

# Principles, Criteria, Protocol and Competencies

required for the designation

## CHARTERED ARBITRATOR

*The ADR Institute of Canada, Inc. (ADRIC) owns the trademarks for the designations:*

*Chartered Arbitrator, C.Arb,*

*Arbitre Certifié(e), Méd.C,*

*Arbitre Agrée(e), Méd.A,*

*All other groups and individuals are prohibited from adopting or using any of these marks or any marks that might be mistaken for these marks without the consent of the ADRIC.*

## I. INTRODUCTION

Arbitration is a process whereby parties to a dispute refer it by agreement, (either before or after the dispute arises, or as required by statute) to one or more persons by whose decision they agree or are required to be bound. In that process the arbitrator (or arbitrators) resolves the dispute by determining the parties' legal rights and obligations (unless the parties have agreed to proceed on another basis), after finding the relevant facts and applying the law to those facts in light of the evidence and arguments presented by the parties.

The process is generally characterized by the parties choosing the arbitrator (or having input into that choice), the arbitrator having the authority to rule on jurisdiction, and the principles of party autonomy, procedural flexibility, confidentiality and judicial deference.

The ADR Institute of Canada, Inc. ("ADRIC") has obtained recognition under the Federal *Trade Marks Act* for the designation Chartered Arbitrator as "C.Arb" and Arbitre Agréé /Arbitre Agréée as "Arb.A"; All other groups and individuals are prohibited from adopting or using any of these marks without the consent of ADRIC.

The Chartered Arbitrator designation has been established to recognize a "generalist competence" at a high level, the goal being to assist the public in finding experienced arbitrators.

To ensure that a high and consistent set of standards is met by the persons entitled to use this designation, ADRIC has established general principles, a set of criteria and a protocol to be used in assessing the eligibility of an applicant for the designation and for the granting of the designation.

Specific additional skills and competencies may be necessary and desirable for arbitrators practicing in specific areas such as marine and labour arbitrations.

ADRIC is national in scope and is represented throughout Canada by regional affiliates who administer and regulate the C.Arb designation in their respective regions.

All reference to rules, forms and requirements are references to the most recent version of the rules, forms and requirements approved by the ADRIC Board of Directors.

## II. DEFINITIONS

REGIONAL CHARTERED ARBITRATOR ACCREDITATION COMMITTEE ("Regional Committee"): the Regional Committee is appointed in each region by ADRIC's regional affiliate and shall be comprised of no fewer than 3 Chartered Arbitrators. At least 2 of the 3 members of this committee shall constitute a quorum.

NATIONAL ARBITRATION APPEAL AND AUDIT COMMITTEE ("National Committee"): The National Committee is appointed by ADRIC and shall be comprised of no fewer than 3 Chartered Arbitrators.

## III. GENERAL PRINCIPLES

A member of ADRIC who meets the standards required of a Chartered Arbitrator may apply for the designation on the form prescribed by ADRIC.

The following process is required to qualify an applicant for certification:

1. Satisfactory completion or waiver of the educational and practical experience requirements;
2. Review and approval of the written application by the Regional Committee; and

3. Review and approval of the application, for completeness only, by ADRIC.

The designation is awarded by ADRIC and is subject to renewal or revocation in accordance with the rules established by ADRIC. The designation certificate remains at all times the property of ADRIC.

## IV. CRITERIA

An applicant must meet the following criteria and conditions:

### A. EDUCATION

1. Successful completion of a course of study of 40 hours or more in arbitration and hearing procedure approved by ADRIC or a regional affiliate.

and

2. Successful completion of ADRIC's written open book Chartered Arbitrator examination or an examination which is part of a course approved by ADRIC or a regional affiliate no more than 10 years prior to application.

### B. PRACTICAL EXPERIENCE

1. The applicant must have chaired<sup>1</sup> at least 10 arbitrations, at least 10 fee-paid<sup>2</sup> or demonstrably complex and involved if unpaid.
2. The applicant must provide at least 2 awards, written by the applicant for review by the Regional Committee, redacting the award to remove personal or confidential information.

### C. PLEDGE

An applicant must pledge to abide by ADRIC's Code of Ethics.

### D. MEMBERSHIP

An applicant must be a member in good standing of ADRIC which includes being a member in good standing of a regional affiliate. The C.Arb designation lapses upon termination of membership in ADRIC or a regional affiliate, or upon failure to pay C.Arb annual fees.

### E. FEES

An applicant must pay an application fee to the Regional Affiliate, an annual fee to ADRIC to maintain the designation and Continuing Education and Engagement Program reporting fees (every three years). Chartered Arbitrators are also required to maintain their membership.

### F. ONGOING REQUIREMENTS

1. Every three years, Chartered Arbitrators are required to acquire a set number of points as prescribed by the ADRIC Board of Directors for the Continuing Education and Engagement Program.

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<sup>1</sup> The applicant must clearly have been the lead arbitrator or chairperson, not simply a co-arbitrator. Evidence of same may be required.

<sup>2</sup> A "paid" arbitration is an arbitration where the arbitrator receives a salary, payment or reasonable honorarium specifically for arbitration services. The amount received by the arbitrator is not subject to any specific minimum amount, provided it is a legitimate and reasonable amount in the context within which the arbitration took place. In exceptional circumstances described in writing by the Regional Committee, where any unpaid arbitrations are demonstrably complex and involved, the Regional Committee may accept any or all of them as counting toward the total of 10 arbitrations required.

2. The C.Arb designation must be renewed annually. Chartered Arbitrators must pay an annual designation fee to ADRIIC. This is in addition to the application fee, and membership fees payable to a regional affiliate.
3. Chartered Arbitrators must maintain professional liability insurance in an amount prescribed by ADRIIC and provide proof of same upon request by ADRIIC.
4. Failure to comply with ongoing requirements constitutes grounds for suspension or cancellation of the C.Arb designation.

## **V. PROTOCOL**

Regional affiliates invite and accept applications from members who believe they meet the standards required of a Chartered Arbitrator.

The Regional Committee evaluates the application in accordance with the process established by the regional affiliate and the requirements established by ADRIIC.

## **VI. APPLICATION FORM**

All applicants will use the standard application and evaluation forms prescribed by ADRIIC.

## **VII. APPLICATION APPROVAL AND APPEAL PROCESS**

### **A. REVIEW PROCESS**

Where the Regional Committee approves an applicant, by unanimous or majority decision, the Regional Committee will forward the application to the Manager of Designations at ADRIIC.

1. ADRIIC will review the application and forms to ensure the application is complete and the requirements established by ADRIIC have been met;
2. Where ADRIIC considers an application to be complete, the Manager of Designations will inform the applicant and the Regional Committee that the application has been approved. The Regional Committee will notify the regional affiliate of the approval. ADRIIC will forward the C.Arb certificate to the applicant; and
3. Where ADRIIC finds the application incomplete, the Manager of Designations will return the application to the Regional Committee to be completed.

### **B. RIGHT TO APPEAL**

1. The applicant may appeal to the National Committee a decision of the Regional Committee to deny the C.Arb designation only if the reason for denial relates to or raises policy or procedural issues. The applicant must deliver a written notice of appeal to the Manager of Designations within 30 days of receipt of the decision of the Regional Committee, setting out the grounds for the appeal, failing which the Regional Committee decision stands.
2. The National Committee will review the policy or procedure issues and if a policy or procedure has not been followed, may allow the appeal. If a policy and procedure has been followed but its application is unfair in a particular application, the National Committee may make a recommendation to the ADRIIC Board of Directors.

## **VIII. AUDIT AND QUALITY CONTROL**

A percentage of applications will be sent to the National Committee for review after the Regional Committee decision and review by the Manager of Designations.

The National Committee will review applications sent to it for review to ensure all documentation is in order and the prescribed process has been followed. National Committee concerns will be directed to the Manager of Designations, the Board of Directors, and the original Regional Committee to ensure future applications are appropriately processed and reviewed. The decision of the Regional Committee on a particular application will remain final notwithstanding the comments of the National Committee.

## **IX. VOTING**

Any member of a Regional Committee or regional affiliate Board of Directors who has voted on any application at that level must not vote on that application as a member of the National Committee or the Board of Directors.

## **APPENDIX "A"**

### **COMPETENCIES IN ARBITRATION**

Summary of knowledge and skills applicable to an Arbitrator:

- Knowledge of the Laws of Contract, Tort Evidence and other applicable laws related to the subject matter of the dispute.
- Knowledge of the governing Arbitration Act (Law) and other applicable laws related to arbitration in the jurisdiction of the arbitration.
- Knowledge of ADRIC's Code of Ethics and other applicable governing the conduct of an arbitrator generally and recognition of the importance and necessity to abide by same;
- The skills required to hear and evaluate the evidence in accordance with the applicable procedural rules, including the ability to assess conflicting points of view, evaluate the validity of arguments presented and determine the award;
- Knowledge of the arbitration process and possession of the skills to carry out the protocol required to initiate and complete an arbitration engagement, including the formalization of the engagement, procedures during the arbitration hearing and issuing the award.

## **ADR Institute of Canada, Inc.**

### **Letter of Reference Guidelines for Chartered Arbitrator Applicants**

The Chartered Arbitrator (C.Arb) designation indicates a high degree of experience and skill as an arbitrator and is the most senior designation awarded by the ADR Institute of Canada.

Letters of reference play an important part in the assessment of C.Arb applicants and we thank you for providing your candid assessment of the applicant.

Please forward your letter of reference directly to the following address:

**(NAME AND ADDRESS OF ADRIC AFFILIATE -ATTN: MANAGER OF DESIGNATIONS)**

Please include the following information in your letter of reference:

1. Name of Applicant
2. Name, position and title of Referee
3. Contact information of Referee
4. Capacity in which you have known the Applicant in relation to his or her work as an Arbitrator:
  - a. Party to an arbitration conducted by applicant
  - b. Counsel in arbitration conducted by applicant
  - c. Co-Arbitrator
  - d. Other
5. How well and for how long have you known the applicant
6. Please comment and provide your opinion of the applicant with respect to these competencies:
  - a. Ability to run and manage the arbitration process effectively in a fair, impartial and respectful manner;
  - b. Ability to get the facts, issues and perceptions of all parties clearly out on the table;
  - c. Ability to carry out the protocol required to initiate and complete an arbitration engagement, including the formalization of the engagement, procedures during the arbitration hearing and handing down issuing the award
  - d. Preserves party autonomy in decision making;
  - e. Regardless of settlement outcome, would work with this arbitrator again.
7. Any other comments you consider relevant to the evaluation of the applicant's skill, ability and integrity as an arbitrator.