

Choosing an Arbitrator

George A. Derwin, ADR Section, Chair

Tuesday, September 16, 2008

Arbitration is a private procedure, where an issue is submitted, by agreement, to one or more arbitrators, to make a decision. Almost any type of dispute can be arbitrated. Arbitration has a number of advantages: flexible process, cost effective, private, final and fast.

The Arbitration Act does not provide much guidance regarding the qualifications or skills needed of an effective arbitrator, other than to say that an arbitrator must be independent and impartial. *The Arbitration Act* also obligates an arbitrator to disclose any circumstances which may give rise to an apprehension of bias. Beyond independence, impartiality and bias, you must consider other factors before you settle upon an arbitrator. Other factors to consider when choosing an arbitrator include:

1. Competence to determine the issues in dispute;
2. Adequate knowledge of the principles of arbitration;
3. Experience or knowledge of the arbitration process;
4. Ability to understand, analyze and apply the facts to the law;
5. Good communication and writing skills;
6. Ability to manage people and process;
7. If you have a complex, esoteric dispute, you may wish to consider an arbitrator with a specific educational or work background;
8. If you anticipate that the arbitration process will be fraught with numerous legal issues, consider a legally trained arbitrator.

In locating an appropriate arbitrator, ask for recommendations from colleagues or counsel who have had experience with the arbitration process. Lawyers who are regularly involved in the arbitration process keep lists of arbitrators that meet certain criteria. When assembling names, ensure that you get information about the background of the proposed arbitrators to ensure that they meet the criteria of your particular matter. An excellent resource is the Arbitration and Mediation Institute of Canada, which maintains a list of Chartered Arbitrators, including a brief biography of each arbitrator and the types of cases they hear.

