



**Background paper for the
"Seminar on Strengthening the Enforcement and
Administration of Environmental law in North America."
PANEL 4.- Environmental enforcement at a local level, alternate
mechanisms to solve environmental disputes and submissions on
enforcement matters. (b) Alternative disputes resolution,
arbitration and other mechanisms for conciliation.
Author: Irene Artru, Commission for Environmental
Cooperation.**

ADR play a secondary but a growing role in the administration of Canadian Environmental Law. Today, The *Canadian Environmental Assessment Act* (hereinafter CEAA), as well as a number of environmental provincial Acts, particularly but not exclusively in the matter of environmental assessment, provide for various forms of dispute resolution, such as mediation, arbitration, judicial dispute resolution, etc.

The most common process is mediation conducted by administrative environmental tribunals, such as the Alberta Environmental Appeal Board, the Manitoba Clean Environment Commission, the Ontario Environmental Review Tribunal, the Quebec Bureau d'Audiences Publiques sur l'Environnement (BAPE), etc.

Although rules vary from one process to the other, the general sequence is the following : During a pre-hearing session¹, parties voluntarily agree to participate in a mediation process conducted by a member of the correspondent administrative body². The process is provided by the administrative body without fee. It is generally private, in the sense that it is not open to the public for viewing or hearing³. The information brought to these hearing is considered privileged, which means its content cannot be used as evidence in future legal proceedings⁴, or even confidential, which means they will not be communicated by the mediator to non-parties without their consent⁵. If any agreement is reached, the administrative body approves it, and if not, a hearing is conducted by a panel excluding the member who conducted the mediation. In the case of a dispute arising in the course of environmental assessments, the mediation is rather at the initiative of the responsible authority, and the potential resulting agreement is used by the Minister to assist with his decision on the project⁶.

¹ In the case of the CEAA, mediation is rather an option considered from the beginning as a partial or complete alternative to a panel review.

² In the case of the Alberta Environmental Appeal Board, it could be conducted by a mediator appointed by this board. At the federal level, the CEAA allows the Minister of the Environment, by request of the responsible authority, to refer an environmental assessment dispute to a mediator he designates. The Quebec BAPE can at any moment exercise its discretion to terminate the mediation and compel all parties to a public hearing.

³ Except that the Quebec BAPE makes a practice of releasing transcripts of the mediation to the public. In the case of the CEAA, a public information program keep the general public informed of the progress of talks.

⁴ I.e. the CEAA, the Quebec BAPE and the Manitoba Clean Environment Commission process.

⁵ I.e. the Ontario Environmental Review Tribunal and the Alberta Environmental Appeal Board process.

⁶ I.e. the Quebec BAPE and the Ontario Environmental Review Tribunal process.



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Mediation has proved to be an efficient ADR in many environmental cases. From June 1999 to January 2003, on a sample of 150 parties involved in Alberta Environmental Appeal Board-sponsored mediations, 75% of respondents reached agreement in mediation⁷. Mediation may not be suitable or possible in every situation, but when it is, one of its most obvious advantages is the cost and time savings on further litigation for the parties and on adjudication for the administrative body. It is particularly true with respect to environmental assessment hearings, which are often lengthy, but not only: the Alberta Environmental Appeal Board estimates that the use of mediation has assisted in a 20% decrease in overall costs in 1998/1999⁸. Another important benefit is the consensual outcome, which doesn't produce a winner and a loser as judicial hearings do, and eventually makes possible the reestablishment of a normal business or neighborhood relationship between the parties.

⁷ According to a survey of the Consensus Building Institute: <http://cbuilding.org/publication/case/building-mediation-expertise-alberta-environmental-appeals-board>.

⁸ Ron Goltz, *Amicable Dispute Resolution: The Mediation Alternative and the Alberta Environmental Appeal Board*, 2000, <http://cfcj-fcjc.org/clearinghouse/drpapers/environment.htm>.