

Principles, Criteria, Protocol and Competencies

required for the designation

CHARTERED MED-ARBITRATOR C.Med-Arb

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PART I

INTRODUCTION and STATEMENT OF PURPOSE

The Chartered Med-Arb designation recognizes a superior level of generalist competence, the goal being to assist those requiring mediation and arbitration services in finding a highly experienced and skilled practitioner. The C.Med-Arb designation is awarded to Chartered Mediators and Chartered Arbitrators who meet the extra qualifications set out¹

To ensure that a high and consistent set of standards is met by those entitled to use this designation, ADR Institute of Canada (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.

ADRIC is national in scope and is represented throughout Canada by seven Regional Affiliates which process applications from their membership for ADRIC designations in their respective regions. They then make recommendations to ADRIC for the award of successful applicants.

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

Statement of Purpose: ADRIC Chartered Med-Arb Designation

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Med-Arb is a distinct, innovative standalone process that is not as well known or understood by consumers of ADR services compared to mediation and arbitration.

Med-Arb is not merely the merging of separate mediation and arbitration processes, but a unique process designed to meet the needs of particular disputants.

Med-Arb involves nuances and complexities that can be fine-tuned to the needs of the parties as a customized dispute resolution process, which requires a high level of practitioner competence to do successfully.

As part of ADRIC's roles of protecting the public and promoting best practices in ADR, the need for a designation to certify competence, experience and skills specifically in Med-Arb has been determined to be extremely important, especially as the use of Med-Arb is expanding in many areas of substantive disputes.

The ADRIC Med-Arb designation is unique in the ADR world and provides clearly defined criteria for those practitioners who wish to obtain it. This in turn provides users of ADR services with confidence that they can rely on the specific and specialized knowledge and experience of individuals with the designation.

By designing and implementing this designation in consultation with experienced and expert ADR practitioners and by imposing strict requirements for members who wish to apply for the designation, ADRIC is confirming its commitment to the public and to its members as the premier ADR organization and thought leader in Canada.

¹ Specific additional skills and competencies may be necessary and desirable for arbitrators practicing in specific areas such as marine and labour arbitrations

PART II

DEFINITIONS

- (a) "ADRIC" means the ADR Institute of Canada Inc.;
- (b) "ADRIC Accredited Course(s)" means a course or courses accredited in accordance with this Program;
- (c) "Affiliate" means any Regional Affiliate of ADRIC;
- (d) "Approved-" or "Accredited Course Provider" means a course provider whose course has been reviewed and approved as an ADRIC Accredited Course;
- (e) "Regional Assessment Committee" (RAC) means an Affiliate's committee that assesses designation applicants and makes recommendations to ADRIC whether the applicant should be awarded the designation
- (f) "Designations Committee" means the body appointed by ADRIC:
 - To consider, develop, review and revise as necessary, designation standards/criteria, policies, protocol, and CEE points program aspects
 - Hear appeals from unsuccessful applicants, if they wish to appeal (see "Right to Appeal")
 - Audit a percentage of applications from each affiliate at random to ensure consistency and adherence to standards.

PART III

GENERAL PRINCIPLES

A member of ADRIC who meets the standards required of a Chartered Med-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 of the educational and practical experience requirements;
2. Review and approval of the written application by the RAC;
3. Review and approval of the application by ADRIC.
4. Where a RAC does not recommend an applicant, the applicant may appeal the decision to the Designations Committee.
5. On receipt of the RAC's recommendation, and on confirmation that the application and all requirements are complete, ADRIC will inform the applicant whether the C.Med-Arb designation will be awarded.

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

PART IV

CRITERIA

An applicant must meet the following criteria and conditions:

A. EDUCATION

- 1 Completion of the education requirements of the C.Med and C.Arb Designations and currently hold both designations.
- 2 Completion of 16 hours of the ADRIAC Med-Arb training course² (or an ADRIAC Accredited Med-Arb Course). **(Must provide completion certificate of the course.)**

B. PRACTICAL EXPERIENCE

Completion of the practical experience requirement of the C.Med and C.Arb Designations which includes:

1. having conducted at least 15 mediations³ as the sole mediator or the mediation chairperson⁴ where all 15 of the mediations have been fee paid⁵, successfully completed C.Med Assessment, and
2. having chaired⁶ at least 10 arbitrations, at least 10 fee-paid⁷ or demonstrably complex and involved if unpaid, and
3. having provided at least 2 Arbitration awards, written by the applicant for review by the RAC (redacted to remove personal or confidential information)
4. having conducted at least 1 Med-Arbitration

C. PLEDGE

The applicant must pledge to comply with ADRIAC's Code of Ethics and Code of Conduct.

D. MEMBERSHIP

An applicant and a Chartered Med-Arbitrator must be a member in good standing with ADRIAC which includes being and remaining a member in good standing with a regional affiliate. The Med-Arb designation holder must maintain their C.Med and C.Arb designations. **It is important to note that all designations lapse upon termination of membership in ADRIAC or a regional affiliate, or upon failure to pay annual designation fees or upon failure to submit CEE report and fees.**

² The ADRIAC-approved Med-Arb training course (yet to be designed and approved by ADRIAC) would cover Med-Arb agreements, other forms of combining mediation and arbitration, one-person and 2-person models (advantages and disadvantages), preserving Natural Justice, transitioning between mediation and arbitration, ethical issues in Med-Arb, Med-Arb awards, Med-Arb simulation, video-conference Med-Arb, post Med-Arb corrections, reviews and approvals

³ A "mediation" is a discreet event contracted for by the parties. A situation where a person helps two subordinates resolve a conflict is not considered a mediation. However, if the full or part time duties of an applicant specifically include the conducting of structured mediations, these would count toward the C.Med. Where a person is conducting mediations with staff members who do not report to that person, these may count as mediations provided the person was specifically identified as an impartial mediator, and the mediation was structured and conducted as a mediation, not as an informal meeting to resolve a problem.

⁴ The applicant must clearly have been the lead mediator, not simply a co-mediator. While there is no hard and fast determination, criteria for being lead mediator in a co-mediation may include some of the following indicators: The applicant chaired the mediation; The applicant took a primary role in running the session; The applicant organized the process during the mediation by actively guiding the discussions, delegating time to the other mediator and/or the parties, and having primary voice during the session; It will be the responsibility of the applicant to describe and establish that they were the lead mediator in a co-mediation for it to count toward the required number of mediations.

⁵ A "paid mediation" is a mediation where the mediator receives a salary, payment or reasonable honorarium specifically for mediation services. The amount received by the mediator is not subject to any specific minimum amount, provided it is a legitimate and reasonable amount in the context within which the mediation took place. In exceptional circumstances described in writing, where an un-paid mediation is demonstrably complex and involved, the RCMAC may, at its discretion, accept an unpaid mediation toward the total of 15.

⁶ The applicant must clearly have been the lead arbitrator or chairperson, not simply a co-arbitrator. Evidence of same may be required.

⁷ 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.

E. FEES

An applicant must pay an annual fee to ADRIC to maintain the designation. C.Med-Arb renewal fees are set by ADRIC and are payable directly to ADRIC. These fees are separate from any application fee and are payable immediately on award of the designation (prorated) and annually thereafter. (Annual membership fees payable to a regional affiliate are also separate.)

F. CONTINUING EDUCATION AND ENGAGEMENT (CEE)

In addition to collecting the appropriate CEE points for their C.Med and C.Arb designations, every three years, Chartered Med-Arbitrators are required to take part in a refresher Med-Arb course or training (which may be online training and scenarios practice), and conduct at least one Med-Arb, as per the Continuing Education and Engagement Program and submit a report along with required certificates.

G. INSURANCE

Chartered Med-Arbitrators are required to maintain Errors and Omissions Insurance with a limit of at least \$1 million aggregate and sign and submit the Declaration of Insurance form, indicating such or check the appropriate box for an exemption of the requirement.

PART V

PROTOCOL

1. Regional Affiliates invite/accept applications from members holding both a Chartered Mediator and Chartered Arbitrator designation who believe they possess the standards required of a Chartered Med-Arbitrator.
2. The Regional Affiliates will establish their own process to evaluate applicants in accordance with the requirements established by ADRIC.

A. APPLICATION FORM

All applicants will use the standard application and evaluations forms prescribed by ADRIC.

B. APPLICATION APPROVAL AND APPEAL PROCESS

REVIEW PROCESS

- 1 The RAC will forward all applications⁸ to ADRIC. Where the RAC approves an applicant, by unanimous or majority decision, the RAC will forward the application to the Manager of Designations at ADRIC with its recommendation form signed by the committee.
 - a. ADRIC will review the application and forms to ensure they are complete and meet the requirements established by ADRIC;

⁸ whether or not successful

- b. Where ADRIC considers an application to be complete and the recommendation in order, the Manager of Designations will inform the applicant and the RAC that the application has been approved. The RAC will notify the regional affiliate of the approval. ADRIC will forward the C.Med-Arb certificate to the applicant on receipt of annual fee.
- c. Where ADRIC finds the application incomplete, the Manager of Designations will return the application to the RAC to be completed.
- d. Where the RAC does not recommend an applicant, it will so notify the applicant, copying ADRIC, providing reasons and recommendations, along with information about appeal processes.
- e. The decision of the RAC is final, but for the right of appeal to the National Designations Committee by a failed applicant based on issues related to application of policy or procedure.

RIGHT TO APPEAL

- a. The applicant may appeal to the National Designations Committee (NDC) a decision of the RAC to deny the C.Med-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 RAC, setting out the grounds for the appeal, failing which the RAC decision stands.
- b. The NDC 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 NDC may make a recommendation to the ADRIC Board of Directors.

C. AUDIT AND QUALITY CONTROL

- 1. A percentage of applications will be sent to the NDC for review.
- 2. The NDC will review applications sent to it for review to ensure all documentation is in order and the prescribed process has been followed. The concerns of the NDC will be directed to the Manager of Designations, the Executive Director, and the appropriate Regional Assessment Committee to ensure future applications are appropriately processed and reviewed. The decision of the RAC on a particular application will remain final notwithstanding the comments of the NDC.

D. VOTING

Any member of a RAC 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 NDC or the ADRIC Board of Directors.

PART VI

COMPETENCIES GUIDELINES

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

A. COMPETENCIES IN MEDIATION

This is not an exhaustive list of competencies and is intended as a guideline of generally recognized desirable qualities for competent mediators.

- **Facilitation skills** to conduct the mediation session using fair, flexible and effective procedures, skills and techniques
- **Relationship skills** to instill and maintain a positive relationship and good communication to bring the engagement to completion
- **Procedural skills** to recognize the nature of the dispute and establish clear understandings concerning the process with and between the parties
- **Administrative skills** to organize and conduct the practice of mediation in an efficient and effective manner to bring closure and achieve settlement

B. 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 ADRI's Code of Ethics and other applicable governing the conduct of a Med-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.