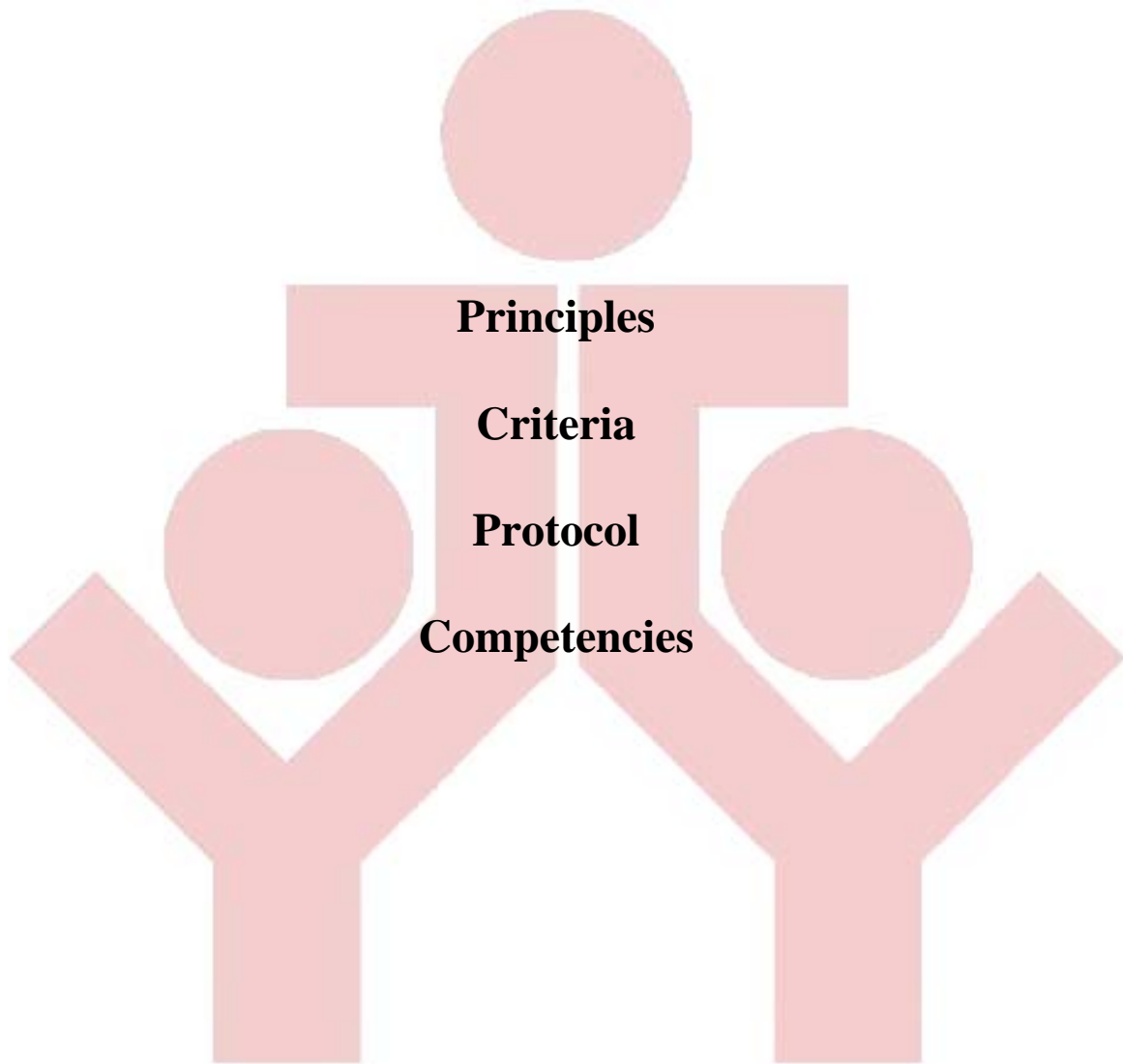


ADR INSTITUTE OF CANADA, INC.



for the designation

CHARTERED ARBITRATOR

PART I

INTRODUCTION

Arbitration is a legal procedure in which the parties to a dispute agree to appoint one or more persons, who become the arbitrators, to review the evidence and arguments of the parties and render a decision, called an award, which is binding on the parties.

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

The Chartered Arbitrator designation has been established to recognize a "generalist competence" upon which the public can rely as a basis to identify qualified arbitrators. In order to ensure that a high, consistent, set of standards is met by the persons entitled to use this designation, the Board of Directors of ADR Canada has established general principles, a set of criteria and a protocol to be used in assessing the eligibility of a candidate for the designation and for the granting of the designation.

ADR Canada recognizes that specific additional skills and competencies may be necessary and desirable for arbitrators practicing in specific areas such as marine and labour arbitrations. ADR Canada acknowledges that arbitrators need not be chartered in order to provide arbitration services.

ADR Canada is national in scope and is represented throughout Canada by its affiliated Regional Institutes who administer and regulate the designation C.Arb./Arb.C. in their respective regions.



PART II

GENERAL PRINCIPLES

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

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

- i. Satisfactory completion of the educational and practical experience requirements; and
- ii. Review and approval by the Regional Institute's Chartered Arbitrator Accreditation Committee and ratification by the Regional Board of Directors; and
- iii. Review and approval by ADR Canada 's National Chartered Arbitrator Accreditation Committee and ratification by ADR Canada's Board of Directors.

Each successful applicant is required to complete a pledge to abide by ADR Canada's Code of Ethics.

The designation is awarded by ADR Canada and is subject to renewal or revocation in accordance with the rules established by ADR Canada.

The certificate presented to a successful candidate remains at all times the property of ADR Canada.



PART III CRITERIA

DEFINITIONS:

NATIONAL CHARTERED ARBITRATOR ACCREDITATION COMMITTEE ("NCAAC"): is appointed by the Board of Directors of ADR Canada to review and approve recommendations for accreditation as a Chartered Arbitrator by the Regional Accreditation Committees and to review and approve arbitration training and competency assessment programs to ensure national consistency. The Committee shall be comprised of no fewer than 3 Chartered Arbitrators.

REGIONAL CHARTERED ARBITRATOR ACCREDITATION COMMITTEE ("RCAAC"): the RCAAC is appointed in each region by the Institute's regional affiliate and will be comprised of no fewer than 3 qualified arbitrators.

QUALIFYING ARBITRATOR: Chartered Arbitrators or person otherwise deemed qualified by the RCAAC and appointed by that body to carry out the function.

COMPETENCY ASSESSMENT PROGRAM: is a program of study designed to assess the competencies of arbitration practitioners as set out in Appendix "A".

The following criteria and conditions must be met by an applicant:

I. EDUCATION

Possess a degree, qualification or demonstrated expertise in a particular discipline; and have attended and successfully completed a course or courses of study in arbitration approved by ADR Canada /Regional Institute.

II. PRACTICAL EXPERIENCE

Have practiced as an arbitrator for not less than two (2) years and have chaired at least five (5) arbitrations of which at least 2 have been fee-paid. (i.e. the arbitrator has been remunerated either by fee or by salary for services rendered as an arbitrator). Evidence of same may be required and shall not be considered a breach of ADR Canada's confidentiality rules.

III. SKILLS ASSESSMENT

Demonstrated competency in the process of arbitration as outlined in Appendix "A" as determined through:

1. Observation and approval by a Qualifying Arbitrator through one or more of the following: co-arbitration, practicum, role playing, video taped arbitration or other processes approved by ADR Canada.



OR

2. Successful completion of a competency assessment program approved by ADR Canada.

IV. WAIVER

Notwithstanding the above, where the RCAAC determines that the applicant has satisfied or exceeded I, II, and III above through proven skills and competency, longevity in practice and recognition and recommendation by peers, the requirements listed above may be waived. The decision of the RCAAC must be supported by documented reasons for the recommendation.

V. PLEDGE

Pledge to abide by ADR Canada's Code of Ethics.

VI. MEMBERSHIP

Must be a member of good standing of the ADR Institute of Canada, Inc.

VII. INSURANCE

Required to provide proof of Errors and Omissions Insurance in the amount of at least \$1 million aggregate to protect themselves and those involved in matters where they are providing services.



PART IV

PROTOCOL

1. Regional Institutes invite/accept applications from those members who believe they possess the standards required of a Chartered Arbitrator.
2. The Regional Institutes will establish their own procedures to evaluate applicants in accordance with the requirements established by ADR Canada, provided, however, that each applicant must be interviewed and evaluated by a Committee of not less than two (2) members of the RCAAC.
3. The RCAAC shall recommend to the Regional Board all those applicants who have qualified as candidates.
4. The Regional Board shall consider and approve those candidates it deems qualified, and recommend them to the NCAAC with the following minimum information:
 - i. Letter of recommendation from the Regional Institute;
 - ii. Candidate's application (on prescribed form); and
 - iii. Candidate's pledge (on prescribed form).
5. Each application supported by the recommendation of a Regional Institute shall be considered by the NCAAC. Each member of the NCAAC will consider the information submitted on a candidate, may discuss such information with other members of the NCAAC if necessary and shall vote on each candidate using the prescribed ballot form.
6. A candidate who received a majority of the votes cast in favour shall be recommended to ADR Canada's Board of Directors for the designation Chartered Arbitrator (C.Arb.).
7. All candidates recommended to ADR Canada's Board of Directors by the NCAAC shall be considered by the Board at its next regularly scheduled meeting or by mail ballot vote of the Board.

VOTING

Any person who also sits on a RCAAC or Regional Institute Board and has voted on any candidate at that level must refrain from voting on that candidate as a member of the NCAAC or the ADR Canada Board.



APPENDIX "A"

COMPETENCIES IN ARBITRATION

Summary of knowledge and skills applicable to an Arbitrator:

- Knowledge of the Laws of Tort/Delict, Evidence and other applicable laws related to arbitration in the jurisdiction of the arbitration;
- Knowledge of the governing Arbitration Act (Law) in the applicable jurisdiction.
- Knowledge of ADR Canada's Code of Ethics and Rules of Conduct 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 handing down the award.



COMPETENCIES IN ARBITRATION

Prepared by the National Education Committee of the
Arbitration and Mediation Institute of Canada, © June 30, 1999

The listing below is not an exhaustive listing of competencies and is intended as a guideline of generally recognized desirable qualities for competent arbitrators. ADR Canada recognizes the previous works "A Model of Arbitrator Competence" (© Hilary Lewis-Ruttley) published in February 1996 by the Institute of Advanced Legal Studies University of London on which this listing is modeled with permission.

ADMINISTRATIVE SKILLS

General Definition:

The ability to organize and conduct the practice of arbitration in an efficient and effective manner.

- a. Ability to organize and maintain office systems
 - appointment system
 - correspondence system
 - case file system with monitoring feature
 - time log, billing and disbursements receivable system
- b. Ability to work within the system/rules governing the accepting and handling of cases
 - records details of appointment (terms, conditions and fee)
 - confirms appointment in writing (engagement letter or contract)
 - ensures all correspondence sent and received is provided to both parties
 - demonstrates a clear understanding of the applicable Arbitration Act and Ethics
- c. Ability to allocate time, effort and other resources
 - expeditiously reviews and deals with documents and information received
 - develops an overall perspective of the case
 - draws up timetable for dealing with preparatory matters and conduct of the arbitration
- d. Ability to organize the required needs of the arbitration
 - adequacy of hearing room to accommodate the parties and others
 - capability for cloistering of witnesses
 - capability to provide privacy of private consultations
 - suitability of the location in terms of minimizing external distractions or interruptions
- e. Ability to bring case to completion
 - exhibits timeliness in drafting the award
 - if on a panel, works co-operatively to draft the decision
 - promptly notifies the parties on the completion of the award
 - submits the fee billing in accordance with terms of engagement or within a reasonable time



PROCEDURAL SKILLS

General definition:

Ability to conduct matters using fair, flexible and effective procedures.

- a. Ability to clearly establish understandings
 - clearly explains the role of the arbitrator
 - clearly defines and explains the rules of procedure
 - in cooperation with the parties, estimates time that will be required
- b. Ability to determine legitimacy and jurisdiction
 - reviews contracts between the parties (if they exist)
 - determines if agreements are effective and enforceable
 - ensures the issues in dispute are covered by the arbitration clause
 - ensures there is no reason for parties to challenge the appointment
 - ensures that the appointment is not inconsistent with the applicable arbitration statute , local laws or institutional rules.
- c. Ability to deal with preliminary matters
 - holds preliminary meeting if required or requested
 - provides directions on pleadings and disclosure of evidence
 - requires parties to disclose and make available to the arbitrator and the parties, at the earliest opportunity , all relevant information,
 - determines if legal counsel, witnesses, experts or other parties will be involved
 - addresses the issue of exclusion of witnesses
 - ensures all parties have a clear understanding of how the arbitration hearing will be conducted and the award issued
 - ensure all procedural steps have been completed as required
- d. Ability to supervise the preliminary meeting
 - supervises conduct of the meeting
 - explains the purpose and content of the meeting
 - intervenes when necessary to ensure that the exchange of documentary evidence does not become a presentation of oral evidence
 - brings the parties to agreement on procedural matters
- e. Ability to handle interlocutory matters
 - hears parties arguments on the matter
 - characterizes and decides the points of issue
 - defines and supervises a fair interlocutory procedure
- f. Ability to conduct a fair hearing
Hearing
 - affords each party full and appropriate opportunity to present its' case
 - allows each party an opportunity to examine the other party's witnesses
 - allows parties to make and respond fully to objections
 - allows parties adequate opportunity for rebuttal



- allows parties adequate time to deal with surprises
 - deals expeditiously with procedural objections
 - keeps interruptions to a minimum
 - narrows issues (by clarification without unnecessarily interjecting)
 - maintains order
 - recognizes the need for recess or adjournment
 - ensures the hearing is conducted in accordance with the applicable arbitration statute or institutional guidelines
 - keeps the parties deliberations focused on the issues of the dispute
- g. Ability to handle witnesses
- knows the formalities for swearing or affirming witnesses
 - explains procedure to witnesses where necessary
 - in the case of expert witnesses, determines legitimacy of expertise
 - encourages expert witnesses to make use of lay language
- h. Ability to keep a record of evidence
- ensures proper record is kept of submissions and evidence
 - subjects the record to review and organization on a timely basis
 - analyzes the evidence record periodically during the hearing
 - limits evidence to relevant topics

INTERPERSONAL SKILLS

General Definition:

The ability to control the arbitration process in a manner which engenders mutual respect between all those involved, to communicate effectively and assist others to do so.

- a. Ability to maintain an appropriate relationship between the parties
- acts with courtesy, respect and patience
 - indicates empathy for the issues
 - does not pre-judge the parties on the issues
 - is modest in attitude held towards others
 - devotes appropriate care and attention towards the parties
- b. Ability to remain impartial and independent
- ensures both parties have all documents
 - does not send unilateral correspondence
 - discloses all facts which may give rise to doubts about impartiality
 - allows both parties equal access to correspond with the arbitrator
 - remains detached but not unfriendly
 - avoids conduct which may reflect bias or coercion
 - avoids personal cross examination and interrogation of witnesses
 - controls emotion
 - never discusses anything related to the case with any party to the exclusion of all the other parties
 - demonstrates an understanding of the rules of natural justice



- c. Ability to maintain legitimacy
 - personal appearance commands respect
 - is punctual
 - displays a confident manner
 - maintains consistent behaviour
 - identifies limits of personal expertise
 - is discreet and diligent
 - keeps all information confidential
 - acts with self confidence and authority
 - commands respect for the office of arbitrator
- d. Ability to listen actively
 - remains visibly alert at all times (utilizes collateral body language to confirm alertness)
 - intervenes selectively to obtain clarification or maintain order
 - does not interrupt except in the most serious circumstances
- e. Ability to speak effectively
 - uses clear diction and collateral body language
 - asks succinct questions when necessary
 - is direct but not intimidating
 - adopts a moderate volume and pace of speaking
 - uses an unemotional and detached tone of voice
 - uses simple language
 - utilizes terminology that is common to the parties' industry
- f. Ability to maintain a conducive atmosphere during the hearing
 - uses civil language
 - permits humor which is beneficial to the process
 - displays understanding of the evidence and submissions
 - puts parties and witnesses at ease
 - avoids distracting body movements or facial expressions
 - discourages an excessively adversarial climate

EVIDENCE MANAGEMENT SKILLS

General Definition:

The ability to deal with the quantity and quality of evidence in a manner which facilitates the identification and analysis of relevant issues.

- a. Ability to organize and analyze data
 - develops an overall perspective of the case
 - understands the sequence and nature of events contributing to the dispute
 - organizes data into logical principles or legal concepts
 - determines the most effective and efficient way to utilize the evidence to complement the process



- b. Ability to identify documents required to assist the arbitration
 - identifies the factual evidence from the data provided by the parties
 - identifies those documents necessary to the arbitration and makes appropriate request for them to be made available
 - notes the absence of any relevant evidence
 - distinguishes between material and non material facts
- c. Ability to differentiate between different types of evidence
 - understands the difference between direct and cross examination of a witness
 - notes any absence of oral evidence where it may be desirable
 - notes any problems with completeness or accuracy of documentary evidence
 - understands the definition of hearsay evidence and weights it accordingly
 - separates legal and emotional issues
 - identifies circumstantial evidence and weights it accordingly
- d. Ability to differentiate the value and reliability of evidence
 - observes and seeks to accurately interpret non verbal demeanor of witnesses
 - notes ambiguities and inconsistencies in the evidence
 - identifies corroborative evidence
 - attempts to test the consistency of own observations against the facts submitted
 - does not utilize information or technical knowledge, gained outside of the hearing, to assess balance of probabilities without consent of all parties
- e. Ability to make inferences
 - determines inferences that can be properly drawn from data presented or omitted
- f. Ability to deal with expert evidence
 - identifies need of expert evidence
 - understands the significance of expert evidence

DECISION MAKING SKILLS

General Definition:

The ability to reach a principled decision determining the rights and liabilities of the parties and expound that decision in the form of a reasoned award.

- a. Ability to recognize the factual issues
 - separates the parties claims and issues
 - identifies the real issues
 - reconstructs the issues in terms that will assist understanding
 - evaluates the strengths and weaknesses of arguments and counter arguments
 - evaluate submissions and the relevant evidence
 - isolates those issues that are of no or little relevance
- b. Ability to define legal issues and apply them to the facts
 - determines the relevant principles of law



- applies the relevant law to the specific facts of the case
 - distinguishes between the different sources of law (i.e. the contract between the parties, the law of tort, land law, etc)
 - uses deduction to determine the application of relevant principles of law
- c. Ability to come to a decision
- reaches an independent and impartial decision only after a careful study and consideration of all the relevant evidence
 - makes a decision that can be enforced by a court if necessary
- d. Ability to articulate the decision
- succinctly articulates, the reasons and terms of the award as well as the evidence considered and the weight given to the evidence
 - uses terminology appropriate to the audience at which it is directed
 - reserves jurisdiction, if necessary, in order to address remaining issues

AWARD WRITING SKILLS

General Definition

The ability to effectively convey a decision in writing.

- a. Ability to address formalities
- cites parties names, dates, etc.
 - understands the requirement of formalities
- b. Ability to summarize facts and issues
- briefly describes the nature of the dispute
 - summarizes evidence and submissions
 - identifies undisputed facts and agreed upon law
 - distinguishes parties claims and issues
 - restates issues in terms which assist understanding
 - separates relevant and irrelevant facts
- c. Ability to reference the law relied on
- provides a clear reference to any law relied upon
- d. Ability to substantiate the decision
- corroborates findings with relevant evidence
 - explains chosen weighting of evidence
 - discloses inconsistencies in evidence
- e. Ability to convey decision clearly to the parties
- writes clearly and concisely
 - presents the decision components in a logical manner
 - uses appropriate language for the audience
 - presents decisions in an impartial manner
 - succinctly articulates the reasons for reaching the decision
 - addresses each identified issue and sets out the remedy (if any)

