once the arbitration phase of the Med-Arb has begun.

[†]On receipt of the notice of request to commence a Med-Arb and the appropriate payment, ADRIC will:

- a) confirm that the parties agree to apply the Med-Arb Rules;
- b) confirm that ADRIC has received the Notice of Request for Med-Arb and/or the Notice of Submission to Med-Arb;
- c) confirm that ADRIC has received the Commencement Fee;
- d) open a case file;
- e) issue a Notice of Commencement of Med-Arb (Med-Arb Rule 3.4 and Arbitration Rule 2.3);
- f) under Med-Arb Rule 4.2, or on request under Med-Arb Rule 4.2, deliver a list of potential Med-Arbitrators;
- g) on request under Med-Arb Rule 4.2, appoint in accordance with Med-Arb Rule 4.2e any Med-Arbitrator whose appointment is required;
- h) declare vacant any office that becomes vacant under Med-Arb Rule 6.5;
- i) receive any advances that the Tribunal requires the parties to deposit through ADRIC under Arbitration Rule 4.23;
- j) inform the parties under Arbitration Rule 4.24 of non-payment of required deposits or fees;
- k) under Arbitration Rule 4.24.3, cease administering the Med-Arb if the Case Service Fee is not paid within 30 days of becoming payable;
- l) administer deposits in accordance with Arbitration Rule 4.25;
- m) deliver copies of all awards, rulings, orders, and decisions to the parties in accordance with Arbitration Rule 5.1; and receive copies of all awards, rulings, orders, and decisions in accordance with Arbitration Rules 5.1 and 5.4.6.

Current fees for ADRIC's Med-Arb Services can be found at <https://adric.ca/services/>

1 Services are optional

All references to Rules are to the ADRIC Med-Arb Rules or ADRIC Arbitration Rules as indicated.