



POINT COUNTER POINT  
RESOLUTION CONSULTANTS

## How Long will this Take?

The two most common questions we are asked related to mediation and arbitration are:

1. What is the difference between mediation and arbitration; and
2. How long will this take?

The answer to the first question is fairly straight forward. The key difference between mediation and arbitration is that with mediation, the parties to the dispute make the decisions and ultimately resolve the dispute. The mediator is a facilitator who is there to help the parties come to an agreement. The final decision rests with the parties, not with the mediator. Although a mediator must be sensitive to the perception of bias, he/she can meet or caucus privately with an individual party to the mediation without compromising the outcome.

With arbitration, the arbitrator is a third-party neutral who is there to decide the matter for the parties. That decision is based on the evidence provided through the arbitration process including documentary and testimony evidence, the contractual terms the parties were bound by and the relevant law including *The Arbitration Act, 1992* for Saskatchewan and civil and contract law. An arbitrator must never allow the perception of bias. Any information that is imparted to the arbitrator by one party must be shared with the other. There can be no private meetings with one of the parties as it would compromise the impartiality or the perceived impartiality of the arbitrator.

The answer to the second question is much more difficult to answer. There are those who might think mediation is the quicker approach. After all, it's just a meeting right?

Possibly. There are many factors that can feed into how long mediation might take. For instance, the matters in dispute can be surrounded by emotional baggage. There might be anger, hurt, betrayal, fear and a slew of other emotions that can potentially hamper the process. To have an agreement, there must be understanding. The mediator has to help the parties navigate these emotions to reach that understanding. The mediator needs to break through any resistance the parties might have to revealing the core issues that are preventing the parties from reaching an agreement.

The number of issues in dispute is another factor. There can be multiple issues that can then be broken further into sub-issues. Family law is a case in point where the matters in dispute can include family property, child custody, child access, child support, spousal support, etc. In the case of a family property dispute, there can be financial

properties, real properties, investments, bank accounts, household goods, “toys” such as skidoos, boats, and the list goes on. It may not be possible to address all of these items in a single meeting.

Arbitration is a process. It requires careful planning, scheduling and execution. The arbitrator must put on a “project management” hat at the outset to develop a plan that includes identifying what issues are in dispute, how the parties will communicate with the arbitrator, how evidence will be introduced, how issues will be resolved in the arbitration, how the hearing will be conducted, who are the parties to the arbitration, will witnesses be presented at the hearing, etc. These items are discussed in a preliminary meeting with the parties and the parties are expected to honour those terms.

A schedule of events must be developed that includes deadlines for submissions, dates for pre-hearing examinations for discovery (if any), and of course the hearing date(s). Of course, as with any engagement, schedules can be very hard to nail down. If there are multiple witnesses to matters in dispute, their availability as well as the availability of the parties to the dispute can be difficult to coordinate.

Depending on the complexity of the dispute, a hearing can require more than one sitting. Once the hearing is completed and all evidence has been produced by both parties, the arbitrator must then sift through the accepted evidence in order to render a decision. The decision-writing process itself can take quite some time. The arbitrator must ensure that all relevant evidence has been considered.

Given all of this, there is no easy answer to “how long will this take?” Each mediation, each arbitration is unique with unique issues and unique parameters that can affect the process.

At Point Counter Point Resolution Consultants, we have the knowledge and expertise to help you navigate this process. For further information, contact:

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