



**Law Society**  
of Ontario

**Barreau**  
de l'Ontario

# ADR for Paralegals 2024

## CO-CHAIRS

**John (Jack) Sullens**

*Sullens Dispute Resolution & Workplace Investigations*

**Rameen Sabet, Professor, Longo Faculty of Business**

*Humber College*

June 19, 2024



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*Sullens Dispute Resolution & Workplace Investigations*

**Rameen Sabet**, Professor, Longo Faculty of Business,  
*Humber College*

**June 19, 2024**

**1:00 p.m. to 4:00 p.m.**

**Total CPD Hours = 2 h + 35 m Substantive + 25 m Professionalism <sup>P</sup>**

**Law Society of Ontario**

**SKU CLE24-00604**

## **Agenda**

**1:00 p.m. – 1:05 p.m.**

**Welcome**

*John (Jack) Sullens, Sullens Dispute Resolution & Workplace Investigations*


*Rameen Sabet, Professor, Longo Faculty of Business, Humber College*

**1:05 p.m. – 1:30 p.m.**

**Introduction to Private Dispute Resolution**

**1:30 p.m. – 1:55 p.m.**

**Mediation**

<b>1:55 p.m. – 2:20 p.m.</b>	<b>Arbitration</b>
<b>2:20 p.m. – 2:30 p.m.</b>	<b>Break</b>
<b>2:30 p.m. – 2:55 p.m.</b>	<b>Mediation - Arbitration (MED/ARB)</b>
<b>2:55 p.m. – 3:20 p.m.</b>	<b>ADR Institute of Canada – ADRIC Rules (25 m )</b>
<b>3:20 p.m. – 3:45 p.m.</b>	<b>Contracts - Mediation, Arbitration and MED/ARB</b>
<b>3:45 p.m. – 3:55 p.m.</b>	<b>Question and Answer Session</b>
<b>3:55 p.m. – 4:00 p.m.</b>	<b>Closing Remarks</b>
<b>4:00 p.m.</b>	<b>Program Ends</b>

# ADR for Paralegals 2024

June 19, 2024

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John (Jack) Sullens

*Sullens Dispute Resolution & Workplace Investigations*

Rameen Sabet, Professor, Longo Faculty of Business, *Humber College*



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**TAB 1**

## **ADR For Paralegals 2024**

**ADR for Paralegals 2024:  
The Essentials (PPT)**

**John (Jack) Sullens**

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*Humber College*

June 19, 2024



# **ADR for Paralegals 2024: The Essentials**

**June 19, 2024**

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**Presented by: Jack Sullens and Rameen Sabet**

# Introductions

## **Jack Sullens**

- Sullens Dispute Resolution & Workplace Investigations

## **Rameen Sabet**

- Professor & Researcher at Humber College



# Agenda

1. Paralegal Rules of Conduct
2. Private Dispute Resolution
3. Ontario Dispute Resolution Practitioner Statistics
4. Mediation
5. Arbitration
6. Med-Arb
7. ADRIC Arbitration Rules
8. Med-Arb Contracts
9. Questions

# Paralegal Rules of Professional Conduct

- 3.01 (1) A paralegal shall perform any services undertaken on a client's behalf to the standard of a competent paralegal.
- 3.02 (12) The paralegal shall consider the use of alternative dispute resolution (ADR) when appropriate, inform the client of ADR options, and, if so instructed, take steps to pursue those options.

# Private Dispute Resolution

## Definition

- Refers to the process of resolving conflicts outside of the traditional court system.
- Includes methods such as arbitration, mediation, negotiation, and collaborative law.
- Parties involved voluntarily choose a private arbitrator or mediator to resolve their issues in a more flexible, confidential, efficient manner.

# Private Dispute Resolution

## Why Private DR?

### Confidentiality

- Parties can maintain privacy and confidentiality throughout the process, unlike public court proceedings.

### Flexibility

- Parties have more control over the process, including choice of mediator/arbitrator, scheduling, and procedural rules.

### Cost-Effective

- Often proves to be more cost-effective than litigation; typically involves lower fees and shorter timeframes.

# Who Provides Private DR?

Private DR services are offered by various entities including:

- Law firms and paralegals specializing in alternative dispute resolution
- Mediation and arbitration agencies
- Independent mediators and arbitrators (sole practitioners)
- Online dispute resolution platforms

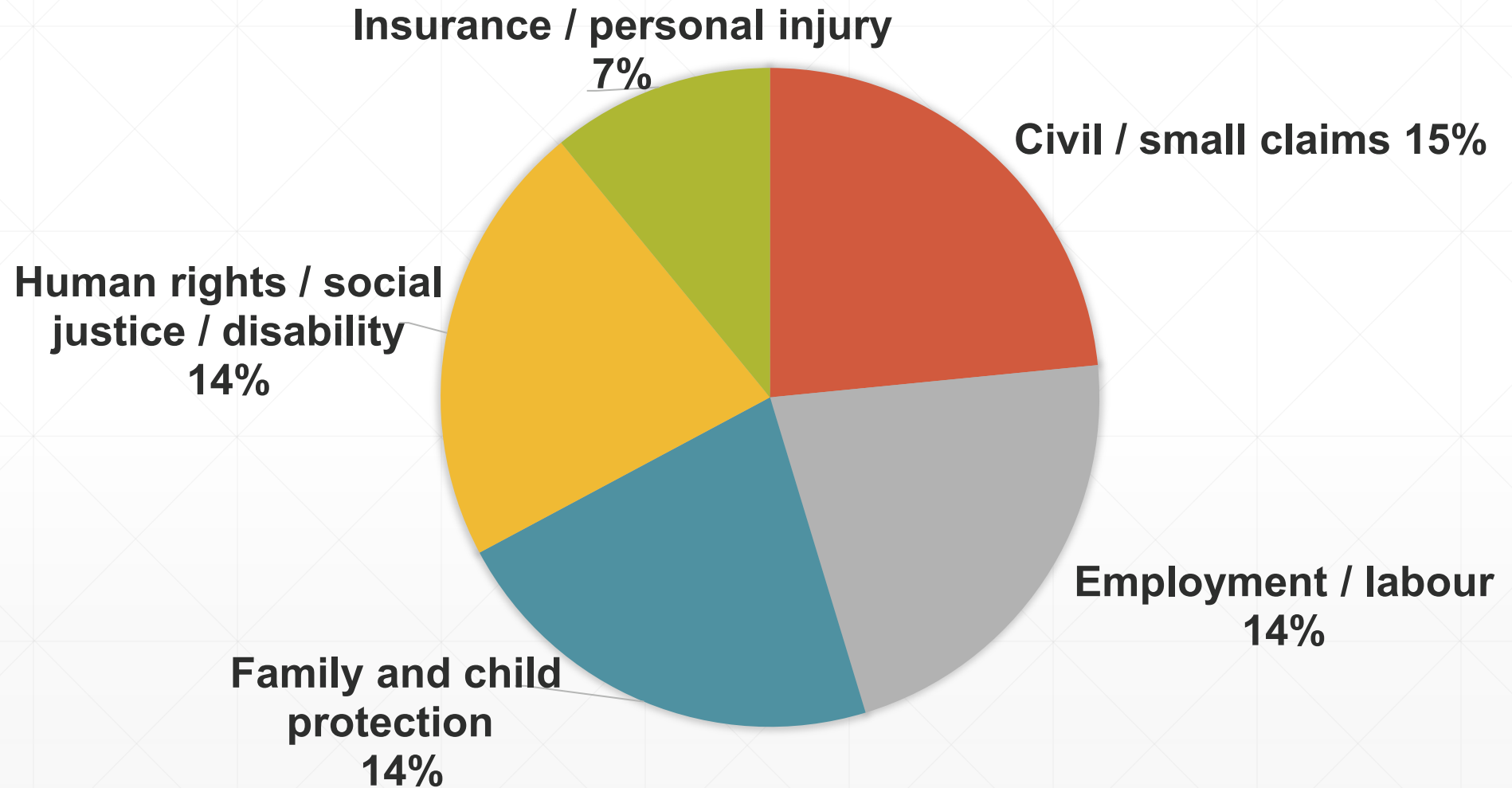
These providers offer a range of services tailored to the needs of parties involved in disputes.

# Statistics

- 56% of ADR practitioners provide Mediation and Mediation-Arbitration (Med-Arb)
- 23% provide Adjudication/Arbitration
- 21% provide other services
- 18% deliver facilitation
- 31% deliver ADR training and coaching
- 11% provide workplace restoration and investigation services respectively



# Statistics: Areas of Practice Amongst Respondents



# Statistics: Ontario DR Services

## **Private services offered by ADR professionals in Ontario:**

- 18% - Facilitation
- 16% - ADR training
- 15% - Coaching
- 11% - Investigation
- 11% - Workplace restoration
- 8% - Restorative processes
- 8% - ADR systems design
- 7% - Conciliation



# Mediation

## Definition

A process where a neutral third party facilitates a discussion between disputants to help them negotiate an agreement to one or all elements of their dispute.



# Mediation Variations

- Facilitative
- Transformative
- Evaluative
- Interest based vs position based
- Open versus closed



# Mediation Uses in Ontario

- Ontario Mandatory Mediation Program (OMMP)
- A wide range of civil disputes
- Employment and labor
- Administrative tribunals
- Family Law

# Arbitration

- Parties mutually choose an arbitrator to resolve their dispute.
- Arbitrator is an impartial third party.
- Decision made by arbitrator is binding.
- Process is confidential.



# Variations of Arbitration

## Rights v. Interests Arbitration

- **Rights:** Focus on contracts & legislation, used for determining whether rights violated
- **Interests:** Focus on parties' concerns & interests, used for negotiating a new agreement

## Binding v. Non-binding Arbitration

- **Binding:** Decision is legally enforceable, limited grounds for appeal
- **Non-binding:** Decision is advisory, flexibility if unsatisfied with outcome (litigation)

# Use of Arbitration in Ontario

- ADR Chambers provides arbitration for the construction, engineering, and infrastructure industries
- Arbitration for grievance disputes, incorporated into collective agreements through s. 48 of the Labour Relations Act (1995)
- Commercial Arbitration Society
- Family Law Arbitration for divorce disputes

# Initiating Arbitration

## **Arbitration Under Agreement:**

A Party / Claimant submits a dispute to arbitration by:

- (a) Sending **Notice of Request to Arbitrate** to each respondent.
- (b) Providing a copy to the **Institute**.

## **Arbitration by Submission:**

Parties submit dispute to arbitration by:

- (a) Delivering a **Notice of Submission to Arbitration** to the Institute.
- (b) Paying the **Institute** a **Commencement Fee** if administering the arbitration.



# Mediation-Arbitration (MED-ARB)

## Definition:

- Med-Arb is a dispute resolution process that combines elements of both mediation and arbitration.
- It begins with mediation, where a neutral third party assists parties in reaching a mutually acceptable agreement.
- If mediation fails, the mediator transitions into an arbitrator and renders a binding decision on the unresolved issues.



# Mediation-Arbitration: Variations

- **Sequential:** Mediation followed by arbitration if mediation fails.
- **Concurrent:** Mediation and arbitration occur simultaneously.
- **One-step:** The mediator makes a non-binding recommendation, but it becomes binding if the parties can't agree.
- **Two-step:** The mediator facilitates discussion, then if parties can't agree, a different arbitrator renders a decision.

# Use of Med-Arb in Ontario

- Family law cases
- Construction, Condominium, and Commercial Disputes

## **Statistics:**

- 14% of the ADR professionals in Ontario practice Med-Arb

# ADRIC - Arbitration Rules

- The ADR Institute of Canada new Arbitration Rules came into effect December 1, 2014.
- These rules established clear, modern, and common-sense procedures under which effective arbitrations can be conducted.
- Download the Arbitration Rules at the ADR Institute of Canada website ([adric.ca](http://adric.ca)) under the Rules & Codes tab

## When The Rules Apply

- The Rules apply when parties mutually agree to their application.
- **Conflict with Legislation:** If a conflict arises between the Rules and applicable legislation, The Rules apply, except where legislation cannot be varied or excluded by agreement.

# ADRIC - Arbitration Rules

## **Irregularities and Waiver of Right to Object**

- Failure to comply with the Rules does not nullify arbitration or any step, document, award, ruling, order, or decision in arbitration.
- Failure to promptly object to a Rules violation waives the right to object.

**Appointment of Arbitrators:** By Parties and By ADRIC

# ADRIC - Arbitration Rules

## Arbitrator Independence and Impartiality

- Arbitrator must be wholly independent and wholly impartial and cannot act as an advocate for any party.
- The proposed Arbitrator undertakes to disclose any subsequent conflicts.

## Challenging an Arbitrator

- A party may challenge an Arbitrator if:
  - (a) circumstances give rise to justifiable doubts about the Arbitrator's independence or impartiality, or
  - (b) the Arbitrator does not have the agreed qualifications.

# ADRIC - Arbitration Rules

## Privacy and Confidentiality

- Unless the parties agree otherwise, the arbitration proceedings must take place in private.

## Evidence

- Parties may offer relevant and material evidence.
- Must also produce additional evidence as deemed necessary by the Tribunal.
- **Rules of Evidence:** Arbitrator may consider rules of evidence but is not required to conform with them.
- Arbitrator determines the admissibility, relevance, materiality, and weight of the evidence.

# ADRIC - Arbitration Rules

## Settlement

- The Arbitrator can promote settlement and, with the parties' consent, and order mediation or conciliation at any point.

## Awards, Rulings, Orders, and Decisions

- The Tribunal can issue rulings, interim awards, and final awards on procedural and substantive matters, all in writing with reasons.
- In multi-arbitrator panels, decisions are made by majority vote; if no majority, the Chair's decision prevails.

# ADRIC - Arbitration Rules

## **Amending and Correcting Awards, Rulings, Orders, and Decisions**

A Tribunal may, on application or its own initiative, amend or vary an award, ruling, order, or decision to correct:

- (a) a clerical or typographical error;
- (b) an error, slip, omission, or other similar mistake; or
- (c) an arithmetical error.



# ADRIC - Arbitration Rules

## Conclusion of Arbitration

An arbitration concludes:

- (a) when it settles;
- (b) when it has been abandoned;
- (c) 30 days after all final awards have been delivered to the parties; or
- (d) when it has been otherwise finally disposed of, whichever occurs last.

# ADRIC - Arbitration Rules

- The Med-Arb Rules were presented to the membership at ADRIC's annual conference in November 2019
- Access the ADRIC Med Arb Rules 2020 booklet at the ADR Institute of Canada website ([adric.ca](http://adric.ca)) under the Rules & Codes tab
- **Designation** Chartered Med-Arb
- **Course:** Med-Arb Foundational Course by ADRIC

# ADRIC - Arbitration Rules

## When The Med-Arb Rules Apply

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

- A failure to comply with the Med-Arb Rules is an irregularity and does not nullify the process.

## Initiating Med-Arb Process

- A party may submit a dispute by delivering a written Notice of Request for Med-Arb to other parties.

# ADRIC - Arbitration Rules

## Appointment of Med-Arbitrator(s)

ADRIC appoints a Med-Arbitrator under Med-Arb Rule 4.2 if:

- (a) All parties agree for ADRIC to make the appointment.
- (b) Parties fail to appoint a Med-Arbitrator within 21 days after delivery of the Notice of Request for Med-Arb to the last party.

## Med-Arbitrator Independence and Impartiality

- The Med-Arbitrator must remain independent and impartial throughout the process and commit to disclose any such circumstances arising after appointment.

# Med-Arb Phases and Transition

- ADRIC Mediation Rules govern the mediation phase.
- ADRIC Arbitration Rules govern the arbitration phase.

## Transition from Mediation to Arbitration:

- (a) Agreed time limit expires
- (b) Disputed issues settled
- (c) Parties agree to end mediation
- (d) Med-Arbitrator declares mediation unlikely to settle further
- (e) Med-Arbitrator decides to move to arbitration

# Med-Arb Phases and Transition

## Tasks at the End of Mediation:

- Confirm resolved issues for settlement or consent award
- Identify unresolved issues for arbitration
- Consent to continue arbitration under relevant legal provisions.

## Beginning of Arbitration Phase:

- Resolution of any other objections under ADRIC Arbitration Rules.
- Med-Arbitrator restricted from using mediation phase information without consent or as evidence in arbitration.

# Mediation Contracts – Key Components

- Agreement to mediate a defined dispute.

Guiding principles, the mediator we will conduct a mediation by the following principles:

- Commitment to the principle of early settlement
- Candor in all communications
- Confidentiality
- Costs to be shared between the parties.

# Arbitration Contracts – Key Components

- Agreement to Arbitrate
- Appointment of the arbitrator

## Guiding Principles

- The parties shall be treated equally and fairly;
- Each party shall be given an opportunity to present its own case and meet the case of the other party;
- The dispute is to be arbitrated as effectively, expeditiously and cost effectively as possible; and
- The award shall be based solely on the pleadings, the evidence led by the parties, and legal submissions offered at the conclusion of the evidentiary hearing.



# Applicable Law - Ontario

- Procedure
- Stay of legal proceedings
- Immunity of the Arbitrator
- Cost to be shared between the parties.

# Med-Arb Contracts

- Components of both the mediation and arbitration contracts with the addition of an agreement to the provision contained in the **Ontario Arbitration Act section 35.**
- The members of an Arbitral tribunal may, if the parties' consent, use mediation, conciliation or similar techniques during the arbitration to encourage settlement of the matters in dispute.

# Questions

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# Conclusion

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