



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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Law Society of Ontario

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Library and Archives Canada
Cataloguing in Publication

ADR for Paralegals 2024

ISBN 978-1-77953-018-9 (PDF)
ISBN 978-1-77953-019-6 (Hardcopy)



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

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

Total CPD Hours = 2 h + 35 m Substantive + 25 m Professionalism ^P

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

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

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*



Law Society
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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

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

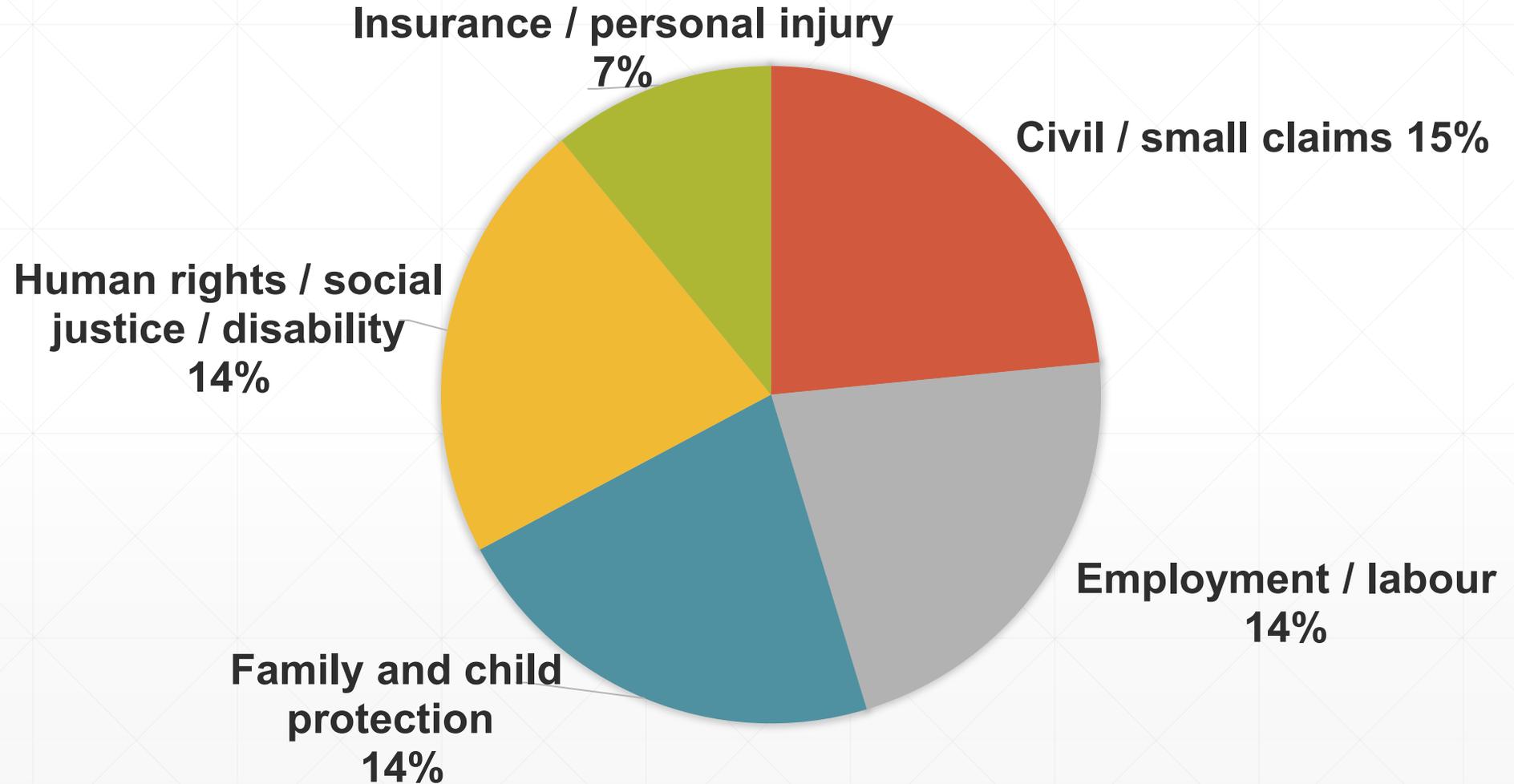
These providers offer a range of services tailored to the needs of parties involved in disputes.

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) 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) 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

Conclusion
