

Choosing Between Med-Arb and Arb-Med: An Exploratory Study

by

Trevor Jason Sones
B.A., Carleton University, 2002

A Thesis Submitted in Partial Fulfillment of the
Requirements for the Degree of

MASTER OF ARTS

in the Department of Dispute Resolution

© Trevor Jason Sones, 2007
University of Victoria

All rights reserved. This thesis may not be reproduced in whole or in part, by
photocopy or other means, without the permission of the author.

Choosing Between Med-Arb and Arb-Med: An Exploratory Study

By

Trevor Jason Sones
B.A., Carleton University, 2002

Supervisory Committee

Dr. A.R. Elangovan, (Faculty of Business)

Supervisor

Dr. Marie Hoskins (School of Child and Youth Care)

Departmental Member

Dr. Bart Cunningham (School of Public Administration)

Departmental Member

Dr. Maria Carmen Galang (Faculty of Business)

Outside Member

Supervisory Committee

Dr. A.R. Elangovan, (Faculty of Business)

Supervisor

Dr. Marie Hoskins (School of Child and Youth Care)

Departmental Member

Dr. Bart Cunningham (School of Public Administration)

Departmental Member

Dr. Maria Carmen Galang (Faculty of Business)

Outside Member

ABSTRACT

The use of hybrid processes med-arb and arb-med continues to grow in both commercial and labour relations contexts. With this growth, there remains a lack of research looking at why a particular hybrid process is chosen or what variables influence individuals to choose one process over another. This exploratory study uses both an online survey of full-time workforce members and semi-structured interviews of experienced hybrid process practitioners to identify and evaluate the variables that influence conflicting parties to choose either med-arb or arb-med. The research findings suggest that two variables, importance of the relationship between the parties and the perceived strength of legal case, are the two greatest indicators of hybrid process selection. Strong support for med-arb is found when disputants place a high value on the importance of their relationship. Arb-med is preferred when relationship is of low importance and strength of legal case is perceived to be high.

Table of Contents

<u>TITLE PAGE</u>	I
<u>SUPERVISORY COMMITTEE</u>	II
<u>ABSTRACT</u>	III
<u>TABLE OF CONTENTS</u>	IV
<u>LIST OF TABLES</u>	VI
<u>CHAPTER 1 - INTRODUCTION</u>	1
<u>1.2 PURPOSE AND FOCUS OF RESEARCH</u>	4
<u>1.3 CONTRIBUTION TO KNOWLEDGE</u>	4
<u>1.4 BENEFITS OF RESEARCH TO PRACTITIONERS</u>	6
<u>1.5 IMPORTANCE OF THIS RESEARCH</u>	9
<u>CHAPTER 2 - LITERATURE REVIEW</u>	12
<u>2.1 PROCESS DESCRIPTION AND DISCUSSION</u>	12
<u>2.2 EMPIRICAL RESEARCH</u>	16
<u>CHAPTER 3 - THEORY BUILDING</u>	20
<u>3.1 THEORY BUILDING AND LITERATURE REVIEW</u>	20
<u>3.2 THEORY BUILDING AND PRELIMINARY RESEARCH</u>	23
<u>3.3 RESEARCH HYPOTHESES</u>	25
<u>CHAPTER 4 - RESEARCH METHODOLOGY</u>	27
<u>4.1 RESEARCH DESIGN</u>	27
<u>4.2 SAMPLE</u>	28
<u>4.3 PROCEDURES</u>	30
<u>4.4 MEASURES</u>	33
<i>4.4.1 Independent Variable</i>	34
<i>4.4.2 Dependent Variable</i>	35
<u>4.5 METHOD OF ANALYSIS</u>	36
<u>CHAPTER 5 - RESEARCH RESULTS</u>	37
<u>5.1 SCENARIO-BASED EXPERIMENTAL DESIGN</u>	37
<u>5.1.1 DESCRIPTIVE STATISTICS (QUANTITATIVE)</u>	37
<u>5.2 MANIPULATION CHECKS</u>	38
<u>5.3 RESULTS OF VARIABLE MANIPULATIONS</u>	44
<u>5.4 IMPACT OF DEMOGRAPHIC VARIABLES ON PROCESS CHOICE</u>	48
<u>5.5 SUMMARY OF KEY FINDINGS</u>	51
<u>5.6 OPEN-ENDED SURVEY RESPONSES (QUANTITATIVE METHODOLOGY)</u>	52
<u>5.7 SUMMARY OF KEY FINDINGS</u>	59
<u>CHAPTER 6 - QUALITATIVE RESEARCH RESULTS</u>	59
<u>6.1. DESCRIPTIVE STATISTICS</u>	59
<u>6.2 THEMES UNDERLYING HYBRID PROCESS CHOICE</u>	61
<u>6.3 EFFECTS OF IMPORTANCE OF RELATIONSHIP, STRENGTH OF CASE ON PROCESS SELECTION</u>	64
<u>6.4 RELATIONSHIP RESULTS FOR THE MED-ARB RESPONDENTS</u>	66
<u>6.5 RELATIONSHIP RESULTS FOR THE ARB- MED RESPONDENTS</u>	67
<u>6.6 STRENGTH OF CASE RESULTS FOR THE MED-ARB RESPONDENTS</u>	69
<u>6.7 STRENGTH OF CASE RESULTS FOR THE ARB-MED RESPONDENTS</u>	70
<u>6.8 USAGE RATE DIFFERENCES BETWEEN HYBRID PROCESSES</u>	71
<u>CHAPTER 7 - DISCUSSION AND CONCLUSION</u>	73

<u>REFERENCES</u>	90
<u>APPENDIX A</u>	95
<u>APPENDIX B</u>	96
<u>APPENDIX C</u>	97
<u>APPENDIX D</u>	101
<u>APPENDIX E</u>	102
<u>APPENDIX F</u>	103
<u>APPENDIX G</u>	104
<u>APPENDIX H</u>	106
<u>APPENDIX I</u>	108

List of Tables

Table 1 Expected Process Selections for Variable Manipulations.....	26
Table 2 Crosstabulation Business Cases listed from 1-4 * Which process option would you choose in this scenario?.....	38
Table 3 Mean Distributions of Variable Ratings	39
Table 4(a) Mean Distribution. On a scale of 1-7 describe your strength of case?.....	40
Table 4(b) Independent Samples Test. On a scale of 1-7 describe your strength of case?.....	40
Table 5(a) Group Statistics. On a scale of 1-7 describe the importance of the relationship?.....	41
Table 5(b) Independent Samples Test. On a scale of 1-7 describe the importance of the relationship?.....	41
Table 6 Multiple Comparisons Bonferroni Dependent Variable: On a scale of 1-7 describe your strength of case?.....	43
Table 7 Bonferroni Dependent Variable: On a scale of 1-7 describe the importance of the relationship?.....	44
Table 8 Crosstabulation * Singled out only Business Case One Respondents for Analysis	45
Table 9 Crosstabulation * Singled out only Business Case Two Respondents for Analysis	46
Table 10 Crosstabulation * Singled out only Business Case Three Respondents for Analysis.....	46
Table 11 Crosstabulation * Singled out only Business Case Four Respondents for Analysis.....	47
Table 12 Crosstabulation * Which process option would you choose in this scenario?.....	48
Table 13 Crosstabulation * Are you male or female? * Which process option would you choose in this scenario?	49

Table 14 Crosstabulation *Are you employed by the organization or the organization owner? * Which process option would you choose in this scenario? * Are you male or female? 50

Table 15 Chi-Square Tests *Which process option would you choose in this scenario? * Created to single out only those who have Organizations from 1-5 people or from 200 and above * Are you male or female?..... 51

Chapter 1 - Introduction

The world of business includes a wide variety of different individual personalities and interests working both together and in competition to continually increase and maintain an organization's share in the marketplace. Often this combination of factors is a potential recipe for the creation of conflict. I had a hands-on experience with such a situation as the co-founder of a start-up rope access company a number of years ago. The plan was to develop a company with specialized industrial climbing experts that would be available for hire to complete a variety of tasks in very high risk, difficult to access places. The company began with three people and each of us had a different skill set, expertise and experience to bring to the new organization. The company started with a clear division of roles and responsibilities, however, as the business progressed so did accompanying complications, both interpersonal and legal. While working together to solve these challenges, it was amazing to witness how each individual had vastly different thoughts and perspectives on how the problem should be solved and what issues around the conflict they thought were imperative. At times, one could question if we were all discussing the same issue. It was during this experience that I began to wonder if there was an ideal process that could help individuals to resolve multifaceted disagreements.

Overall, this experience exemplified the complexities that we all represent as unique individuals with our own thoughts, perspectives and interpretations. As unique as we all may be, in order to run and maintain a successful business organization, the people within it need to do their best to work together and minimize conflict. Of course, conflict is not always negative as there are examples where conflict can be a good thing. For

example, it sometimes takes open conflict to force individuals to make a change for the better, rather than continue to ignore a problem situation. Conflict can also create better understanding between individuals and can result in improved relationship outcomes, among other things. However, as I have experienced and as many companies have exemplified, conflict can also reduce an organization's efficiency by diverting the focus of the business entity away from pursuing its goal of greatest possible success in the marketplace. Furthermore, conflict can consume an organization's resources, sometimes to a measure that can affect the overall bottom line. In extreme circumstances conflict can even destroy an organization. It is largely conflict's capacity to negatively affect an organization and its business strategy that has begun to generate ever increasing awareness and concern in the corporate world, in addition to creating the primary interest for this research.

In the past few decades, the corporate world has begun to look at the most successful ways to resolve conflict and there has been a movement towards the use of alternative dispute resolution (ADR) processes (Goss 1995). However, what the business world has also discovered is that there is a wide range of the kinds of conflict that occur, both within an organization and between organizations, both nationally and internationally. Furthermore, many conflict situations have a complex web of factors and issues to consider, sometimes making it difficult to determine how best to resolve the problem. It is the wide range of conflicts and their multifaceted nature that has encouraged commercial organizations, among others, to search for ideal resolution mechanisms. Litigation and use of the courts have been historic methods for resolving conflict; however, in the past few decades mediation and arbitration have become widely

accepted dispute resolution alternatives (Goss 1995). Both these options have significant benefits, and sometimes associated shortcomings, when compared against the needs and expectations of the corporate world.

Business organizations require successful interpersonal relationships to survive; however they also have an interest in getting the conflict resolved as soon as possible, reflected in the time honoured expression “time is money”. This has led organizations to consider the use of conflict resolution processes that guarantee a final outcome in a finite time period and the capacity to provide the conflicting parties with autonomy and the greatest chance at improvement of the interpersonal relationship. Attempts to satisfy these objectives lead to the creation and use of hybrid dispute resolution mechanisms such as med-arb and arb-med. These two mechanisms combine mediation and arbitration in an attempt to draw the greatest benefit from both individual processes.

The business world has only begun to use and fully comprehend the advantages of hybrid dispute resolution processes such as med-arb and arb-med. The hybrid options exemplify promise when challenged by the complexities of conflicts in the corporate world. Although it is the commercial industry that is one of the strongest users of the two hybrid-processes (Brewer and Mills 1999; Zack 2004), many companies are not yet fully aware of these processes or the advantages they provide. In fact very little research has been done on these processes, thus, there is a lack of empirical knowledge to inform the business community of the potential these processes have. This research study seeks to discover more about these hybrid processes for the benefit of the business world. Specifically, this research project looks at what conditions would lead someone to choose one hybrid process over the other. The findings of this research will have a number of

benefits towards improving our understanding of hybrids in addition to facilitating an organization's ability to successfully choose a dispute resolution process that is appropriate in a given conflict situation. Research in this area will increase awareness, understanding and knowledge of when to use these processes and what the perceived or expected benefits may be.

1.2 Purpose and Focus of Research

The purpose of this research is to identify the variables that influence individuals in conflict to choose the med-arb or arb-med hybrid dispute resolution process. To further narrow the study, this research has been limited to focusing on med-arb and arb-med processes where the third party facilitator is the same individual for each of the process stages. The research uses case examples centered within a business context. However, even though the conflict is centered on a commercial enterprise, many of the factors causing, contributing to, or perpetuating the conflict are prevalent throughout a variety of different conflict circumstances such as: interpersonal relationship factors, difference in perceptions, communication challenges etc. For these reasons, the research endeavor is considered to be applicable to a larger population and a variety of different conflicts.

1.3 Contribution to Knowledge

The unique capacity of the med-arb and arb-med processes is that each option allows the conflicting parties to a) gain the opportunity to determine the outcome of the conflict themselves and b) guarantee that a binding decision will be provided, finalizing

the dispute, if required. This offers real advantages to clients using these processes because they can reduce costs, provide certainty of resolution within a reasonable time, and enhance client control over the dispute resolution process (Brewer and Mills 1999). For these reasons, among others, these hybrid processes have proven to be effective and useful in many different conflict situations, particularly in a commercial context. The benefits of these hybrid processes make them particularly applicable to a number of commercial disputes that are both international and intra-national in nature. As a result, the med-arb and arb-med processes are gaining increased levels of use and awareness in the global marketplace. With the increasing use of these processes there has been a relative absence of associated process-specific research. The intention of this work is to add empirical research and associated knowledge to our understanding of the med-arb and arb-med processes.

In addition to a shortage of research on hybrid processes, there is a further lack of research that identifies how hybrid processes specifically benefit commercial organizations. Therefore, in an attempt to make this research as useful to industry as possible, this research focuses on participants who contribute a business perspective to their responses. Thus, this research aims at gathering the perspectives of active workforce members, to determine what variables influence individuals to choose a particular hybrid process in commercial settings. The expectation is that the research findings will help business owners and third party practitioners to understand what motivates people in organizational/business conflicts to choose one hybrid process over the other. In addition, this research attempts to help those involved in a hybrid process to

better understand why they and the other disputant might opt for a particular hybrid resolution process.

The final knowledge contribution of this research pertains to the overall field of conflict resolution. Alternative dispute resolution (ADR) represents a number of different processes, strategies and approaches that all attempt to find a more effective and beneficial approach to resolving conflict. Hybrid processes represent a couple of the more recent process developments in the ADR field. These processes have unknown potential and neither their strengths nor weaknesses have been fully evaluated and realized. One of the primary benefits of this research study is that it will identify a new set of knowledge and understanding in the field of ADR. This will provide an enrichment of knowledge of both theory and practice relating to hybrid dispute resolution processes. This research will continue to push the marker of our understanding just a little further out expanding the field and creating new avenues of future curiosity, concern and exploration.

1.4 Benefits of Research to Practitioners

Added knowledge on the understanding of hybrid processes could provide benefits to: the third party; the individuals in conflict; the lawyers assisting their clients to choose a process; the business owners trying to determine the correct process for conflicts within their organization and the greater business community interested in this growing trend. For example, the research could demonstrate to disputants that a majority of people would make the same process choice under similar circumstances. Thus, disputants could use this research to look closely at their particular conflict situation and

choose a process they think fits best for them with the understanding that they are not alone in their choice. Furthermore, lawyers could use the results of this research to encourage their clients to choose a process that is likely to best meet expectations. If the research accurately identifies which combinations of particular variables will influence process choice, then the research results could be used by lawyers to help guide their clients towards a process that is most fitting based on these preferences. This means that if a party explains that they value the long term relationship between themselves and the disputant, then a lawyer might help this client meet these concerns by assisting them to choose a process that may better fit with those relationship concerns. In some of the more complex commercial conflicts, the disputing parties may not be the individuals with the authority to choose the conflict resolution process. In these circumstances the conflict resolution process may be selected by a supervisor, manager or company executive. The research findings could assist managers, supervisors and company executives in choosing a process for the conflicting employees under their supervision.

The research results could also allow individual parties to better understand the variables that may be most important to them based on the process they prefer to use. For example, if an individual was to notice that they held a strong preference for a certain hybrid process, the results of this research might provide some explanation as to why. This might lead one to realize that the relationship is not very important to them or alternatively that it is. Similarly, if the opposing party displays a strong preference for a particular hybrid process this research might provide insight into why they are keen to use that process. This may provide insight on how the opposing party frames the conflict. Thus, this research has the potential to provide both disputants with valuable

insight on the nature of the conflict and what issues might be valued most by the individual parties.

In addition to benefits for the disputing parties, this research also has the potential to assist third parties who are facilitating a hybrid process. For example, if importance of the relationship does influence process choices, then when both parties strongly prefer the med-arb process, this may indicate to the mediator/arbitrator that the long-term relationship may be of critical importance to the parties. Providing the third party with some insight on what the potentially prevailing themes of the conflict might be, could allow them to better facilitate the parties during the mediation stage, and/or determine a more mutually agreeable resolution during the arbitration stage. This insight has the potential to assist the third party to better fulfill their role in addition to providing resolution benefits for the disputants.

Understanding what process parties would prefer to use in a given conflict situation can allow organizations to expend time and resources into the particular process disputants want to use. If the parties are engaged in a process of preference then this could improve their behaviour within the process stages leading to increased concession making and more mutually beneficial outcomes in shorter time frames. This can improve organization efficiency and can reduce the cost of conflict. Resolutions created through preferred processes could also be perceived as being more fair, thus increasing the propensity of parties to comply with the terms of the resolution (Ross and Conlon 2000).

Furthermore, adding to knowledge of med-arb and arb-med processes in general provides greater awareness in the business community of processes that could likely become resolution tools of increased popularity and use in the future. In the long term,

this research gives companies increased knowledge of a potential business trend allowing them to consider the impacts this may have on their specific approach to conflict resolution. Therefore, this research has the potential to inform a number of different decision makers involved in minimizing the negative impacts of an organizational conflict. A greater understanding of hybrid processes can provide direct benefits for commercial organizations, individual disputants and the third party practitioners, thus exemplifying the value and need for research in this area.

1.5 Importance of this Research

As the corporate world is beginning to realize the extensive costs of litigation, it is at the same time beginning to search for ADR procedures that will satisfy its concerns (Carver and Vondra 1994). For example, a 1997 survey of the ADR practices of Fortune 1,000 corporations showed that approximately 25% of the companies had some experience with med-arb (Lipsky and Seeber 1998). Lipsky and Seeber (1998) also found that med-arb was the most commonly used dispute resolution method, after straight mediation and arbitration, in seven different industry sectors (12). In addition to these statistics, numerous high profile corporate cases involving corporations such as IBM, Fujitsu and the Federal Deposit Insurance Corporation have successfully used med-arb as a dispute resolution tool, thus showing its effectiveness and applicability to the business world (McLaren and Sanderson 1994). As noted by Adams (2003), the use of med-arb ended Canada's national railroad strike in 1995, which involved a number of trade unions and three railroad companies. Through the use of this process, the dispute was resolved in ninety days whereas the use of arbitration for other similar disputes had taken nearly

two years to complete (Adams 2003). Examples such as this demonstrate the significant benefits of hybrid dispute resolution processes for certain types of commercial disputes.

Further support for the importance of this research is provided by Telford (2000) when she states, “med-arb will continue to be a popular and effective method for the settlement of labour disputes” (iv). Med-arb, for example, has not only gained legislative sanction in North America but to some degree is gaining legislative recognition in countries such as Australia, Singapore, Sweden, England, Brazil, China and the World Intellectual Property Organization (Christudason and Ping 2003; Elliott 1996; Onyema 2001; Schneider 2004; Thompson 2006). Even the arb-med process has begun to gain increased use and recognition. As stated by Zack (2004), “[a]rb-med has appealing value in the airline industry because it will offer more efficient resolution of airline labor contract disputes” (37). The arb-med process is being used by a number of nationalities in a variety of different industry sectors such as union management relations in South African steel and auto industries (Albertyn 2006; Zack 2004). To some extent the hybrid process has been used in Japan and the U.S (Oghigian 2006). As recognition and acceptance of these processes grows internationally, there is an expanding need for increased research and knowledge.

In addition to being used in a variety of different nations, the hybrid processes med-arb and arb-med demonstrate the capacity to be useful tools for resolving disputes that cross international borders. For commercial disputes between parties that are governed by laws of different nations, one issue of concern can be a respective lack of faith in the national laws governing the actions of the opposing party. In light of these concerns, Peter James (1997) discusses the value of international arbitration noting that it

is “suited to the needs of international commerce and avoids the pitfalls of litigation in national courts” (87). Similarly, mediation also offers a process that has the capacity to effectively deal with resolving disputes where each party represents a different nationality and associated legal system (Goldberg 1973). In certain types of international commercial disputes, a hybrid process can be of significant benefit. The hybrid option can provide parties with the opportunity to reach a resolution themselves, balanced with the certainty of an arbitral award if necessary, while avoiding the pitfalls of dealing with national courts.

As the corporate world is grasping for alternative mechanisms to reduce cost and resolve conflict, it is beginning to increasingly acknowledge the benefits of hybrid resolution processes such as med-arb and arb-med, speaking to the usefulness of research in this area. While current commercial trends may be leaning towards the use of these hybrid processes, much of the literature on this topic is limited to either explaining how the hybrid processes work or critical evaluation of the potential strengths or weaknesses of each process (Karen 1988; Landry 1996; Oghigian 2003; Ross and Conlon 2000; Telford 2000; Zack 2004). No research has been found to date that looks at why a party might choose one hybrid process over another.

Due to the continued growing interest in using these hybrid processes as conflict resolution tools, it is useful to gain new knowledge about the med-arb and arb-med processes. Such knowledge would be useful to those involved in using these hybrids, those assisting people to select and use hybrid processes and the general field of ADR overall. It is the growing international use of hybrid processes combined with their

significant value for resolving conflicts and a relative lack of process knowledge that demonstrates the importance of this research.

Chapter 2 - Literature Review

2.1 Process Description and Discussion

Although there are no universally accepted definitions for med-arb and arb-med (Hill 1997), the following describes the general process, function, advantages and disadvantages of these ADR methods.

Med-Arb: Med-arb is an abbreviated term that stands for a two stage process consisting of mediation followed by arbitration. In the first stage of this process, the conflicting parties work with a third party who acts as a facilitator to assist the disputants to find a mutually agreeable resolution. If a resolution is obtained in this first stage then the process is finished and the parties do not move on to the second stage. When the parties are unsuccessful in reaching an agreement during the mediation, the parties then move to the second stage of the hybrid process, which is arbitration. The same third party who acted as a facilitator in the mediation stage then becomes the decision maker during the arbitration stage. The disputants can ask the third party to make a binding decision on the whole dispute or just on parts that were left unresolved after the mediation (Conlon, Ng and Moon 2002).

Arb-Med: Arb-med is an abbreviated term that represents a three stage process involving arbitration followed by mediation and a binding decision if necessary. The first

stage begins with an arbitration hearing. Each disputant presents their case to a third party who then renders a binding decision that is placed into a sealed envelope before either disputing party is allowed to see it. The process then moves to the second stage. In stage two, the conflicting parties attempt to mediate the dispute using the same third party from stage one, therefore, the third party who was the resolution decision maker now acts as facilitator for the dispute. The parties attempt to create their own resolution during the mediation. If they are successful in resolving the conflict during the mediation then the decision in the envelope is destroyed without being viewed by either party. If the parties fail to reach a settlement during the mediation they then move to stage three. In stage three the third party opens the envelope and reveals a ruling which is binding for both parties (Conlon, Ng and Moon 2002). *See Appendix A for additional definitions of terms.

The greatest distinction between these two hybrid processes is the order in which mediation is used in combination with arbitration. However, changing the order of the process stages has some unique positive and negative ramifications that affect disputants.

In everyday practical application the med-arb process is more commonly used than arb-med, even though the process seems to “contravene traditional notions of ‘natural justice’ and the ordinary transparency of arbitration whereby arbitrators only receive information from the parties in an open hearing where it can be counteracted” (Adams 2003, 328). The med-arb process challenges notions of natural justice because it allows parties to have a private caucus with the mediator in stage one, who later becomes the decision rendering arbitrator in stage two. A private caucus is a component of mediation practice that allows the mediator and one of the disputants to meet privately to

gather additional information or to explore resolution alternatives (James 1997). It is during a caucus that the med-arbiter could become privy to information and statements that would never be made to an arbiter (James 1997). The structure of this process indicates that the disputing parties need to have a significant amount of trust in the neutrality of the third party practitioner. This is because the practitioner who facilitates the mediation in the first stage could then potentially render a binding decision in the arbitration stage. Thus, in the med-arb process, parties are largely susceptible to the impact potentially untrue statements made within the caucus might have on the med-arbiter. For example, the med-arbiter¹ could become victim to their own feelings of empathy for a particular party and these feelings have the potential to consciously or unconsciously influence the arbitral award (James 1997). As result of these concerns, parties could become less candid; reducing their willingness to express their true thoughts and interests for fear of how certain statements might influence the med-arbiter in the arbitration stage. This concern, if held by the parties, can impede the capacity and usefulness of the mediation to resolve the dispute. Conversely, it is commonly “presumed that judges are able to render decisions based only upon such admissible evidence, and that they have learned to block out extraneous, yet potentially prejudicial, matters” (Karen 1988, 397). One could make a case suggesting that with specific training it is possible med-arbiters could bare the same presumption and privilege given to judges faced with similar considerations. However, in practice the statements made during caucus influence the arbitral award is not the issue of greatest consideration, but rather disputants’ perceived impact that caucusing could have on the outcome of the process.

¹ Both the terms med-arbiter and arb-mediator respectively are terms commonly used by hybrid dispute resolution practitioners to refer to the third party who is hired by the conflicting parties to facilitate both stages of either the med-arb or arb-med process.

Thus, parties may want to consider to what degree caucusing might affect the arbitration outcome should the conflict move to that stage.

The amount of inherent flexibility is another important factor to consider when looking at the med-arb or arb-med process. For example, the arb-med process involves a full arbitration hearing with each side presenting their case. The parties then move to the mediation stage with only two options; either come to a fully negotiated agreement in the mediation stage or open the envelope with the binding arbitration decision. In comparison, the med-arb process offers added flexibility. In this process, the parties are first given an opportunity to solve the problem themselves through mediation and then they move to arbitration if necessary. Thus, using the med-arb process, disputants could determine a resolution on eight of ten identified issues causing the dispute. The disputants have the flexibility to then move to the arbitration stage asking the arbiter to render a decision on the two remaining points of contention. This effectively allows the parties to maintain their autonomy to the greatest extent possible reverting to a binding decision maker only on the issues of impasse. This difference in process flexibility is an issue that may be worthy of contemplation.

Alternatively, in the arb-med process the arbitration precedes mediation. The advantage of this process is that the parties have the opportunity to first put their best case forward to the arb-mediator in an unbiased manner. The arb-mediator then renders a decision based solely on the strength of the cases presented before them. In this example, parties' disclosures of information in the mediation and furthermore within caucusing do not bias the arbitral award. This presents an advantage over the med-arb process. Some of the disadvantages of this process relate to the associated time and cost commitment

involved. In the arb-med process, the parties are committed to two stages, a full arbitration hearing followed by mediation, whereas the med-arb process has the potential to resolve the dispute in the first stage (mediation). Thus, parties looking at the arb-med process must consider this important difference and determine if they are willing to commit themselves to the associated time and cost investment. Furthermore, parties choosing the arb-med process must also consider the relatively adversarial nature of the arbitration process and determine if that will impede the parties from succeeding in mediation.

Both hybrid processes offer unique advantages towards resolving disputes. However, neither process is ideal for all disputes and all circumstances. Thus, it is important to match the process appropriately to the dispute in an effort to create the greatest possibility of a mutually beneficial resolution between the disputing parties.

2.2 Empirical Research

The empirical research looking at med-arb and arb-med processes is relatively limited. The research to date has looked at issues and questions such as: in which process stages do parties commonly reach settlement; which hybrid process results in greater joint outcomes; the effects of same versus different third party neutral ² and parties' perceptions of fairness.

One explanation for the lack of research on hybrid dispute resolution methods pertains to the fact that the processes are relatively new. The creation of the med-arb process is widely accredited to arbitrator Sam Kagel who used the process in 1970 to

² When choosing a hybrid process parties have the additional option of having either the same third party for both the mediation and arbitration stage or having a different third party for each of the respective stages.

settle a nurses' strike in San Francisco (Allred 1984; Kagel 1973). Similar to most new concepts, the med-arb process began to slowly gain wider use and recognition as an effective dispute resolution process. It is not certain when the arb-med process developed, nor is there a particular individual credited with its creation. Rather, it appears that the process emerged both in writings and practice as a somewhat natural response to med-arb. As med-arb began to gain increased popularity, practitioners and scholars started to question the effectiveness of reversing the med-arb process order, leading to the formal recognition of the arb-med process (Berger 2003; Elliott 1996; James 1997; Oghigian 2003; Ross & Conlon 2000; Zack 2004). Although the process has only recently been formally recognized, it has existed for a while in practice as an informal process. This informal combination of processes frequently begins as a pure arbitration that at some point during the arbitration becomes a settlement negotiation or an overtly determined mediation between the disputing parties (Schneider 2004). For example, Vincent Ready, who established a private arbitration/mediation practice in 1982 (Online: Ready 2006), is renowned for his ability to take conflicts that begin in arbitration and resolve them using mediation. Mr. Ready alone, who is one of many practitioners, has exemplified the use of this informal arb-med process for hundreds if not thousands of commercial and labour disputes between 1982 and 2006 (Online: Ready 2006). Thus, it is likely that because the med-arb and arb-med processes are relatively new, research in this area is in the early stages of development.

Looking at the existing research, Johnson and Pruitt (1969) present some of the first research findings to suggest, perhaps indirectly, the benefits of hybrid processes such as med-arb and arb-med. Their research looked at parties in mediation and arbitration

and found that the parties “faced with a binding decision from a third party behaved in a more conciliatory fashion and were more likely to reach agreement than those faced with a non-binding decision” (Johnson and Pruitt 1969, i). Although this research was not looking specifically at the advantages of a hybrid process, the findings suggest that having a fixed stage where a binding decision will be imposed, can improve the fluidity and overall outcome of a negotiation. This research is a stepping stone towards looking specifically at the benefits of a hybrid process and then ultimately at the differences between hybrids.

It took some time from when med-arb was formally recognized in 1970 for it to gain widespread recognition. It then took even more time after the recognition of med-arb before a formal arb-med process was used in widespread practice. It was not until both processes were being used formally in conflict resolution practice that research looking at comparisons between the two hybrid processes began. Ross and Conlon (2000) were one of the first research teams to evaluate differences in these hybrid processes. Their research demonstrated that for long-term outcomes med-arb provides greater advantages than arb-med, but in short-term outcomes arb-med demonstrates the most advantages between the two processes. These findings suggest that in situations where the long-term relationship is important, med-arb might be the hybrid process of choice. Accordingly, arb-med might be preferential when relationship is not important because it “promotes information exchange, concession making, and a high frequency of settlements” (Ross and Conlon 2000, 428). The research findings suggest that the variable relationship might have an impact on what process parties may prefer. However,

this research measures outcome after processes have been used by disputants, thus the impact the relationship variable has on process choice continues to remain uncertain.

Additional research conducted by Conlon, Ng and Moon (2002) found that the “use of the arb-med procedure led to mediated settlements in 35 of 43 disputes (81%) where as use of the med-arb procedure led to mediated settlements in 28 of 45 disputes (62%)” (981). Furthermore, Conlon, Ng and Moon (2002) found “in terms of joint benefit, the outcomes disputants received from the arb-med procedure were marginally greater than the outcomes received under med-arb” (981). Ross, Brantmeier and Ciriacks (2002) found that upon completion of the conflict, parties perceived med-arb as fairer and thus preferential to arb-med. However, once again this research measured the parties’ satisfaction with the process after they had resolved their dispute and did not consider party preferences at the onset of the particular hybrid process. Furthermore, the above noted research studies involved the use of university undergraduate students or college students as research participants. It is unknown how these research findings might compare with research using individuals who are actively involved in the workforce as fulltime employees.

The remaining majority of research on med-arb and arb-med looks at the effect of having the same third party for both stages of the hybrid process versus the effect of having a different third party for each stage of the hybrid process. The research in this area consistently shows strong support for having the same third party throughout the hybrid process, claiming it is more constructive for disputants to concentrate their efforts on problem solving activities over other negotiation tactics (Greenbaum 1986; McGillicuddy, Welton and Pruitt 1987; Phillips 2005; Pruitt 1995). Empirical research

by Pruitt (1986) found that in addition to having disputants act in a less hostile and more engaged manner, the med-arbiters were overall more active and motivated when engaged in both processes (mediation and arbitration) than when doing only one part of a hybrid process (mediation or arbitration) (241). Using the same person for both the mediation and arbitration components of the hybrid processes is also in many respects more efficient and less costly than having a separate individual for each process (Schneider 2004). A wealth of research on med-arb and arb-med has consistently shown distinct benefits for hybrid process that use the same third party for both stages of the process. It is due to these findings that this research study is narrowed to look specifically at process choice between hybrids that use the same third party for all stages.

Although research in the area of med-arb and arb-med has not yet looked at the factors influencing why individuals choose one process over the other, Ross and Conlon have put forth the question “will disputants prefer one hybrid procedure over another? If so, why?” (2000, 419). It is their suggestion that med-arb may be preferential if the parties have an ongoing relationship because previous research suggests this process provides an advantage for long-term outcomes. However, there is no directly related empirical research to respond to the claims made by Ross and Conlon. Thus, there is an existing void in the literature that needs to be further researched and tested.

Chapter 3 - Theory Building

3.1 Theory Building and Literature Review

The preliminary stages of this research sought to identify the two key variables that either supersede or subsume most relevant variables affecting the parties' decision to

choose one of the hybrid processes. An in-depth review of literature on the med-arb and arb-med processes provided initial insight on what factors might influence conflicting parties to choose a particular hybrid dispute resolution process. While there are potentially unlimited numbers of variables influencing the hybrid process chosen, the potential factors identified in the literature are: a) relationship (Allred 1984; Brewer and Mills 1999; Elliott 1996; Goldberg 1990; James 1997; Oghigian 2003; Ross and Conlon 2000; Telford 2000); b) saving face (Landry 1996; Ross and Conlon 2000); c) perception of fairness (Ross, Brantmeier and Ciriacks 2002); d) time (Carnevale and Conlon 1988; Conlon, Ng and Moon 2002; Elliott 1996; Flake 1998; Lipsky and Seeber 1998); e) power (Kressel and Pruitt 1989; Stern 1984); f) cost (Conlon, Ng and Moon 2002; Flake 1998; Lipsky & Seeber 1998) and g) willingness to settle the dispute (Telford 2000). These variables were the foundation for further investigation in this research study on the factors that influence parties to choose one hybrid process over another.

Starting from the seven variables noted in the literature, the second stage of investigation involved looking for additional explanation on what variables affected process choice decisions and why. Research conducted by Brett, Barsness and Goldberg (1996) did not look specifically at hybrid processes, however in looking at levels of satisfaction after parties had chosen and used mediation or arbitration, they displayed results that could provide insight into hybrid process choice. Their research found that “mediation participants are more satisfied with the process ... and the effect on the parties’ relationship than arbitration participants” (Brett, Barsness and Goldberg 1996, 267). Their research also suggested that parties were more inclined to choose arbitration when they thought “the case turned on issues of fact or law” (266). These findings

suggest that disputants concerned with their relationship could show an inclination to choose mediation as the initial process, namely med-arb. Alternatively, disputes where there are strong issues of fact or law present might influence parties to more frequently choose arbitration as the initial stage of a hybrid dispute resolution process, namely arb-med.

Additional published works lead to the consideration of how a perceived strength in case might affect process choice. Bartel (1991) notes that a weaker party may to some degree become empowered to a greater degree by a hybrid process which combines mediation and arbitration than a single process, such as mediation. In the med-arb process the weaker party may not "be tempted to succumb to what he considers an unfair result as the only way of guaranteeing that the dispute be resolved" (Bartel 1991, 682). Therefore, to some degree the med-arb process has the capacity to strengthen the position of a weaker party (Newman 1994). While the med-arb process does not guarantee an exceptional outcome for the less powerful party, it does limit the ability of the more powerful party to leverage their power position to create a resolution significantly in their favour. However, Bartel (1991) also acknowledges that for these very same reasons it is highly probable that the stronger party will be less eager to accept a process such as med-arb for concern of stifling their power over to the weaker party. In continuation with this logic, it is probable that when faced with a choice between the med-arb and arb-med process the parties who perceive they have more power will likely prefer an arb-med process. Bartels' work informs the research hypothesis suggesting that parties who perceive their *strength of case* to be high will more frequently choose the arb-med process.

A majority of the variables identified in the literature have not focused in detail on their potential impact on process choice. Although the literature has presented some initial insight as to what variables might influence an individual's choice for a particular process, it also leaves many factors associated with these variables uncertain. For example, relationship is the variable most frequently represented in the literature, however, it is uncertain whether this variable is the most influential or just the most obvious. Furthermore, it is unclear which variables identified in the literature supersede other variables in the degree that they influence the decision to choose one process over another. The literature does little to acknowledge the connection or combination of variables required to affect party decisions. Finally, the literature does not provide much empirical testing to support whether the identified variables do influence party process choice.

3.2 Theory Building and Preliminary Research

Using the list of variables generated from the literature, the second stage of the preliminary research involved consultation with various friends and colleagues of the researcher to discuss what factors or conditions of a conflict would lead them to specifically choose the med-arb and arb-med process. Extensive discussion on this topic found that the majority of individuals would in most circumstances choose med-arb because it provides an opportunity to first talk through the conflict situation using what is perceived to be a less adversarial process. When asked in what situation individuals would choose arb-med, the majority of respondents stated they would choose this option when the issues of the conflict were legalistically structured in nature. These initial

findings lead to the question, "do the words mediation and arbitration each hold their own stereotype that is influencing how individuals responded to the questions being asked?"

Based on initial responses, it appeared that mediation was perceived to be a less adversarial process and thus predominately preferential to arbitration.

The impact the perceptions of the words mediation and arbitration had on peoples' responses became an issue of concern. To address this concern, a description of mediation and arbitration was written that did not include either of the two words. Rather, the two processes, mediation and arbitration, were labeled as process A and process B (see Appendix B). Building from the description of process A and process B, a second set of descriptions of the two hybrid processes were created and labeled process AB and BA (see Appendix B). The descriptions were emailed to eighteen individuals of various age, gender, social economic status, culture, education and training, asking them to use their own words to provide an example of when they would choose process AB and when they would use process BA to resolve a dispute (see Appendix B). Thirteen individuals responded to the email. The responses were carefully analyzed in an effort to identify the variables with the strongest support for influencing process choice. Relationship was the single strongest indicator influencing process choice. Relationship in the context it is used for this research means "[d]ealings by one person with another in particular contexts, such as domestic, commercial, and industrial" (Walker 1980, 1054). The large majority of respondents identified med-arb as a preferred process if the continued relationship with the conflicting party was important or arb-med when the relationship was not important. The major variable that respondents suggested would

lead them to choose the arb-med process most frequently pertained to perceived strength of legal case.

The thirteen respondents were contacted on the phone and asked to describe the reasons for their responses in detail. The detail provided indicated that relationship subsumes related variables such as saving face and perception of fairness, while *strength of case* subsumes related variables such as time, power, cost and willingness to settle the dispute. With a literature review and some preliminary research completed, thought was given to how the identified variables influence parties' decisions to choose one process over another, leading to the research hypotheses.

3.3 Research Hypotheses

The hypotheses for this research study developed as result of the findings discovered in both the literature review and the preliminary research conducted for this study. As noted earlier in this paper, previous research has found that individuals are frequently more satisfied with the mediation process and its effects on party's relationship, but frequently prefer arbitration when the conflict is framed around issues of fact or law (Brett, Barsness and Goldberg 1996). Furthermore, existing research has suggested that parties who perceive a *low strength of case* will lean towards selecting a med-arb style process while those who perceive a *high strength of case* may be inclined to select an arb-med style process. In addition, the preliminary research findings for this study suggested that individuals have a strong preference for a mediation first process when relationship is important and consider an arbitration first process only when

strength of case is perceived to be high and the importance of relationship is low. As result of these initial findings, the research hypotheses for this study are as follows:

H1. If the importance of the relationship is high and the *strength of case*³ is high or low then med-arb will be the preferred process.

H2. If the importance of the relationship is low and the *strength of case* is high then arb-med will be the preferred process.

H3. It is uncertain what the preferred process will be when importance of relationship is low and *strength of case* is low. See Table 1.

Expected Process Selections for Variable Manipulations

		<u>Importance of Relationship</u>	
		High	Low
<u>Strength of Case</u>	High	Med-Arb	Arb-Med
	Low	Med-Arb	Med-Arb or Arb-Med?

Table 1

³ **Note:** In this research ‘strength’ as it is used with reference to the variable case, refers to the probability one has to win the case at issue on the basis of the rule of law. If strength of case is high then there is a good chance the party would win if the issue was taken to court.

Chapter 4 - Research Methodology

4.1 Research Design

The research incorporates two different methodological approaches to identify the variables that influence people to choose between dispute resolution processes med-arb and arb-med. The first method is quantitative and will use a scenario-based experimental design with one open-ended question asking participants to explain their choice. The second research method is qualitative and will use six semi-structured interviews of third party practitioners who have facilitated a hybrid process. The results from the semi-structured interviews will be used to enrich the findings of the quantitative methodology.

The scenario-based experimental design consists of four different business conflict scenarios that correspond to testing a two-by-two factorial design measuring the outcomes of (high vs. low) importance of relationship and (high vs. low) *strength of case* (see Appendix C). With the two most critical variables, relationship and *strength of case* identified, the first stage of the research process was to develop a fictional business conflict scenario that could be used to test the different combinations of the variables based on the identified hypotheses (see Table 1). The four business case scenarios were created with each one testing for a different combination of the two variables importance of relationship and *strength of case* (see Appendix C). The next stage was to develop the process descriptions and respective research questions (see Appendix D & E). The four conflict scenarios, the process descriptions and the research questions were placed into an online survey. The survey was set-up to automatically rotate through the conflict scenarios 1 through 4 as individuals clicked on the survey link.

Once the online survey was established a pilot test was conducted. The survey link was sent out to thirty contacts of different age, gender, education, work experience, social economic status etc. Participants were given a week to click on the survey link and complete the ten minute survey. The twenty-five responses of the pilot test were in line with the research hypotheses (see Appendix F). The pilot test participants were then contacted via email and asked to note any areas where the survey was unclear. The responses provided by the participants were noted and the online survey was revised to address these concerns (see Appendix G for a copy of final survey questions). The preliminary research was completed and the online survey was ready for distribution.

The second research methodology involves six, thirty minute semi-structured interviews of practitioners who have facilitated a hybrid process (see Appendix H for questions). Three of the practitioners will speak from their experience of facilitating a med-arb process and three practitioners will respond based on their experience with facilitating an arb-med process (see Appendix H for questions).

4.2 Sample

The target population for the scenario-based experimental design includes fulltime employees for commercial organizations including managers, directors, and owners of businesses that operate in British Columbia. The research participants are all adults, both male and female with varying education levels. This population is of interest because it represents the individuals who are most likely to be involved in choosing a hybrid dispute resolution process to resolve a commercial dispute; they are either the individual disputants involved in the conflict or the supervisor/manager responsible for

the disputants involved in the conflict. For this method the URL link to the research surveys were sent to approximately 10 500 recipients. However, due to a technical error, the link to the online survey was rendered useless when sent out to approximately 2 000 recipients. This significantly reduces the number of people who could have responded to the survey, down to 8 500. It is also worthwhile to note that the surveys were sent out through online newsletters of recognized business associations. Although the surveys were sent out to the entire member roster of these associations, the survey description was specifically targeted to solicit management level interest and participation. Thus, a large majority of those receiving the newsletter would have found that the survey did not target their respective interests but there was no way of discerning this ahead of time. In addition, although the total number of email addresses that were sent newsletter information is relatively accurate, there is no measurement for how many of those addresses are still active. This means that there is no measurement for how many of the email addresses on the associations' mailing lists are no longer in use due to employee turnover, retirement, firewall blockades, email address changes, etc. It is also noteworthy to consider that the survey went out as one of many articles in a regular online newsletter, therefore there is a distinct probability that an individual who was sent the newsletter may not have opened the email and if they did open the email they still may not have noticed the link to the survey. Only a fraction of the potential respondents actually saw the survey. The final sample size of 126 participants is a reflection of these circumstances.

The semi-structured interview component of this research study involved participants who have experience acting as a third party in one of the hybrid processes to resolve a labour or commercial dispute. There were a total of six semi-structured

interview participants, both Canadian and American, who were randomly contacted based on availability and interest (further details on this will be discussed later).

4.3 Procedures

For the scenario-based experimental design group, the research participants were provided with a short description of the survey. They were then asked to participate by clicking on the URL web link provided, which brings them to the online survey hosted by Pollcat (2006). There are four different business case scenarios associated with the online survey. Each business case scenario tests for a different combination of the variables, that is, relationship and *strength of case* (see matrix illustration in Appendix C). Each time a participant clicks on the URL web link, the Pollcat survey provider is set to automatically rotate to one of the four case scenarios. Thus, the first person to click on the web link would get scenario 1 the second would get scenario 2 and the fourth person will get scenario 4. The process then infinitely repeats itself so that the fifth person to click on the web link will get scenario 1 and the sixth person will get scenario 2 and so on. Using this approach ensures that there is a relatively equal level of participation in all of the four business case scenarios, enhancing the statistical viability of the research results. Once connected to the online survey, participants were first provided with a fictional conflict scenario. After reading the conflict scenario, participants were then asked to read a description of the two hybrid processes and choose which process they would prefer to use based on the scenario provided. Finally, the participants were asked a number of questions used to determine why they made the choice they did, in addition

to questions pertaining to age, gender and other demographic information (see Appendix G).

Once the online survey was developed, the next step in the research process was to contact business organizations and ask for their permission to distribute the survey description and associated online link to members of their association. Four organizations agreed to send the survey to their members. These organizations are: The Better Business Bureau of Vancouver Island (BBB); the British Columbia Construction Association (BCCA); the Downtown Victoria Business Association (DVBA) and the British Columbia Human Resources Management Association (BC HRMA).

The online survey was sent to the various business contacts in the following order. The survey link was first sent out through the BCCA online newsletter. The newsletter goes to approximately 2000 people in BC. There were no research participants from this association who responded to the survey. It is suspected that the lack of responses relate to the nature and characteristics of the construction industry (represented by the BCCA), suggesting an online survey is not something of interest in that particular commercial community. In a second attempt, the survey link was sent out through the DVBA online newsletter for two weeks in a row. The newsletter goes out to approximately 2000 recipients who are predominately small business owners in Victoria, B.C. During both weeks the web link to the online survey was not functional. Furthermore, due to the way the text was coded in the PDF newsletter, copying the link and pasting it into a web browser was also of no avail. Zero research participants were generated from this attempt. The third approach involved sending out the research survey link through the electronic newsletter of the BBB. This went out to approximately 1000 individuals and

achieved 24 responses. In the fourth attempt, the research survey was sent out in the newsletter of the BC HRMA. This newsletter is electronically distributed to approximately 5500 recipients. It did not generate any responses.

It is presumed that there are a number of reasons why response rates for the electronic distribution to the BC HRMA members were very low. The first consideration is that the day before publication the BC HRMA changed the pre-approved title and text description of the message, quoting editorial privilege. Before these changes were made, the original title and associated descriptive text indicated that the BC HRMA supported the research and encouraged members to participate. Furthermore, at the point of electronic mail-out, the title of the research project had been changed from the enticing title "Survey Could Help Reduce Organizational Cost" to the less enticing "Dispute Resolution Survey". It is also believed that the date of the electronic mail-out could help to explain the low response rate. The survey was sent out in the middle of September. During this time of year many people might have recently come back from summer vacation in addition to dealing with schooling considerations for children. Thus, the timing of the survey combined with the changes in survey title, survey description and the fact that the newsletter includes a wide variety of articles and links to distract the attention of recipients, may explain the poor survey response rate from the BC HRMA members.

In effort to encourage increased participation in the research study, participants were offered a chance to win an \$80 gift certificate to the Chapters book store. This information was included in a new article with a revised survey title and description. This was published for two consecutive weeks in the BC HRMA newsletter (See

Appendix I). This second approach was quite effective. Improving the survey title and text combined with an offer of incentive led to an additional 95 survey responses. Furthermore, sending the survey out to BC HRMA members in October may have also increased the response rate. This combination of factors attracted the required number of survey participants to complete the scenario-based experimental design component of the research project.

Identifying participants for the semi-structured interview segment of the research project began by searching online databases of experienced mediators and arbitrators looking for individuals who had experience with hybrid processes. In addition, authors who had published work discussing their experience with med-arb or arb-med processes were contacted and asked to participate in the semi-structured interviews. Potential participants were contacted using email and the telephone to explain the research study and request participation. Those who agreed to participate were electronically sent the semi-structured interview questions in advance (see Appendix H). An interview time was scheduled with the participant and they were contacted at the agreed upon time to complete the interview. Responses were recorded using a speaker phone and a voice recorder. The results of the interview were later transcribed using the voice recordings, a laptop and the Microsoft Word program.

4.4 Measures

The research study measured how the dependent variable process choice was influenced based on research participants' responses to the independent variable manipulations.

4.4.1 Independent Variable

Participants' concern for a particular hybrid process was manipulated by influencing the scenario of the story line in terms of importance of relationship and *strength of case*. In the low concern conditions consisting of low importance of relationship and *low strength of case*, respectively, participants were told the following:

1. You do not have much in common with the disputant nor do you socialize with them outside of work. Even at work communication with the disputant was purely of a business nature.
2. You want to terminate the working relationship however the opposing party has credible excuses for their mistakes and technically has fulfilled all work responsibilities.

In the high concern conditions consisting of high importance of relationship and *high strength of case*, respectively, participants were told the following:

1. You have a lot in common with the disputant and over a number of years you have developed a close friendship. You often go hiking, skiing and biking together.
2. You made it clear from the beginning that if the disputant did not meet your clearly defined expectations that you would not continue to employ them. As result of recent performances, clearly the disputants work responsibilities are not being fulfilled. You don't really want to work with the disputant anymore.

Alternatively, participants were offered a condition of high importance of relationship and *low strength of case*. In this example the participants were told:

1. You have a lot in common with the disputant and over a number of years you have developed a close friendship. You often go hiking, skiing and biking together.
2. You want to

terminate the working relationship however the opposing party has credible excuses for their mistakes and technically has fulfilled all work responsibilities.

In the final manipulation of the independent variables, participants were offered conditions consisting of low importance of relationship and a *high strength of case*. In this example participants were told: 1. You do not have much in common with the disputant nor do you socialize with them outside of work. Even at work communication with the disputant was purely of a business nature. 2. You made it clear from the beginning that if the disputant did not meet your clearly defined expectations that you would not continue to employ them. As result of recent performances, clearly the disputants work responsibilities are not being fulfilled. You don't really want to work with the disputant anymore.

The semi-structured interview methodology asked research participants whether the variables relationship and *strength of case* would influence parties' decision to choose a particular hybrid process. Research participants were asked to explain in detail what combination of these variables would provide strongest support for the med-arb and the arb-med processes respectively.

4.4.2 Dependent Variable

The med-arb and arb-med processes were the dependent variables. In the quantitative (scenario-based experimental design) methodology all survey participants were provided with a description with the two process options (see Appendix D). Participants were given the option to choose one of these dependant variables based on the fictional business case/dispute scenario provided to them.

Research participants in the qualitative process (semi-structured interviews) were all experienced dispute resolution practitioners who were already aware of how the processes med-arb and arb-med functioned. These participants were asked to respond to the research questions based on their professional experience in using a hybrid process to resolve a conflict.

4.5 Method of Analysis

For the scenario-based experimental design methodology, online survey responses were first captured in a secure online database hosted by Pollcat. Once the data collection phase of the research was completed, the survey responses were numbered and downloaded from the Pollcat database by the researcher. A coding key was developed and used to determine how responses to the survey questions would be imputed into the Statistical Packages for the Social Sciences (SPSS) program. Once the responses were inserted into the SPSS program, a variety of different tests were generated, using the research data, to determine if the research hypotheses were correct.

In addition, survey participants were provided with an opportunity to respond to an open-ended survey question where they could explain, in their own words, why their hybrid process selection was made. The open-ended survey question responses were divided into four different groups, each group pertained to one of the fictional business case scenarios. All the responses for each of the business case scenarios were reviewed individually. The most common responses for each one of the four business case scenarios were collected and provided in the research results section of this study.

The semi-structured interviews were conducted on the telephone using a speakerphone and a voice recorder. After each semi-structured interview, the voice recording was replayed and the responses to the interview questions were typed into a word document. The semi-structured interview responses were grouped into either the med-arb or arb-med response group. The most common responses for each group were provided in the research results section of this study.

Chapter 5 - Research Results

5.1 Scenario-Based Experimental Design

5.1.1 Descriptive Statistics (Quantitative)

There were a total of 126 survey participants, 43 or 34.1% of the respondents were male and 83 or 65.9% of the respondents were female. The large majority of the respondents were from either very small or very large organizations, with 45.2% working in organizations that have 200 or more employees and 23% working in organizations of 1-5 employees. Although many respondents worked in large organizations, 65.1% worked in departments of 10 employees or less. In addition to organization size, 37 or 29.4% of respondents reported they were organization owners, with 89 or 70.6% of respondents reporting to be employees of an organization. The research group consisted largely of middle aged individuals with 67.5% of respondents between the age of 30 and 60. Furthermore, those surveyed reported relatively high levels of work and supervisory experience. 62.7% of respondents had work experience in the range of 16 years and above, with 61.2% of those surveyed reporting 6 – 21+ years of supervisor management experience. Education levels ranged, but the large majority of participants reported

having a College (27%) or Undergrad University education (44.4%). The research data suggests that the respondents bring a wealth of workforce experience to the data results, demonstrating a variety of employee, employer and supervisor/management perspectives.

5.2 Manipulation Checks

Table 2 presents the distribution of the process choices made for each of the four business cases. The manipulation of different high and low conditions of the independent variables for each of the four business cases demonstrates an impact on process selection. However, the number of individuals who chose the med-arb process consistently outnumbers those who chose arb-med in every business case scenario.

Table 2 Crosstabulation Business Cases listed from 1-4 * Which process option would you choose in this scenario?

		Arb-med	Med-arb	Total
LRel HCase	Count	8 22.9%	27 77.1%	35
HRel HCase	Count	14 40.0%	21 60.0%	35
HRel LCase	Count	10 40.0%	15 60.0%	25
LRel LCase	Count	10 32.3%	21 67.7%	31
Total	Count	42 33.3%	84 66.7%	126

The frequency distribution in Table 3 describes how the independent variables' importance of relationship and *strength of case* were perceived by the survey participants. Each of these two variables were manipulated using the storylines of the four business case scenarios to represent two examples where each variable was expected to be rated

high and two examples where each variable was expected to be rated low. Effective manipulation of the independent variables should be demonstrated with central means approaching the value of 4 with a normal frequency distribution over all seven cells. Table 3 demonstrates that the variable *strength of case* achieved the expected frequency distribution with a mean value of 4.28. Importance of relationship however demonstrated a mean value of 5.06 which is slightly higher than expected. Thus, respondents most frequently ranked relationship to be of greater importance across the four different business case storyline manipulations. Although research respondents were told that the friendship was not important in two of the manipulations, respondents may still have perceived an importance of relationship other than friendship (such as the professional relationship) in these low condition manipulations of the variable relationship. This might explain why relationship was reported to be of higher concern across the four business case storyline manipulations creating a higher overall mean value.

Table 3 Mean Distributions of Variable Ratings

	On a scale of 1-7 describe your strength of case?	On a scale of 1-7 describe the importance of the relationship?
N	126	126
Mean	4.28	5.06
Std. Deviation	1.676	1.576

Table 4(a) and 4(b) present an independent samples t-test that looks at the overall effectiveness of the independent variable manipulations for *strength of case*. Of the four business case scenarios, two of the business case storylines were manipulated to demonstrate a *high strength of case* concern condition and two storylines were manipulated to demonstrate a *low strength of case* concern condition. To measure the

success of the strength of case manipulations business cases 3 and 4 were collapsed into a single *low strength of case* concern group and business case 1 and 2 were collapsed into a single *high strength of case* concern group. The high and low concern groups were compared with how survey respondents rated the *strength of case* of their business storyline from 1 to 7, with 1 being the lowest concern condition and 7 the highest concern condition. Table 4(b) demonstrates that the manipulation for the *strength of case* conditions were successful with a statistically significant mean difference of 0.048. These results demonstrate that overall the business case storyline manipulations for *strength of case* were effective.

Table 4(a) Mean Distribution. On a scale of 1-7 describe your strength of case?

Case12HighCase	N	Mean	Std. Deviation
Low Sgt of Case	57	3.61	1.719
High Sgt of Case	69	4.83	1.434

Table 4(b) Independent Samples Test. On a scale of 1-7 describe your strength of case?

Levene's Test for Equality of Variances		t-test for Equality of Means
F	Sig.	Std. Error Difference
3.993	.048	.281

Table 5(a) and 4(b) present an independent samples t-test that looks at the overall effectiveness of the independent variable manipulations for importance of relationship. Of the four business case scenarios, two if the business case storylines were manipulated to demonstrate a high importance of relationship concern condition and two storylines were manipulated to demonstrate a low importance of relationship concern condition. To

measure the success of the importance of relationship manipulations business cases 1 and 4 were collapsed into a single low importance of relationship concern group and business case 2 and 3 were collapsed into a single high importance of relationship concern group. The high and low concern groups were compared with how survey respondents rated the importance of relationship for their business storyline from 1 to 7, with 1 being the lowest concern condition and 7 the highest concern condition. Table 5(b) demonstrates that the manipulation for the importance of relationship conditions were marginally successful with a statistically significant mean difference of 0.079. These results demonstrate that overall the business case storyline manipulations for importance of relationship were effective.

Table 5(a) Group Statistics. On a scale of 1-7 describe the importance of the relationship?

Case23HighRel	N	Mean	Std. Deviation
Low Imp Rel	65	4.77	1.730
High Imp Rel	61	5.36	1.342

Table 5(b) Independent Samples Test. On a scale of 1-7 describe the importance of the relationship?

Levene's Test for Equality of Variances		t-test for Equality of Means
F	Sig.	Std. Error Difference
3.145	.079	.277

Table 6 presents an analysis of variance table of manipulation check indexes for the independent variable *strength of case*⁴. Support was found for the manipulation of *strength of case* for each of the four business cases. The storylines in business cases 1 and 2 were manipulated to demonstrate *high strength of case* concern conditions and business cases 3 and 4 were manipulated to demonstrate *low strength of case* concern conditions. After reading their case, each participant was asked to rate the importance of strength of case (on a 7 point scale) with 1 as the lowest concern condition and 7 as the highest concern condition. As seen in Table 6 the analysis of variance produced statistically significant main effects that coincide with the expected concern manipulations. The high concern condition in business case 1 demonstrates a statistically significant mean difference with a significance value of 0.026 when compared to the low concern condition in business case 4. Furthermore, the high concern condition in business case 2 also demonstrates a statistically significant mean difference with a significance value of less than 0.001 when compared to the low concern condition in business case 4. When the high concern condition in business case 2 is compared with the second low concern condition in business case 3, the data once again demonstrates a statistically significant mean difference with a significance value of 0.005. When comparing business case 1 to business case 3, the differences were not statistically significant with a mean difference value of 0.156. The respective mean differences

⁴ In this research 'strength' as it is used with reference to the variable case, refers to the probability one has to win the case at issue on the basis of the rule of law. If strength of case is high then there is a good chance the party would win if the issue was taken to court. If strength of case is low then there is little chance the party would win if the issue was taken to court.

between the high and low concern business cases demonstrate that the storyline manipulations of the four business cases were largely successful.

Table 6 Multiple Comparisons Bonferroni Dependent Variable: On a scale of 1-7 describe your strength of case?

(I) BusCase	(J) BusCase	Mean Difference (I-J)	Sig.
1	2	-.486	1.000
	3	.920	.156
	4	1.116(*)	.026
2	1	.486	1.000
	3	1.406(*)	.005
	4	1.602(*)	.000
3	1	-.920	.156
	2	-1.406(*)	.005
	4	.196	1.000
4	1	-1.116(*)	.026
	2	-1.602(*)	.000
	3	-.196	1.000

* The mean difference is significant at the .05 level.

Table 7 presents an analysis of variance table of manipulation check indexes for the second independent variable importance of relationship. The storyline manipulations for importance of relationship were not as effective as originally expected in the four business cases. Business cases 2 and 3 were manipulated to demonstrate high importance of relationship concern conditions and business cases 1 and 4 were manipulated to demonstrate low importance of relationship concern conditions. Each participant was asked to rate the importance of relationship (on a 7 point scale) with 1 as the lowest concern condition and 7 as the highest concern condition. As seen in Table 7, the analysis of variance did not produced statistically significant main effects that coincide with the expected concern manipulations. However, there is marginal significance between the manipulations for business case 3 and 4 with a respective significance value

of 0.087. When looking at the frequency distribution of the importance of relationship variable (see Table 3) the majority of respondents rated importance of relationship as a high concern condition across the four independent variable manipulations. This distribution could explain why the mean differences between the high and low concern conditions for importance of relationship are not statistically significant.

Table 7 Bonferroni Dependent Variable: On a scale of 1-7 describe the importance of the relationship?

BusCase	BusCase	Mean Difference	Sig.
1	2	-.314	1.000
	3	-.823	.270
	4	.212	1.000
2	1	.314	1.000
	3	-.509	1.000
	4	.526	1.000
3	1	.823	.270
	2	.509	1.000
	4	1.035	.087
4	1	-.212	1.000
	2	-.526	1.000
	3	-1.035	.087

5.3 Results of Variable Manipulations

Crosstabulations were used to test if the independent variable storyline manipulations for each of the four business cases were effective in creating statistically significant differences in process choice. To complete this test, both the independent variables importance of relationship and strength of case were recoded into dichotomous variables. Those who scored from 1-4 for each of the independent variables were given a low concern condition rating of 0 and those who scored from 5-7 were given a high concern condition rating of 1. Respondents were then further separated into each of the

four business cases. Chi-square tests were run comparing high and low concern indications for the independent variables and the effect on the dependent variable process choice. The test on business case 1 produced a statistically significant value of 0.028 (see Table 8). These results show that the manipulation of the strength of case and importance of relationship variables demonstrate that in a low relationship and *high strength of case* condition individuals more frequently choose the med-arb process. Business cases 2, 3 and 4 produced significance values of 0.133, 0.188 and 0.597 respectively. These results indicate that the independent variable manipulations did not create statistically significant differences in process choice (see Tables 9, 10 and 11). The manipulations of the independent variables did not satisfy the expected outcomes for business cases 2 – 4. The increased rankings of relationship as a high concern variable may provide some explanation to these findings. In addition, increasing the number of respondents within each business case might create more statistically significant findings.

Table 8 Crosstabulation * Singled out only Business Case One Respondents for Analysis

		SgtCaseLow equals 1-4 choice and High equals 5-7 choice		Total
		1-4 Choice	5-7 Choice	
Imp Rela Low equals 1-4 choice and High equals 5-7 choice	1-4 Choice	4	11	15
	5-7 Choice	13	7	20
Total		17	18	35

Chi Square **F = 5.042** **Sig. .028**

a Computed only for a 2x2 table

b 0 cells (.0%) have expected count less than 5. The minimum expected count is 7.29.

Table 9 Crosstabulation * Singled out only Business Case Two Respondents for Analysis

		SgtCaseLow equals 1-4 choice and High equals 5-7 choice		Total
		1-4 Choice	5-7 Choice	
Imp Rela Low equals 1-4 choice and High equals 5-7 choice	1-4 Choice	1	8	9
	5-7 Choice	10	16	26
Total		11	24	35

Chi Square **F = 2.321** **Sig. 1.33**

a Computed only for a 2x2 table

b 1 cells (25.0%) have expected count less than 5. The minimum expected count is 2.83

Table 10 Crosstabulation * Singled out only Business Case Three Respondents for Analysis

		SgtCaseLow equals 1-4 choice and High equals 5-7 choice		Total
		1-4 Choice	5-7 Choice	
Imp Rela Low equals 1-4 choice and High equals 5-7 choice	1-4 Choice	4	0	4
	5-7 Choice	13	8	21
Total		17	8	25

Chi Square **F = 2.241** **Sig. .188**

a Computed only for a 2x2 table

b 2 cells (50.0%) have expected count less than 5. The minimum expected count is 1.28.

Table 11 Crosstabulation * Singled out only Business Case Four Respondents for Analysis

		SgtCaseLow equals 1-4 choice and High equals 5-7 choice		Total
		1-4 Choice	5-7 Choice	
Imp Rela Low equals 1-4 choice and High equals 5-7 choice	1-4 Choice	9	4	13
	5-7 Choice	12	6	18
Total		21	10	31

Chi Square **F = .023** **Sig. .597**

a Computed only for a 2x2 table

b 1 cells (25.0%) have expected count less than 5. The minimum expected count is 4.19.

Crosstabulations were used to test if the independent variable storyline manipulations were effective overall across the four business case scenarios. To complete this test, once again both the independent variables importance of relationship and strength of case were recoded into dichotomous variables. Those who scored from 1-4 for each of the independent variables were given a low concern condition rating of 0 and those who scored from 5-7 were given a high concern condition rating of 1. Chi-square tests were run for all of the survey responses comparing both the high and low concern indications for the independent variables and the effect on the dependent variable process choice. The test did not produce statistically significant values (see Table 12) and the sample size might contribute to these findings. However, although the findings were not statistically significant the numbers in Table 12 move in the correct direction to demonstrate support for the first and third research hypotheses. When importance of relationship is high med-arb is chosen more frequently with values of 31 and 26 when compared to respective values 17 and 11 regardless of whether strength of case is high or low. Furthermore, when both strength of case and importance of relationship are low

med-arb is more frequently chosen with a value of 11 compared to a value of 7. The numbers do not demonstrate support for the second hypothesis suggesting arb-med would be most frequently selected when strength of case is high and importance of relationship is low.

Table 12 Crosstabulation * Which process option would you choose in this scenario?

		Imp Rela Low equals 1-4 choice and High equals 5-7 choice		Total	
		1-4 Choice	5-7 Choice		
Arb- med	SgtCaseLow equals 1-4 choice and High equals 5-7 choice	1-4 Choice	7	17	24
		5-7 Choice	7	11	18
	Total		14	28	42
Med- arb	SgtCaseLow equals 1-4 choice and High equals 5-7 choice	1-4 Choice	11	31	42
		5-7 Choice	16	26	42
	Total		27	57	84

Chi Square	Arb-med	F = .438	Sig. .369
	Med-arb	F = 1.365	Sig. .175

a Computed only for a 2x2 table

b 0 cells (.0%) have expected count less than 5. The minimum expected count is 6.00.

c 0 cells (.0%) have expected count less than 5. The minimum expected count is 13.50.

5.4 Impact of Demographic Variables on Process Choice

The data did not demonstrate any one specific variable or condition that indicated a statistically significant strategic choice between the process variable. Crosstabulation between males and females and process choice variable med-arb and arb-med, revealed a marginal significance value of 0.104 (see Table 13). However, there is a statistically significant interaction effect between gender and the organization employee/organization

owner variable when combined in a crosstabulation with the process choice variable.

Table 14 shows that females who are working with an organization as employees show a statistically significant tendency to choose the med-arb process over the arb-med process indicated by a significance value of 0.029. 76.9% of females who were employees selected the med-arb process option. When looking at females who were organization owners, the process selection rate dropped to 50%. However, the statistically significant tendency remains only for the female - organization employee/owner category. Males did not demonstrate a statistically significant difference in process choice when process choice was combined with the employee/owner variable.

Table 13 Crosstabulation *Are you male or female? * Which process option would you choose in this scenario?

		Arb-med	Med-arb	Total
	Male	18	25	43
	Female	24	59	83
Total		42	84	126

Chi Square **F = 2.136** **Sig. .104**

a Computed only for a 2x2 table

b 0 cells (.0%) have expected count less than 5. The minimum expected count is 14.33.

Table 14 Crosstabulation *Are you employed by the organization or the organization owner? * Which process option would you choose in this scenario? * Are you male or female?

		Arb-med	Med-arb	Total
Male	Employed by the Organization	11	13	24
	Organization Owner	7	12	19
Total		18	25	43
Female	Employed by the Organization	15	50	65
	Organization Owner	9	9	18
Total		24	59	83
Chi Square	Male	F = .352	Sig. .390	
	Female	F = .471	Sig. .029	

a Computed only for a 2x2 table

b 0 cells (.0%) have expected count less than 5. The minimum expected count is 7.95.

c 0 cells (.0%) have expected count less than 5. The minimum expected count is 5.20.

Further significant findings on process choice outcomes were discovered when comparing process selection variables with gender and size of organization. In order to get appropriate minimum expected counts of 5 for comparison of the organization size variable and process choice variable, a new variable was created comparing the two largest frequency segments for the organization size variable. The new variable included only those in organizations with 1-5 employees or 200 and above. Table 8 demonstrates the output of a crosstabulation of gender, organization size and process choice. The report for this output generates a significance value of 0.018 demonstrating that there is a relationship between organization size and process selection for females. The results indicate that females working for large organizations tend to choose the med-arb process.

The differences in process selections for males did not generate statistically significant values.

Table 15 Chi-Square Tests *Which process option would you choose in this scenario? * Created to single out only those who have Organizations from 1-5 people or from 200 and above * Are you male or female?

	Value	Exact Sig. (1-sided)
Male	.621(b)	.339
N of Valid Cases	30	
Female	6.322(c)	.018
N of Valid Cases	56	

Computed only for a 2x2 table

b 0 cells (.0%) have expected count less than 5. The minimum expected count is 6.07.

c 1 cells (25.0%) have expected count less than 5. The minimum expected count is 3.48.

5.5 Summary of Key Findings

The results of the scenario-based experimental design demonstrate a number of interesting findings. The first significant finding was that participant responses consistently ranked the importance of relationship to be slightly higher than expected. In two of the business case storylines, participants were told that the disputants were not friends and did not have a personal relationship yet the importance of relationship variable was more often rated of high concern than not. This finding suggests that the variable relationship is multi-layered, leading participants to consider relationship concerns such as the professional relationship between the disputants and the potential long-term relationship between the disputants after the conflict is resolved. The results also demonstrate that the med-arb process is most frequently preferred over the arb-med process, independent of the storyline manipulation for each of the four business cases.

The increased rating of relationship importance and greater selection rates of the med-arb process supports the hypothesis that high perceptions of the relationship variable indicate an increased use of the med-arb process.

Furthermore, the results demonstrate that women who are employees of an organization prefer to use the med-arb process option, whereas women who are employers demonstrate a 50/50 split in process selection. In addition, women who work for large organizations tend to choose the med-arb process. However, men do not show any statistically significant trends in process selection regardless of organization size or employee/employer status. While unable to gain a deep understanding for these findings within this study, prior research suggests these findings could be related to the gender differences in style and approach to resolving conflict, perhaps suggesting that women prefer using relational arguments based on responsibility to a relationship leading to an increased preference for the med-arb process (Pines, Gat and Tal 2002). It is possible that women who are company owners may experience a sense of responsibility to remain completely neutral for the benefit of those they manage, thus leading to an equal split in process choice rather than a preference for med-arb.

5.6 Open-Ended Survey Responses (Quantitative Methodology)

In the survey, research respondents were also asked to provide a description of why they choose a particular process in response to the scenario they got. The following responses describe why respondents chose either the med-arb or arb-med process for each of the four business case scenarios:

Business Case 1 Low Relationship High Strength of Case

The findings for the first fictional business case scenario provide some interesting insights on why people are making their process choices. Those explaining why they selected the med-arb process demonstrate the complexity surrounding the relationship variable. The survey respondents in this business case make note of the importance of considering the professional relationship in extension to the personal relationship, even though they are told that the disputants are not friends and don't really get along in this scenario. Alternatively, those explaining why they chose arb-med, demonstrate strategic thinking around concerns for protecting neutrality, in addition to demonstrating support for the second research hypothesis.

Med –arb Choice Responses:

The logical escalation of stages makes sense to me. First we attempt to work it out between us with a facilitator, and if that fails stage Y (arbitration) has a third party render a decision which is binding.

Because of the potential to salvage professionalism.

I think if you talk it out, you would have a better working relationship after.

Arb-med Choice Responses:

Because I don't like Pat so I just want to get a decision.

It leaves the neutral party neutral. The third person can be influenced or swayed by the body language or the chemistry that comes out of the two people with the issues. By not mixing emotions first you are able to decipher facts without emotional evaluation. Once a factual choice has been made it is easier to separate the emotional facts with the concrete ones. If the matter is solved then no need in knowing what was in the envelope. Again sparing the human emotion from hurt or disrespect and solve a problem much faster.

Business Case 2 High Relationship High Strength of Case

Respondents given the second fictional business case scenario also exemplify the use of med-arb when relationship (both business and personal) is a concern. The med-arb respondents also suggest that a mediation first process is a more logical, or perhaps comfortable, evolution of process stages. Again the arb-med respondents demonstrate strategic reasons for their selections noting how the process encourages concession making and the advantages of clearly delineating the facts for both parties before a negotiation begins.

Med-arb Choice Responses:

I believe strongly that this process honours both the individual and the relationship that has been formed (business and personal) better.

The process seems more logical. A discussion should happen before a decision is made.

Arb-med Choice Responses:

This is the first time I have heard of the sealed envelope and I like the idea of this because if during the negotiating stage you offer up a concession in the effort to agree on the overall dispute this would not come into play in the final decision.

I think that you need to get the issues out on the table quickly as that is what both parties will be focused on initially and they may not be concentrating on any discussion that occurs up front or come to a resolution. Also there may be some factors that come out that either party was not aware of that may change everything.

Business Case 3 High Relationship and Low Strength of Case

In the third business case scenario, med-arb respondents focused less on the potential process benefits for the relationship between the disputing parties and more on the more logical, or again perhaps comfortable, process order. The med-arb respondents demonstrate that there is perceived value in the process order, trying to mediate the conflict first and then resort to arbitration if necessary. Choice explanations for arb-med demonstrate that the process can be selected when a party does not care about the relationship and just wants to get a resolution demonstrating further support for the second hypothesis. Explanations for why arb-med was selected for business case three also demonstrate strategic thinking, such as protection of third party neutrality and the procedural advantage of having arbitration as the first stage ensuring that each party must listen to the other before mediation.

Med-arb Responses:

Let the parties involved try to work out the conflict themselves first. Then, if all avenues have been exhausted, bring in the third party facilitator to render the decision.

Because it appears less adversarial.

Arb-med Responses:

You are certain you want to get rid of him so you don't want to discuss several points in particular. You just want to get rid of him.

Because the neutral third party has less time to form biases or to "connect" with the parties, or to unwittingly sympathize with one over the other. In short I think this process is the most neutral.

YD (arb-med) is a more complete way to solve the issue, the parties would have opportunity to express their point of view without getting into discussions or interrupted... then, as the D process (mediation) comes, both

will be more open to listen to each other and have the opportunity to find a common solution.

Business Case 4 Low Relationship Low Strength of Case

Consideration for the importance of relationship is evident in the process choice explanations for the med-arb respondents in scenario four. Although participants in this group were told that their strength of case was low and importance of relationship was low, respondents consistently demonstrated the importance of maintaining some form of relationship and respectful mutual agreement between the conflicting parties. Those selecting arb-med note the value placed on this option when the main concern is just getting the conflict over with. The explanations for this process option also demonstrate strategic thinking around the power of persuasion that the unknown envelope decision will have on the disputing parties.

Med-arb Responses:

Informal processes can be effective while maintaining post split relationships.

I prefer to work out my problems myself first. Only if this fails would I want a third party to be deeply involved in the decision making.

It allows both parties the chance to be honest with each other, in safety, and allows for a mutual agreement respectful of both parties needs, wants and wishes.

Arb-med Responses:

I just think it would get to the point faster.

The uncertainty of what is in the envelope will compel the parties to reach a settlement because they know they cannot rely on their power of persuasion during the second stage... nothing can change the decision in the envelope.

One significant finding when comparing the open-ended explanations for process choice across the four business case scenarios, is the consistency in explanation for why a med-arb or arb-med process would be chosen. For example, explanations across all four business cases relating to why people choose the arb-med process demonstrate an interest in getting the situation resolved quickly, indicating low consideration for effects on the relationship and high concern placed on getting the conflict resolved. Responses from those advocating for the arb-med process also demonstrate a theme of strategic thinking. This process seems to be more frequently chosen for reasons that consider the impacts of variables such as neutrality, power dynamics, the value of clarification of facts etc.

The explanations for choosing the med-arb process also demonstrate consistent findings across all four business cases. However, unlike the arb-med process, those advocating for the use of med-arb to resolve the dispute frequently describe the hybrid as a more natural evolution of process stages. These findings suggest there is value placed on the perceived comfort level of beginning with discussion in the mediation and then moving to the presentation of cases and a final decision in the arbitration stage. Individuals choosing the med-arb process consistently indicate the value of first attempting to work out the conflict between the parties, indicating the importance of making a genuine effort to resolve the conflict with the disputing party. Respondents advocating for the use of the med-arb process also consistently make note of the importance of both the personal and professional relationship between the disputants. Those choosing the med-arb process far more frequently consider relationship issues in explaining the value of the med-arb process than those who choose arb-med.

In the low relationship manipulations of business case 1 and 4, participants were told that the disputants were never friends and that they did not want to continue their professional relationship (see Appendix C). Yet under these conditions respondents continued to choose the med-arb process overall more frequently than the arb-med process. Furthermore, those selecting med-arb in the low relationship cases described choosing the process explaining concerns about protecting the personal or business relationship. These results indicate a couple of possible scenarios: 1. That the business case script was somehow not successful in indicating that the parties are not friends and don't care to work together. 2. That the script was successful in conveying this message but that when respondents placed themselves in the situation provided, they drew from their own work experiences and determined that there is still significant value in giving the professional or personal relationship a chance at success, regardless. For example, in drawing from their personal work experience, respondents may continue to perceive value in preserving the relationship, such as making sure there are no harbored feelings of anger and resentment once parties go their separate ways. This aspect of relationship was not considered in the research study. Thus, the consideration of both the professional and the personal relationship of the disputing parties could provide some explanation as to why there was more frequently high concern values indicated for the variable relationship. These findings could also assist to explain why the med-arb process was more frequently chosen over arb-med in each of the four business cases regardless of the storyline manipulation for the independent variables.

5.7 Summary of Key Findings

The open-ended survey responses demonstrated process selections based on reasons and explanations that are comparable to the reasons formulating the research hypotheses. The significant findings of this component of the research project demonstrate that the med-arb process is frequently chosen for reasons of comfort (the process demonstrates a more natural feeling evolution in process stages) and for reasons pertaining to concerns about the relationship. These findings support the research hypothesis indicating that those who place high concern on the importance of relationship tend to prefer med-arb over arb-med.

The findings also demonstrate that the arb-med process is chosen for more strategic reasons. In the arb-med choice examples, respondents consistently indicated more complex considerations for why this process would be an ideal option. Furthermore, those choosing the arb-med process demonstrated a lack of consideration for the relationship variable when compared to the med-arb choice descriptions. This finding suggests that those choosing arb-med do not perceive a high relationship concern situation or that given the conflict circumstances there are other variables that outweigh relationship impact considerations.

Chapter 6 - Qualitative Research Results

6.1. Descriptive Statistics

The semi-structured interviews involved a total of six participants, five male and one female, two of whom are American and four that are Canadian. All interview

participants are ADR practitioners who have experience being the third party facilitator for either a med-arb or arb-med hybrid dispute resolution process. Three participants answered the semi-structured interview questions based on their experience with the med-arb process and the other three participants spoke based on their experience with the arb-med process. The formal arb-med process (as defined earlier in this paper) is much less commonly used in practice. Respondents who discussed their experience with facilitating this process had a range of experience from four different cases to six different cases. The three participants who spoke about their experience facilitating a med-arb process had a range of experience from four different cases to approximately one hundred different med-arb cases. All those interviewed are lawyers. Work experience relating specifically to the ADR field ranges from a minimum of 13 and a maximum of 50 years of practice. The median experience value is 31.5 years with an average experience value of 30.8 years.

When asked what kind of conflict situations end up using the med-arb or arb-med process, respondents indicated that the large majority of cases using these processes are disputes that pertain to the field of labour relations. Corporate/commercial disputes were represented as the second most common category of disputes that use a hybrid process. Respondents indicated that it is relatively rare that a conflict using a hybrid process would not fit within one of these two categories. Furthermore, almost all interviewees reported that the hybrid dispute resolution processes are particularly well suited and frequently used to resolve complex disputes.

When interview participants were asked what kind of parties consider using a hybrid process, most respondents suggested that it is largely individuals who have a more

sophisticated and experienced understanding of both mediation and arbitration who are willing to use a hybrid process to try and resolve their dispute. The large majority of those interviewed indicated that either the parties' lawyer(s) were the ones who suggested or had major influence in the possibility of using a hybrid process, or in many circumstances it is the third party facilitator themselves who presented this option to the conflicting parties. In the example of labour relations disputes, the parties that actually 'come to the table' are often professionals whose job it is to deal with disputes on behalf of a company or a union. These individuals are highly skilled in negotiation, mediation and arbitration and draw from a wealth of experience with these processes. With them at the table are often senior managers or company owners, one lawyer for each side of the issue and sometimes a particular claimant who has brought forth the dispute. In corporate/commercial disputes, the parties 'at the table' are most frequently a senior manager or company owner and one lawyer for each side of the issue at dispute. Thus, the parties that are involved in hybrid dispute resolution processes generally tend to be senior personnel with decision making authority, professional representatives for a particular interest group and experienced lawyers. Lawyers were consistently reported to have pervasive influence over parties' decision to use or not use a hybrid process.

6.2 Themes Underlying Hybrid Process Choice

After gaining a general sense of who the research participants are and what common themes exist around the use and practice of hybrid processes, the interview questions led to more process specific questions such as, what the research participants

thought are the common reasons behind choosing a particular process. Those questioned about the arb-med process presented the following themes in their responses:

The arbitration is limited in its ability to address the specific remedies of a multi-faceted issue so it is then beneficial to have the mediation after the parties have adjusted their perception and come to a common set of information based on the outcomes of the evidence.

The representatives need to show they have represented their constituency to the fullest extent possible, thus saving face plays a roll in the process. Using this process they can first go on record and make their points on behalf of their constituents. However, because the issues are often so complex after they have presented the positions of their constituents they then have the freedom to negotiate a deal that will consider all the complexities and implications of the parties.

You can go to arbitration and make your case and get a decision then in the mediation you can concede points to the other party without being reprimanded because the decision has already been rendered by the arb-mediator.

These responses demonstrate that the arb-med process is well suited and used for cases that are complex in nature, both due to the facts surrounding the dispute and the politics related to the interest groups affected by the outcome of the resolution. One of the first considerations and related benefits of the arb-med process is that the arbitration stage allows each party to put their best facts forward and come to a common blended understanding of what facts hold up and what facts do not. This can provide a better platform for successful negotiation because parties are less focused on negotiating facts and more focused on negotiating the best deal they can achieve given their situation. Another reason for selecting the arb-med process, with particular regard to many labour relations disputes, is the ability for the negotiating representative to save face. As a representative of a group, it is often important that one's constituents know and

understand that their interests were defended appropriately. However, sometimes this representative must balance the interests of their constituency with what is realistic given the nature and circumstances surrounding the dispute. The arb-med process can allow a representative to go on record during an arbitration hearing and make a case for all the demands of the constituent group, but then balance these demands with the demands of the opposing party in the mediation process. Another important consideration when choosing the arb-med process is that after the arbitration process is completed it is often easier for parties to make concessions without penalty. For example, if one was to demand 10 units of a particular commodity and then suggest during the mediation that they would be willing to accept 5 units, if an agreement is not reached in the mediation, then the arbitrator knows a party is willing to go that low and this could change their verdict. However, with arbitration first one is free to make any concessions they want afterwards because the arbitration decision is already rendered thus providing some insight as to why an arb-med process might be preferential to a med-arb process. Based on the responses provided by the arb-med respondents, the process is largely chosen when participants place significant value in having the arbitration process but in addition believe that having the arbitration first will likely enhance the value of the mediation.

Research participants responding to their experience with the med-arb process noted different reasons and explanations for why parties commonly choose the med-arb process option. Those questioned about the med-arb process presented the following themes in their responses:

The corporate world is particularly sensitive to the time and resources that processes take. Thus, saving time and cost and getting the issue finalized is of great value to the corporate world. The mediation can potentially avoid a time and cost consuming process of arbitration.

There is an inherent flexibility in the mediation process that gives the parties more options up front thus making this process of interest.

The process is also very useful when the options for the arbitrator are limited and the nature of the conflict might require more than those limited options. I.e. An apology can come into play where an arbitrator may not have this as a remedy option.

The potential to resolve the dispute in the first stage of the hybrid seems to make the med-arb process of particular appeal. An early resolution allows the parties to satisfy two important concerns, the time and cost invested. Parties may also prefer the med-arb process over arb-med because of its inherent flexibility for parties to determine a resolution themselves and to creatively construct a resolution that involves remedies not available through the arbitration process. In these circumstances the arbitration component of the hybrid process is not considered to be of much value, other than to act as a backup option to ensure a decision will be rendered even if the parties cannot come to terms with a solution themselves.

6.3 Effects of Importance of Relationship and Strength of Case on Process Selection

The semi-structured interview participants were asked to provide their insight on how the variables relationship and strength of case played a role in affecting parties' decisions to choose a particular hybrid process. One reoccurring theme represented in both research groups was that relationship plays a unique role with regard to labour relations disputes. Individuals in the field of labour relations are often professional

negotiators who represent a particular interest group on a continued basis in a variety of different disputes. This means that there is a professional relationship between the negotiating parties as they are faced with each other on numerous occasions in representation of their respective constituent groups.

Although they are usually not friends, in a labour management context the ongoing relationship is very important because they will deal with each other time and again in their professional relationship, weekly, monthly etc.

Relationship is very important in industrial relations issues because the union and management are permanently joined together.

In many examples this relationship is one of professionalism and respect for the symbiotic relationship between union and management and this relationship is continually present. In practice, the field of labour relations is predominantly the largest advocate group for the use of both the med-arb and arb-med hybrid processes. Yet, the research results to follow will demonstrate that importance of relationship largely determines a preference for the med-arb process. In the labour relations example, one must consider that the importance of the relationship shared between union and management is somewhat unique compared to other commercial, domestic and industrial relationships. This is because labour relations disputes often use arb-med processes even though they have a continued relationship between the union and management groups. Although this relationship is ever present, it is important to consider that the relationship is not always a good one thus suggesting an inclination towards the use of the arb-med process. Furthermore, because the relationship is one of a professional nature, among those who are professional negotiators, this relationship could be maintained through basic negotiation practices and customs such as not using adversarial and overly dramatic

negotiation tactics. Thus, when looking at the effects of relationship in this context, it is important to acknowledge the ever present situational relationship between union and management and the professional representatives of these interest groups. This relationship might assist with the overall ability to more effectively and efficiently determine mutually beneficial resolutions in the mediation stage; however, the nature of this relationship might not impact process choice to the same degree as it might affect others who place a high value on the long term relationship between the disputing parties. Finally, it is also noteworthy that the practitioners speaking from their numerous years in the ADR field acknowledged that there is an ever present relationship between management and union in labour relations disputes, however their responses still largely suggest that there is a tendency to choose the arb-med process in labour relations disputes when strength of case is high and relationship is low. These results suggest that there is a difference between the ever present professional relationship between the negotiating representatives and the larger relationship considerations of how winning or losing a certain dispute will impact the parties affected by the resolution outcome.

6.4 Relationship Results for the Med-Arb Respondents

The experienced med-arb practitioners who were interviewed for this research consistently demonstrated the importance the variable relationship plays in the decision to use the med-arb process. This was demonstrated by the following statements:

The nature of the process protects the relationship between the parties because regardless of what stage the process is resolved both parties have given themselves an opportunity to resolve the issue. This has huge implications for the relationship. The nature of the process protects the long term business relationship because the mediation is up front.

The relationship of the parties is frequently very important and the importance of this relationship is often one of the main variables leading the conflicting parties to choose a med-arb process.

Maintaining relationships is critical, especially in corporate commercial disputes. If there is a long term relationship to be preserved then mediation is the way to go.

All those questioned about the med-arb process suggested that if the long-term relationship between the two disputing parties is important then med-arb would be a preferential process option. When questioned in more detail, respondents indicated that the mediation process provides the parties with a multitude of resolution options while avoiding arbitration, which was described as an invasive and more adversarial process. It was suggested that the nature of the arbitration process can further damage the relationship between parties. Respondents also indicated that mediation then arbitration if necessary is widely considered to be a more natural evolution in process order. This suggests that parties are more inclined to choose the med-arb process first over the arb-med process because med-arb it is more naturally intuitive. Another important consideration for choosing the med-arb process relates to the possibility of resolving the dispute in a time and cost efficient manner. It was suggested that minimizing the time and cost of a process makes the dispute overall less damaging to either party and, to a degree, can minimize the negative impressions that either party maintains of the other.

6.5 Relationship Results for the Arb- Med Respondents

The experienced arb-med practitioners consistently demonstrated that the variable relationship is not the most important variable influencing parties to choose the arb-med

process. When asked about the role relationship plays in the decision to choose arb-med responses indicated the following:

When choosing arb-med testing the strength of case is the most important part and then the relationship plays a secondary role in the mediation depending on how well the parties did in the arbitration.

If long term relationship is a concern then med-arb would likely be the process of choice over arb-med.

If you had a strong case and the relationship is important then it is likely the parties will choose med-arb.

The cross-examination of the arbitration process is very adversarial it is difficult and unpleasant experience and it is not really good for relationships. When there are ongoing relationships it is better to have the parties avoid the adversarial process and go straight to the mediation first.

The arb-med practitioners agreed with the med-arb practitioners in expressing that the nature of the arbitration process does not assist with continuing or improving the relationship between the disputing parties. Responses from the arb-med group also demonstrated that when the process of arb-med is selected then testing the strength of case is the most important variable of consideration, which then suggests that relationship remains as a secondary concern. Further support for this finding is provided when respondents indicate that if relationship is important to the parties then strength of case is overridden and the likely process of preference becomes med-arb. Thus, when questioned about the role the variable relationship plays in the decision to choose a hybrid resolution process, both the med-arb and the arb-med test group demonstrate similar findings. Both groups found that if relationship is described as very important, then the med-arb process is likely to be the best fit for the disputants even when strength of case is high.

6.6 Strength of Case Results for the Med-Arb Respondents

Each test group in the semi-structured interviews was initially asked about the impacts the variable relationship would have on process choice and then was asked how the variable strength of case plays a factor in the decision to choose a hybrid process.

The med-arb test group reported the following:

If the case is really strong and the relationship is not important then there will likely be a tendency to choose arb-med.

If parties have a strong case but the relationship is still important (providing they and their lawyer has a broader business sensitive overview) they would lean towards a med-arb.

If the case is really strong and the parties don't care about the relationship then in most cases the parties would likely just want a straight arbitration. People just don't see the benefit of an arb-med process at this stage.

The responses to the strength of case variable question further supported the importance relationship has in the decision to select a hybrid process. The med-arb test group indicated that the arb-med process would only be selected when the relationship between the disputing parties was of very low or of no significance. Only if relationship is low and strength of case is high does the arb-med process become a distinct consideration. This group indicated that when relationship was important parties would prefer med-arb regardless of whether their strength of case was high or low. However, the respondents in this group also indicated that parties with *high strength of case* and low relationship circumstances might prefer to choose pure arbitration. Further investigation into this response developed findings that compared to earlier statements around the more common willingness to view mediation followed by arbitration as a

natural evolution in process option. Those indicating that pure arbitration would be the preferred process explained that parties frequently are challenged by the idea of having mediation as a process option after first completing arbitration. Thus, the responses indicate that only when strength of case is high and relationship is low would parties consider the arb-med process over the med-arb process.

6.7 Strength of Case Results for the Arb-Med Respondents

The arb-med test group was asked if parties' perception of having a strong legal case would influence them towards choosing the arb-med process. The responses to this question pertained to the following themes:

This option allows parties to make their best case first, they then have the advantage of seeing whether their case is as strong as they originally perceived based on the presentation of the opposition. Thus, by hearing the strength of the other sides' case one can better evaluate the strength of their own case. Often there are doubts created so arb-med allows an opportunity to respond to that.

Using this process parties can test their strength of case and the case of their opponent. If strength is high then parties can go with the arbitration decision if strength is low parties can attempt to salvage the deal in mediation.

Evaluating or testing the strength of case is an important part of using the Arb-med process.

If parties think they have a weak case they are much more inclined to opt for a med-arb situation than an arb-med. This is because in a med-arb they think they can do better than just loose i.e. they go for whatever deal they can get. Furthermore, they are not going to want to exemplify the weakness of their case upfront and then try to mediate afterwards.

The responses from the arb-med test group indicate that an important component of choosing the arb-med process is to test one's strength of case, particularly when a party is relatively sure they have a strong case. Respondents in this group were

questioned in further detail as to why two parties would both opt for the arb-med process when it is likely that one party has a very strong case and one party has a weaker case. The participants in the arb-med test group indicated that in a large number of circumstances parties are either not sure how strong their case actually is or both parties genuinely believe they have a much stronger case than their opponent. The practitioners who spoke based on their experiences with the arb-med process indicated that it is fairly common for parties to be overconfident about the strength of their case. In many circumstances parties appear to ignore either the weakness in their own case or they underestimate the impact of the opposing party's strength of case. In these situations it is not until they are involved in the arbitration process that they realize fully how their case measures up to that of their opponents. The respondents in this group indicated that strength of case was an important variable in choosing arb-med in examples where relationship was not the variable of greatest importance. Thus, parties are more inclined to opt for the arb-med process when they believe they have a fairly strong case and they largely value winning over the importance of maintaining the long term relationship.

6.8 Usage Rate Differences Between Hybrid Processes

During the preliminary research stages it became apparent that the med-arb process is much more commonly used in practice than the arb-med process. The range in practitioner experiences with these processes, from 4 - 6 processes for the arb-med test group and from 4 - 100 processes in the med-arb test group, exemplify the greater use of the med-arb hybrid. With further investigation into hybrid processes it was discovered that in addition to the fairly common use of med-arb, there exists a fairly common

informal arb-med process practice. As previously discussed in this paper, there are a number of practitioners who bring two parties to an arbitration hearing that at some point during the arbitration process transforms into a mediation process. In relation to the observation of this phenomenon, both the arb-med and med-arb test groups were asked why people commonly use a formal med-arb process or an informal arb-med process, but rarely decide to use a formal arb-med process in which parties agree to arbitrate as the initial stage of dispute resolution. Their responses are as follows:

Both the individual parties understanding of the processes and their understanding of the dispute resolution continuum lead them to move towards choosing a mediation first process over an arbitration first process.

People want the flexibility. They don't always feel it is necessary to fully go through the arbitration process. In addition, there is a time issue, a cost issue and a level of process severity associated with a formal arb-med and the parties might not feel it is necessary.

There is a lack of knowledge on how effective these processes can be. Furthermore, knowledge of these processes has yet been put into the language that the business community responds to thus, it has not yet attracted widespread interest for the users.

When people think that arbitration is the best fit for them then they won't want to consider mediation as well. It's not until they see their case as it comes out in the arbitration that they start to think about using the mediation option. This frequently arises from a significant change in one parties' strength of case.

Frequently commercial and labour contracts have dispute resolution clauses that do not fit the parties or the conflict. These clauses are just thrown into contracts somewhat haphazardly. So there is a lack of foresight and investment into developing clauses that will allow the appropriate opportunities to resolve the dispute using arb-med as an example.

Responses indicated that due to the nature of the mediation and arbitration processes respectively, in addition to people's common understanding of these processes, a mediation first arbitration second type hybrid is a more natural and comfortable process

choice for the majority of disputing parties. Arbitrating first and then mediating afterwards appears to be somewhat counterintuitive. As explained by the interview respondents, in many cases, those who think their dispute is best resolved through arbitration do not usually see any merit to having a mediation option afterwards. It is frequently not until parties see a significant weakness in their strength of case that they are willing to consider an alternative resolution process such as mediation. This finding suggests, as noted previously, that parties choosing arbitration as an initial option place a high confidence value in their ability to win the dispute. In addition, the factors of time and cost play a large incentive towards influencing people to choose mediation up front because this process allows the parties the opportunity to resolve the issue in one stage as opposed to the inevitable two stages of the arb-med process. Further encouraging this current state of process selection is a lack of widespread knowledge about the different hybrid process options and the potential benefits each one has to offer. Finally, in combination with a lack of knowledge and understanding of hybrids and their benefits, there exists a practice of formulating contracts that place little time and energy into creating dispute resolution clauses that provide parties with the flexibility to choose a hybrid process such as arb-med. These findings suggest that there is a need for increased research and literature around the functions and benefits of hybrid processes with particular regard to corporate/commercial disputes.

Chapter 7 - Discussion and Conclusion

Mediation continues to play a distinct role as a preferential process option. For example, research conducted by Goldberg and Brett (1990) looking at individual's

preferences for either mediation or arbitration found that all of their research participants preferred mediation over arbitration. Further research comparing mediation and arbitration found that disputants frequently prefer mediation over other dispute resolution options because it is perceived as more fair (Karambayya, Brett and Lytle 1992; Pierce, Pruitt and Czaja 1993). Ross, Brantmeier and Ciriacks (2002) looked specifically at hybrid processes and discovered comparable results. Their study found research participants rated the med-arb process as more fair than the arb-med process. The findings of these studies suggest that most individuals considering a dispute resolution process default towards using mediation as a first process option and then consider alternative processes such as arbitration second. The preliminary research stages of this study discovered similar tendencies. In the beginning stages of this study, respondents indicated a distinct preference for a mediation first process suggesting it was a more beneficial way to approach a conflict situation. This trend continued throughout the research study even when the words mediation and arbitration were removed from the process descriptions. The responses to the online survey consistently demonstrated higher selection rates for the med-arb process in each of the four business case scenarios regardless of the storyline manipulation. Furthermore, the responses provided in the semi-structured interviews also clearly indicated that mediation is considered a less adversarial and thus predominantly preferential process when compared to arbitration. Although this study, among others, has demonstrated a trend in process preference there remains the question of why this preference exists.

One possible explanation for why mediation is frequently preferred to arbitration in addition to being perceived as more fair, could relate to party autonomy. Ross and

Conlon (2000) suggest that disputing parties desire to maintain control of both the dispute resolution process and the outcome of that process. It could be this desire to maintain control that “affects disputants’ procedural preferences and their resulting procedural choice” (Ross and Conlon 2000, 418). There is also a willingness to ensure that party autonomy prevails allowing parties to retain as much power and control over the outcome of their dispute for as long as possible (Onyema 2001). Farmer and Pecorino (1998) support this when finding that “in labor-management disputes, negotiated settlements are generally considered to be superior to arbitrated settlements” (417). These findings, if transferable to other management disputes, could indicate that there is a tendency to first attempt to talk about the problem and try to resolve it before moving to a third-party decision maker. The findings of this research study demonstrated comparable results. Overall the survey component of the study consistently demonstrated participants’ willingness to select the med-arb process more often than the arb-med process in all of the four business case scenarios. When looking specifically at the explanations for the med-arb process in the open-ended survey question, respondents frequently indicated the importance of autonomy. The explanations for process selection indicated that value was placed on allowing the parties to first attempt to work out the problem by themselves. Thus, it appears that maintaining party autonomy is a value that helps guide disputants decisions towards choosing a particular resolution process.

Further insight as to why mediation first processes might be preferential relates to how conflict resolution is organized in general. Structurally within our society the med-arb evolution of process order is encouraged. Some examples of this include court appointed mediation (encouraging parties to mediate before using the courts) or ADR

agreements existing within government systems and private organizations that state mediation will be the first resolution process used secondary to litigation or other dispute resolution options. Therefore, with regard to the survey responses, the idea that the parties try to work it out themselves first and then seek a final decision maker seems to be more easily accepted because there are more examples of this kind of approach in the structure of the courts and many dispute resolution systems in North America. This may provide additional insight into why parties more frequently select a med-arb style process over an arb-med style process.

In addition to the way conflict resolution processes are used in practice, both the quantitative and qualitative methodologies of this study found that med-arb has the benefit of 'common sense' process understanding. The common knowledge of mediation and arbitration process options is continuously increasing through a variety of avenues such as specific training, news media, movies etc. With this knowledge, in many ways, it is widely understood that mediation procedurally comes before arbitration on the scale of conflict escalation (Albertyn 2006; Chicanot and Sloan 2003). Even the open-ended responses of the survey participants, who generally had little experience with mediation and arbitration, indicated that they feel more comfortable with choosing the med-arb process as it seems to be a more natural evolution of process order. When looking at both the semi-structured interviews and the open-ended question responses, the research findings consistently indicated that starting in mediation then moving towards arbitration if mediation does not work is a more natural development in process stages. Thus, as result of the way these processes are generally understood, it seems it takes much more

contemplation for parties to consider an arbitration first process helping to provide further explanation as to why med-arb might be preferred.

Perceived time and cost investment might also influence parties to opt for a mediation first process. Again the nature and structure of conflict resolution training and practice might encourage this time and cost consideration. For example, Ury, Brett and Goldberg (1988) indicate in principle five of designing a dispute resolution system that procedures should be arranged in a low-to-high cost order. Over a series of years this principle (and others like it) may have helped influence how people approach selecting a dispute resolution process. Business organizations also place particular concern on minimizing cost. Furthermore, lawyers exposed to these concepts may provide additional influence when advising their clients to choose low-to-high cost processes. The large majority of semi-structured interview respondents indicated the pervasive influence lawyers have on disputants' consideration for processes choice. A low-to-high cost consideration would tend to favour a mediation first process such as med-arb. This is because, using the med-arb process, the parties could potentially resolve the issue in the first stage and never have to make an investment in the second process, whereas arb-med involves a two process investment. The counter consideration to choosing a low-to-high cost process such as med-arb is the value of having a non-biased third party decision rendered before having an informal process of open discussion and caucusing. Concerns for the protection of neutrality beyond time and cost considerations are clearly indicated in the open-ended survey responses of those selecting the arb-med process. Those explaining their decisions to choose arb-med consistently note that the process better protects third party neutrality in addition to minimizing the negative impacts concessions

may have on the arbitral decisions etc. However, the research results demonstrate an increased tendency to select med-arb. This suggests that many parties are willing to sacrifice the impact mediation first might have on the neutrality of the third party facilitator in the interests of a potentially faster and less costly dispute resolution option such as med-arb.

Gender bias could also have played a role in the research results demonstrating a consistent preference for the med-arb process. Two-thirds of the online survey participants were women. Analysis of the results did not demonstrate statistically significant trends in process choice for men when measured against any of the research variables. However, the results did find that women who were employees and women working in large organizations had a statistically significant tendency to select the med-arb process. Although the specific reasons for process selection rates between different genders were not conclusively explained in this study, it remains noteworthy that the increased ratio of women to men in the results of the online survey could have had some impact on the overall selection rates of the med-arb process.

Although there may be a number of variables that influence a mediation first process selection, the research study also found strong support for the importance relationship has on process selection. The open-ended survey responses consistently indicated that the med-arb process was chosen for reasons that related to concerns of protecting or improving the relationship between the disputing parties. Furthermore, the experienced dispute resolution practitioners involved in the semi-structured interviews consistently indicated that when the relationship variable is a consideration, parties will more frequently opt for the med-arb process over arb-med. The semi-structured

interview respondents also indicated that the med-arb process does provide greater opportunity for preserving the relationship between the disputing parties. These findings indicate that not only is there an overall preference to use med-arb when relationship is important, but that the med-arb process does provide greater opportunity to salvage relationship concerns in practice. This supports the first research hypothesis which expects those who value the long term relationship between the disputing parties will more frequently choose the med-arb process regardless of concerns for strength of case.

When relationship was of a high concern the research results were expected to demonstrate a preference for the med-arb process. However, the research study also found that relationship is a far more complex consideration than originally contemplated. The research findings indicate that participants may have considered not only the personal or professional relationship between the two disputing parties but also how that particular dispute could impact the overall professional or personal relationship one might have with other friends and colleagues as result of the conflict. Thus, it appeared that there is value placed on being able to demonstrate to peers and colleagues that regardless of the dispute particulars, effort was made to try and salvage some sort of relationship. Med-arb was consistently perceived to be the process option that would provide the best opportunity to salvage any positive relationship outcomes or considerations. This led to higher than expected measurements for importance of relationship when averaged across the four different business case scenarios. This unexpected finding demonstrates both the complexity and high importance rating that participants gave to the relationship variable when considering a conflict situation.

The research study also found additional beneficial insights to the value and use of hybrid processes. The semi-structured interviews with experienced practitioners consistently indicated that hybrid process options were particularly well suited to very complex cases and sophisticated parties that have had a wealth of experience with both mediation and arbitration. This is demonstrated by the widespread use of these processes in the labour relations field and those who engage in these processes commonly as a profession. These findings provide some knowledge to the business community suggesting that hybrid process may be worthy of increased consideration when involved in very complex conflict situations. It is noteworthy that these findings were not shared across both methodologies of the research study. There are a few possible explanations for these differences. First, the large majority of those who responded to the surveys had little-to-no experience with either mediation or arbitration. Second, the business case scenarios may not have been complicated enough to effectively lend themselves to an ideal paring with a hybrid process option. When looking at the results of the survey participants, it is important to consider their lack of experience with dispute resolution processes. Thus, although there was a lot of comparable overlap between the arb-med responses of the two methodologies, the depth of consideration provided by the hybrid process practitioners in the semi-structured interviews was not perfectly matched by the survey participants.

Another relevant finding of the research study is that many of those who chose the arb-med option consistently provided evidence of more strategic reasons for selecting the arb-med process in the open-ended question component of the survey. These strategic considerations were issues such as saving face, establishing a single set of facts or

maximizing the neutrality of the decision maker. Only when these more strategic considerations overrode the importance of relationship was arb-med most commonly selected as a process option. The responses in the semi-structured interviews also demonstrated that the arb-med process would be chosen for more strategic reasons when relationship was not a significant concern. These findings provide support for the second research hypothesis stating that arb-med would be the preferred process when perceived strength of case is high and relationship concerns are low.

An additional area where arb-med responses between the survey participants and the interview participants largely differed is that many of those in the interview group noted the arb-med process plays a major role in testing the strength of case between parties. As indicated by the participants of the semi-structured interview, those who are experienced with disputes know that one's strength of case is never as strong as they expect it to be. One's strength of case can often become stronger or much weaker as the facts of the dispute come to the forefront and the arb-med process plays a strategic testing role. One noted advantage of the arb-med process is that it has the capacity to allow the parties to get a clear picture of what the facts and strengths of the case will be, then provides an opportunity for the parties to determine how best to resolve the issue in mediation. Those responding to the open-ended question in the survey group placed little consideration on the importance of testing the strength of case; however, some respondents did note the value of using the arb-med process to generate a single unified understanding of the issues (or single set of facts) to then mediate with. Once again the differences between the semi-structured interview responses and the open-ended survey responses may be explained by the fact that the large majority of the survey participants

had little to no experience with mediation or arbitration. Thus, the lack of process experience and sophistication combined with a short time allocation for considering ones reasons for process selection may provide insight as to why respondents in the open-ended questions did not specifically indicate testing strength of case as a strategic reason for using the arb-med process.

The results of this study demonstrate that the existing structure of our dispute resolution systems, the value placed on time and money over neutrality, and the value placed on maintaining autonomy and protecting relationship concerns, led to an overall preference to use the med-arb process. These findings provided insight as to how participants would respond when faced with low relationship and *low strength of case* conditions, thus responding to the third research hypothesis. In response to these conditions, the results indicated that med-arb is the process most frequently selected in a low relationship, *low strength of case* condition. Furthermore, the first hypothesis of this study expected to find that the med-arb process would be selected more frequently than the arb-med process. The research results demonstrated that this was accurate. The first hypothesis was predicated on the belief that the variable relationship would be the single strongest variable influencing parties' selections and that when relationship was a concern med-arb would be preferred. The results found support for the importance of relationship hypothesis however it did not fully consider the complexity and importance that relationship concerns play in a conflict situation. Thus, participants' considerations for the relationship variable were more complex than originally expected leading participants to conclude relationship was of high concern more frequently than originally hypothesized. In comparison, the research results also demonstrated that arb-med is

predominately chosen for specific strategic reasons. When arb-med is selected, concerns for the relationship are generally low. The results of this study suggest that there is support for the second research hypothesis that when *strength of case* is high and importance of relationship is low there is an increased tendency to choose arb-med.

Overall, the findings of this study provide a number of insights and prospective benefits for the business community while also contributing knowledge to the study of conflict resolution. To start, the hybrid processes are advantageous because they guarantee a decision will be made in addition to allowing parties an opportunity to solve the problem themselves. Secondly, this research has found that hybrid dispute resolution processes work particularly well for complex conflict situations that may require a complex multi-faceted solution including options not available through arbitration or litigation alone. Thus, as result of this finding, business organizations might more confidently consider hybrid processes when faced with a complex conflict situation. In relation to this finding, third party practitioners involved in a hybrid process are provided with the initial insight that the issue at conflict may be of complex nature requiring a multitude of different considerations.

This research study also demonstrates that for a number of different reasons and circumstances a mediation first arbitration second process functions as a more natural fit for most peoples' interests and expectations. When organizations have a complex conflict situation and parties involved have little-to-no conflict resolution experience it may be of greater comfort and overall benefit to encourage the parties to use a med-arb process. The findings of this study have also shown that relationship is a complex multi-faceted variable that considers both the personal and professional relationship between

the disputing parties and the relationship with friends and colleagues surrounding the conflict situation. The med-arb process has both real and perceived advantages towards improving or enhancing the relationship between the parties. These discoveries suggest that it might be of value for organizations to determine if there is an important relationship variable present between the parties. If there is a high concern for relationship among the conflicting individuals then a med-arb process option might be an appropriate conflict resolution process. Furthermore, a practitioner involved in a med-arb process may find it advantageous to place extra time and consideration on the relationship (professional or other) between the disputing parties. Having this initial insight based on the process selected might assist the third party practitioner to not only resolve the conflict more efficiently but to create a resolution outcome that is of greater benefit and satisfaction to both parties. Thus, the results of this research begin to add knowledge and additional considerations surrounding a decision to choose a hybrid process.

In circumstances when relationship is not of high concern, the arb-med process may be a more strategic process option. The arb-med process demonstrates an added protection for third party neutrality. When conflicting parties have vastly different perspectives, stories, facts or explanations of a conflict situation then extra consideration for the arb-med process may be of significance. For conflicts of these circumstances the arb-med process provides a structured initial stage that delineates a single set of unified facts creating a shared understanding of the issues. This potentially has the capacity to allow parties greater success through negotiation because they are no longer debating what is true and not true but rather what might work or not work given the predetermined

set of facts. Both business organizations and third-party practitioners could use this knowledge to assist the conflicting parties to increase their chances at creating the best possible resolution given the conflict circumstances.

Insight from the semi-structured interview responses of this study has suggested that the arb-med process is excellent for testing one's *strength of case*. Arb-med can be a process of strategic use allowing each party to get a clear understanding of how strong their case really is and then allowing them the opportunity to negotiate before a final binding decision is rendered. In circumstances where parties are not certain how strong their case is or comparatively how strong their opponent's case is, the arb-med process might be of significant value. Additionally, the third-party practitioners involved in the semi-structured interview noted that in practice parties frequently enter arbitration with over inflated perspectives on their *strength of case*. The semi-structured interview participants also noted that in practice parties frequently begin in arbitration and then as result of new facts and information, change pace and request a mediation approach. As a result of this reality, both individuals and organizations might want to give the arb-med process particular consideration when they believe the conflict is a pure arbitration issue. Under these conditions, selecting the arb-med method can be of great benefit as the process is likely to reveal one of two outcomes. The first outcome is that the party truly has a stronger case (as was perceived) so the arbitration stage can then be used to exemplify this strength, potentially allowing a greater outcome in the mediation stage. However, in the second potential outcome the party enters the arbitration only to learn that their case is not as strong as originally perceived. With the arb-med process selected upfront there is an opportunity to finish the arbitration and then negotiate a deal in the

pre-determined mediation stage allowing them to save face and not further weaken their position. Alternatively, a party who opts for a pure arbitration case and then realizes in arbitration that their case is not as strong as originally perceived may weaken their negotiation position by asking the other party to move away from the arbitration and move into a mediation process. This request to switch to mediation may signal to the opposing party that they know their case is not strong enough. Having this process option pre-determined may avoid the severity of the power reversal between the conflicting parties. In selecting the arb-med process parties that realize a significant reduction in their perceived *strength of case* can continue through the arbitration knowing they will get an opportunity to mediate. In extreme circumstances this may not be of any merit because new facts could alter a parties' case to such a degree that any further attempt at arbitration would be pointless. In these extreme circumstances pre-selecting an arb-med process would neither be of particular advantage or disadvantage because the party losing their *strength of case* would have to request the mediation alternative before concluding the arbitration. It is in circumstances other than the most extreme conditions that there is significant advantage in pre-selecting arb-med for what might be considered a pure arbitration issue.

Although this study provides additional insight and knowledge on the benefits and uses of hybrid processes, it merely begins to shed light on the benefits of these processes, when they should be used, how they should be used and the challenges they present. The first area of development required is the creation of wider overall knowledge in the business community of what these processes are and how they work. Training institutions, practitioners, industry journals, etc. need to take a closer look at these

processes, gain a better understanding of them and then convey their knowledge to a widespread audience. The second major requirement to create further understanding of these processes is to complete more hybrid process specific research. Research on hybrid processes is relatively new and as result there are a great number of questions that could be further considered and researched.

It is largely people in the workforce who are asked to make the decision on which process to use to resolve disputes occurring within a commercial context. Therefore, an increased number of studies covering this target group in a variety of different geographical locations could provide additional insights on hybrid process selections. Furthermore, larger sample sizes may generate productive data sets with additional knowledge about the variables that influence people to choose one hybrid process over another. Future research involving larger sample sizes may want to consider different approaches to the target study group. The survey for this study was sent out electronically to a wide number of potential participants, however, accurate estimations of how many people actually saw the research survey is very difficult to determine. Further studies in this area may want to consider approaching research participants in the workforce using alternative vehicles such as mail-in surveys, distributing paper surveys at association meetings or distributing surveys at annual conferences representing particular industries. Using these alternative methods for collecting research data might achieve more accurate estimations of how many people actually received the survey and could even result in higher participant response rates.

Alternatively, additional research stemming from this study could look more specifically at the different kinds of relationship considerations and how those different

considerations will influence process selections. Relationship seems to be a very complex but important variable that influences peoples' perspectives on conflict and how best to resolve it. Further knowledge in this area could help organizations to better assess the true nature of a particular conflict in addition to providing insight on how best to address relationship values. Hybrid process research could also look at the long-term outcomes of the personal and professional relationship between the disputing parties. This research could consider not only the long-term relationship outcomes between med-arb and arb-med but also a comparison between hybrid processes and just mediation or arbitration independently. Successful interpersonal relationships are a key component of a successful commercial organization so further research in this area may provide some interesting results that are invaluable to organizations.

Additional research on hybrid process choice could also consider how experience using a hybrid process affects change in process selection. The act of using a hybrid process to resolve a conflict may provide additional insights and considerations as to when a process should be selected and why. Some existing research has been conducted looking at post hybrid process outcomes. However, this research has involved students in fictional case study scenarios. Using experienced members of the workforce may provide additional insights not yet discovered in existing research.

Further research is required on process selection by workforce members in real world conflict situations. Looking at participants who are involved in a real life organizational conflict may provide far more in-depth considerations from each of the parties. A study of this nature could identify the most imperative real world considerations for when a particular hybrid process should be used and why. In addition,

hybrid process research using experienced members of the workforce could also consider looking at gender differences and the differences between employees and owners.

Our complex world offers an almost limitless variety of conflict situations. To maximize our ability to address these conflicts as effectively as possible, the appropriate tools along with the necessary knowledge on how best to use these tools is required. The med-arb and arb-med processes are unique conflict resolution processes of significant promise for a variety of different conflicts. This research study has been successful in meeting its aim to provide new knowledge on hybrid dispute resolution processes in addition to confirming earlier assumptions and findings in existing literature. In order to realize the full benefit of these hybrid processes research and widespread understanding of these valuable tools must be continued. For many, these hybrid processes seem strange and unusual as both mediation and arbitration did a number of years ago. Individuals must overcome uncertainty or reluctance to use these hybrid processes. It is through knowledge sharing, curiosity and experimentation that we provide the greatest opportunity to develop tools and strategies to curb the negative impacts of conflict.

References

- Adams, George, W., The Honourable, Q.C. 2003. Mediating justice: Legal dispute negotiations. 326-331. Toronto: CCH Canadian Limited.
- Albertyn, Christopher. 2006. Telephone interview: *The use of med-arb and arb-med*. September 28.
- Allred, Stephen. 1984. Med-arb and the resolution of the SSA-AFGE bargaining impasse: A case study. *The Arbitration Journal* 39, (2) (June): 46-54.
- Bartel, Barry, C. 1991. Med-arb as a distinct method of dispute resolution: History, analysis, and potential. *Willamette Law Review* 27, (3) (Summer): 661-692.
- Berger, Klaus P. 2003. Integration of mediation elements into arbitration 'Hybrid' procedures and 'Intuitive' mediation by international arbitrators. *Arbitration International* 19, (3): 387-403.
- Brett, Jeanne M., Barsness I. Zoe, and Stephen Goldberg. 1996. The effectiveness of mediation: An independent analysis of cases handled by four major service providers. *Negotiation Journal* 12, (3) (July): 259-269.
- Brewer, Thomas J. and Lawrence R. Mills. 1999. Combining mediation and arbitration. *Dispute Resolution Journal* 54, (4) (November): 32-39.
- Carnevale, Peter J. D. and Donald E. Conlon. 1988. Time pressure and strategic choice in mediation. *Organizational Behavior and Human Decision Processes* 42, (1): 111-133.
- Carver, Todd B., and Albert A. Vondra. 1994. Alternative dispute resolution: Why it doesn't work and why it does. *Harvard Business Review* (May-June): 120-130.
- Chicanot, Jamie, and Gordon Sloan. 2003. *The practice of mediation: Exploring attitude process and skills*. Victoria: ADR Education.
- Christudason, Netto A. M. and Ping A. E.E.H. 2003. Med-arb in the catbird seat of ADR. *The International Construction Law Review* 20: 517-526.

- Conlon, Donald E., K. Yee Ng and Henry Moon. 2002. Putting the cart before the horse: The benefits of arbitrating before mediating. *Journal of Applied Psychology* 87, (5): 978-984.
- Elliott, David C. 1995-1996. Med/Arb: Fraught with danger or ripe with opportunity? *Alta. Law Review* 34: 163-179.
- Farmer, Amy and Paul Pecorino. 1998. Bargaining with informative offers: An analysis of final-offer arbitration. *The Journal of Legal Studies* 27, (2) (June): 415-432.
- Flake, Richard P. 1998. Nuances of Med/Arb-A neutral's perspective. *ADR Currents* 2: 8-10.
- Goldberg, Arthur J. 1973. Mediation and arbitration of international disputes. *Hofstra Law Review* 1: 9-14.
- Goldberg, Stephen B. 1990. The case of the squabbling authors: A "med-arb" response. *Negotiation Journal* 6, (4) (October): 391-396.
- Goldberg, Stephen B. and Jeanne M. Brett. 1990. Disputants' perspectives on the differences between mediation and arbitration. *Negotiation Journal* 6, (3) (July): 249-255.
- Goss, Joanne. 1995. An introduction to alternative dispute resolution. *Alberta Law Review*. 34, (1): 1-33.
- Greenbaum, Marcia L. 1986. Process and the professional practitioner. *Negotiation Journal* 2, (3) (July): 225-231.
- Hill, Richard. 1997. MED-ARB: New coke or swatch? *Arbitration International* 13, (1): 105-110.
- James, Peter T. 1997. Med-arb in international arbitration. *The American Review of International Arbitration* 8, (1): 82-117.
- Johnson, Douglas F. and Dean G. Pruitt. 1969. *Pre-intervention effects of mediation vs. arbitration*. State University of New York at Buffalo, 10.
- Kagel, Sam. 1973. Combining mediation and arbitration. *Monthly Labor Review* 96, (September): 62-63.

- Karambayya, R., J. M. Brett and A. Lytle. 1992. Effects of formal authority and experience on third-party roles, outcomes, and perceptions of fairness. *Academy of Management Journal* 35, (4): 426-438.
- Karen, Henry. 1987-1988. Med-arb: An alternative to interest arbitration in the resolution of contract negotiation disputes. *Ohio State Journal on Dispute Resolution* 3: 385-398.
- Kressel, K. and Dean G. Pruitt. 1989. Conclusion: A research perspective on the mediation of social conflict In *Mediation research*. 395-435. San Francisco: Jossey-Bass.
- Landry, Sherry. 1996. Med-arb: Mediation with a bite and an effective ADR model. *Defense Counsel Journal* 63, (April): 263-269.
- Lipsky, David B. and Ronald Seeber. 1998. *The appropriate resolution of corporate disputes: A report on the growing use of ADR by U.S. corporations*. Ithaca: ICR Cornell/PERC Institute on Conflict Resolution.
- McGillicuddy, Neil B., Gary L. Welton and Dean G. Pruitt. 1987. Third-party intervention: A field experiment comparing three different models. *Journal of Personality and Social Psychology* 53, (1) (July): 104-112.
- McLaren, Richard H. and John P. Sanderson. 1994. *Innovative dispute resolution: The alternative*. Scarborough: Carswell Thomson Professional Publishing.
- Newman, Paul. 1994. The med-arb debate: Some contributions. *Journal of the Chartered Institute of Arbitrators* 3, (August): 173-183.
- Oghigia, Haig. 2006. Telephone interview: *The use of med-arb and arb-med*. September 28.
- Oghigian, Haig. 2003. The Mediation/Arbitration hybrid. *Journal of International Arbitration* 20, (1): 75-80.
- Onyema, Emilia. 2001. The use of med-arb in international commercial dispute resolution. *American Review of International Arbitration* 3, (4): 411-423.
- Phillips, Gerald F. 2005. Same-neutral med-arb: What does the future hold? *Dispute Resolution Journal* 60, (2) (May-July): 24-33.

- Pierce, R. S., Dean G. Pruitt, and S. J. Czaja. 1993. Complainant-respondent differences in procedural choice. *International Journal of Conflict Management* 4: 199-122.
- Pines, Alaya Malach, Hamutal Gat, and Yael Tal. 2002. Gender differences in content and style of argument between couples during divorce mediation. *Conflict Resolution Quarterly*. 20, (1) (September): 23-50.
- Pollcat. Pollcat polls and surveys. 2006 [cited December 9 2006]. Available from <http://www.pollcat.com>.
- Pruitt, Dean G. 1995. Process and outcome in community mediation. *Negotiation Journal* 11, (4): 365-377.
- Pruitt, Dean G. 1986. Trends in the scientific study of negotiation and mediation. *Negotiation Journal* 2, (3) (July): 237-244.
- Ready, Vincent L. Professional profile and career experience. 2006 [cited November/4 2006]. Available from: <http://www.adrweb.ca/vince-ready>.
- Ross, William H., Cheryl Brantmeier and Tina Ciriacks. 2002. The impact of hybrid dispute resolution procedures on constituent fairness judgments. *Journal of Applied Social Psychology* 32, (6): 1151-1188.
- Ross, William H. and Donald E. Conlon. 2000. Hybrid forms of third-party dispute resolution: Theoretical implications of combining mediation. *Academy of Management Review* 25, (2): 416-434.
- Schneider, Michael E. 2004. Combining arbitration with conciliation. *Transnational Dispute Management* I, (1) (February).
- Stern, James L. 1984. The mediation of interest disputes by arbitrators under the Wisconsin med-arb law for local government employees. *Arbitration Journal* 39, (2) (June): 41-45.
- Subbarao, A. V. 1978. The impact of binding interest arbitration on negotiation and process outcome: An experimental study. *Journal of Conflict Resolution* 22, (1): 79-103.
- Telford, Megan Elizabeth. 2000. *Med-arb : A viable dispute resolution alternative*. Kingston: Industrial Relations Center Queens University.

Thompson, Claude, Q.C. Med-arb a fresh look. 2006 [cited November/4 2006]. Available from: http://claudethomson.com/docs/Med-Arb_A_Fresh_Look.pdf.

Ury, William L., Jeanne M. Brett and Stephen B. Goldberg. 1998. Designing an effective dispute resolution system. *Negotiation Journal* 4, (4) (October): 413-431.

Walker, David M. 1980. *The oxford companion to law*. Oxford: Clarendon Press.

Zack, Arnold M. 2004. The quest for finality in airline disputes: A case for arb-med. *Dispute Resolution Journal* 58, (4) (January): 34-38.

Appendix A

Definitions of Terms

Mediation: A method of collective problem solving in which a third party facilitates voluntary agreements between disputing parties. (Chicanot and Sloan 2003).

Arbitration: A conflict resolution process in which each party presents a case and a third party imposes a non-negotiable settlement which will be binding on the parties for a future period of time (Subbarao 1978).

Hybrid Process: "Procedures that combine elements of mediation and arbitration" (Ross and Conlon 2000, 416).

Appendix B

Process A: This process is a negotiation-based method of dispute resolution that does not really deal with deciding the rights and obligations of the two parties. It is volitional from beginning to end and it is the parties involved that have the power to decide how their problem will be solved and what that solution will look like. This process is guided by a third party who is not involved in the dispute personally and only serves to facilitate discussion between the disputing parties balancing power when necessary.

Process B: This process is a formal process that is guided by rules and standards of practice. The process is usually based on facts and the various rights of the disputing parties. The conflicting parties relinquish all control of the decision making process to the third party. The third party is not involved in the dispute personally and serves to hear each party's side. The conflicting parties present the facts and related rights of their claim in the conflict and the third party makes a decision that is binding for both of the conflicting parties.

In the past, conflicting parties had the option of choosing either process A or process B to resolve their disputes. Now two hybrid processes have been created where the disputing parties can select a two stage process for resolving their dispute.

The first hybrid option is the conflicting parties choose **process AB**. In this option the parties go through process A do their best to resolve the dispute and anything that can not be resolved is taken to process B and a final binding decision is made.

The second option is the conflicting parties choose **process BA**. In this option the parties first go through process B, a decision is rendered but it is kept in a sealed envelope and neither of the disputing parties sees this decision. The disputing parties then go through process A and if a resolution is found the decision in the envelope is destroyed (and never seen) if a resolution is not found then the envelope is opened and the decision within is binding on both parties.

In both hybrid processes AB or BA the parties either come to a decision themselves or one is rendered for them. Also, in both hybrid processes the third party remains the same for each separate stage. Thus, the same person is the third party for process A and process B regardless of the order.

Assuming that you only have process AB or BA as a dispute resolution option:

1. Please provide an example of a conflict situation where you would choose hybrid process AB? What does this conflict situation look like?
2. Please provide an example of a conflict situation where you would choose hybrid process BA? What does this conflict situation look like?

Appendix C

Importance of Relationship

		High	Low
		<u>Strength of Case</u>	High
	Low	Med-Arb	Med-Arb or Arb-Med?

Script (High Relationship + High Case Strength):

You own a small business that plans conferences for midsized technology firms in the area of laser optics. Three years ago you met a social and articulate individual named Pat. Pat is a motivated go-getter and is good at meeting people and selling conference ideas and sponsorships to them. You are a business minded individual who has great skills in research, marketing, accounting and conference logistics. You are also fairly good at meeting people and selling conference ideas and sponsorships to them, although not quite as good as Pat. You hire Pat and when doing so you offer Pat some shares in the company. With Pat on board you decide to expand your conference planning business creating two main components of the business. Pat goes out and meets with the executives sells them on the conference idea and signs up sponsors to support and attend the event. You collect the contracts making sure all expectations are met in addition to running the logistical components of planning a conference.

From the beginning of your relationship you clearly define the roles and responsibilities that you expect from Pat. You also make it clear that if Pat does not meet your clearly defined expectations that you will not continue to employ Pat. This division of responsibility works really well for the first two years. Pat consistently brings in business, so after the first year you give Pat an expense account and a corporate credit card.

You have a lot in common with Pat so over the years you have developed a close friendship. You often go hiking, skiing and biking together.

In the past ten months Pat's business expenses have been getting higher and higher every month yet fewer conference and sponsorship deals are closing. Pat has also begun to make mistakes in the deals being closed. Promising things the company can't do, agreeing to terms verbally and then forgetting to include them in the written contract and sometimes forgetting to tell you important conference details until the last possible minute, making you and your company look incompetent. Not only is Pat gaining fewer contract and sponsorship interests but the mistakes and less than top quality performance has resulted in the loss of three long term clients. You have spoken to Pat about your

concerns but Pat just blames a slow down in the economy for the lack of contracts and makes excuses for the remaining problems. Even though Pat is your friend, you don't really want to work with Pat anymore. Clearly Pat's work responsibilities are not being fulfilled. However, you also know that Pat believes the company could not have been built to its current size without your combined work efforts. Given the two options which process would you choose?

Script (Low Relationship + High Case Strength):

You own a small business that plans conferences for midsized technology firms in the area of laser optics. Three years ago you met a social and articulate individual named Pat. Pat is a motivated go-getter and is good at meeting people and selling conference ideas and sponsorships to them. You are a business minded individual who has great skills in research, marketing, accounting and conference logistics. You are also fairly good at meeting people and selling conference ideas and sponsorships to them, although not quite as good as Pat. You hire Pat and when doing so you offer Pat some shares in the company. With Pat on board you decide to expand your conference planning business creating two main components of the business. Pat goes out and meets with the executives sells them on the conference idea and signs up sponsors to support and attend the event. You collect the contracts making sure all expectations are met in addition to running the logistical components of planning a conference.

From the beginning of your relationship with Pat you clearly define the roles and responsibilities that you expect from Pat. You also make it clear that if Pat does not meet your clearly defined expectations that you will not continue to employ Pat. This division of responsibility works really well for the first two years. Pat consistently brings in business and so after the first year you give Pat an expense account and a corporate credit card.

You don't really have much in common with Pat so you do not spend time together outside of work. Even at work you only ever talk to Pat about business.

In the past ten months Pat's business expenses have been getting higher and higher every month yet fewer conference and sponsorship deals are closing. Pat has also begun to make mistakes in the deals being closed. Promising things the company can't do, agreeing to terms verbally and then forgetting to include them in the written contract and sometimes forgetting to tell you important conference details until the last possible minute, making you and your company look incompetent. Not only is Pat gaining fewer contract and sponsorship interests but the mistakes and less than top quality performance has resulted in the loss of three long term clients. You have spoken to Pat about your concerns but Pat blames a slow down in the economy for the lack of contracts and makes excuses for the remaining problems. You don't really want to work with Pat anymore. Clearly Pat's work responsibilities are not being fulfilled. However, you also know that Pat believes the company could not have been built to its current size without your combined work efforts. Given the two options which process would you choose?

Script (High Relationship + Low Case Strength):

You own a small business that plans conferences for midsized technology firms in the area of laser optics. Three years ago you met a social and articulate individual named Pat. Pat is a motivated go-getter and is good at meeting people and selling conference ideas and sponsorships to them. You are a business minded individual who has great skills in research, marketing, accounting and conference logistics. You are also fairly good at meeting people and selling conference ideas and sponsorships to them, although not quite as good as Pat. You hire Pat and when doing so you offer Pat some shares in the company. With Pat on board you decide to expand your conference planning business creating two main components of the business. Pat goes out and meets with the executives sells them on the conference idea and signs up sponsors to support and attend the event. You collect the contracts making sure all expectations are met in addition to running the logistical components of planning a conference.

This division of responsibility works really well for the first two years. Pat consistently brings in business and so after the first year you give Pat an expense account and a corporate credit card. You have a lot in common with Pat so over the years you have developed a close friendship. You often go hiking, skiing and biking together.

In the past ten months Pat's business expenses have been getting higher and higher every month yet fewer conference and sponsorship deals are closing. Two months ago Pat made a mistake in one of the contracts prepared which if left unnoticed could have been expensive for the company. Pat generally gets the necessary conference information to you "on time" however lately Pat is always cutting it really close to the final deadline. This makes you nervous and uncomfortable because it leaves little room for incidentals. You have spoken to Pat about your concerns but Pat blames a slow down in the economy for the lack of contracts. Pat also has credible excuses for the contract mistake and for all the almost late submissions of contract information. Even though Pat is your friend, you don't really want to work with Pat anymore, however, technically Pat has fulfilled all the responsibilities of the job. You also know that Pat believes the company could not have been built to its current size without your combined work efforts. Given the two options which process would you choose?

Script (Low Relationship + Low Case Strength):

You own a small business that plans conferences for midsized technology firms in the area of laser optics. Three years ago you met a social and articulate individual named Pat. Pat is a motivated go-getter and is good at meeting people and selling conference ideas and sponsorships to them. You are a business minded individual who has great skills in research, marketing, accounting and conference logistics. You are also fairly good at meeting people and selling conference ideas and sponsorships to them, although not quite as good as Pat. You hire Pat and when doing so you offer Pat some shares in the company. With Pat on board you decide to expand your conference planning business creating two main components of the business. Pat goes out and meets with the executives sells them on the conference idea and signs up sponsors to support and attend the event. You collect the contracts making sure all expectations are met in addition to running the logistical components of planning a conference.

This division of responsibility works really well for the first two years. Pat consistently brings in business and so after the first year you give Pat an expense account and a corporate credit card.

You don't really have much in common with Pat so you do not spend time together outside of work. Even at work you only ever talk to Pat about business.

In the past ten months Pat's business expenses have been getting higher and higher every month yet fewer conference and sponsorship deals are closing. Two months ago Pat made a mistake in one of the contracts prepared which if left unnoticed could have been expensive for the company. Pat generally gets the necessary conference information to you "on time" however lately Pat is always cutting it really close to the final deadline. This makes you nervous and uncomfortable because it leaves little room for incidentals. You have spoken to Pat about your concerns but Pat blames a slow down in the economy for the lack of contracts. Pat also has credible excuses for the contract mistake and for all the almost late submissions of contract information. You don't really want to work with Pat anymore, however, technically Pat has fulfilled all the responsibilities of the job. You also know that Pat believes the company could not have been built to its current size without your combined work efforts. Given the two options which process would you choose?

Appendix D

Process DY: Stage D followed by Stage Y

Stage D is a method of resolving the dispute that concentrates on the interests of the two involved parties (you and Pat). The object of Stage D is to have you and Pat talk together and determine a resolution that you can accept. A neutral third party facilitates the discussion between yourself and Pat, helping you to discuss the issues without getting involved in the decision. If you and Pat cannot agree on a resolution, or if you can only agree on a few of the issues then you can both choose to move to Stage Y.

In Stage Y you and Pat each present your side of the issue. A neutral third party determines how the issues presented will be resolved. In Stage Y, the same neutral third party who was facilitating in Stage D is now rendering a decision. You and Pat can ask the decision maker to decide on all the issues or on just a few of the issues. The decision is final.

Process YD: Stage Y followed by Stage D

In Stage Y you and Pat each present your side of the issue and have a single neutral third party determine how the issues presented will be resolved. After hearing each party the decision maker puts their decision in a sealed envelope, neither you nor Pat is allowed to see the decision. You and Pat then move to Stage D and attempt to resolve the conflict.

Stage D is a method of resolving the dispute that concentrates on your interests. The object of Stage D is to have you and Pat talk together and determine a resolution that you can both accept. The same third party who was the decision maker in Stage Y now merely facilitates the discussion between you and Pat helping the both of you to discuss the issues while not getting involved in the decision. If you and Pat are not successful in resolving the conflict in Stage D then the envelope is opened and the decision within is binding. If you and Pat resolve the conflict in Stage D the envelope is destroyed and neither of you ever knows what was in the envelope.

In both processes DY or YD you and Pat either come to a decision yourselves or one is rendered for you. Also, in both hybrid processes the third party remains the same for each separate stage. Thus, the same person is the third party for process Y and process D regardless of the order.

Appendix E

Questions

1. Using the attached sheet, which process would you choose in this scenario?
YD or DY
2. Why did you choose this process to deal with this scenario?
3. On a scale of 1-10 (1 being low importance and 10 being high importance) describe the importance of the relationship in this scenario?
4. On a scale of 1-10 (1 being weak and 10 being very strong) describe the strength of your case?
5. How many employees are there in the organization you work for? 1-5 6-10 11-20
21-50 51-100
6. Are you employed by an organization or are you the organization owner?
7. Are you Male or Female?
8. What age range do you fit within? 18 – 25 26-35 36-45 46-and above
9. What is the highest level of completed education?
High School College University Undergrad University Masters University Doctoral
10. How many years of work experience do you have since you last finished school?
11. How many years of supervisor or management experience do you have? 1,2,3,4,5,6
12. In the past year how many times do you think your workplace has used mediation?
13. In the past year how many times has your workplace used arbitration?

Appendix F

Pilot Test Summary Report

Business Scenario 1:

Low Relationship & High Strength of Case {Prediction Arb Med}

4 of 6 choose YD = Arb Med 67%

2 of 6 choose DY = Med AB 23%

Business Scenario 2:

High Relationship & High Strength of Case {Prediction Med Arb}

5 of 7 choose DY = Med Arb 71%

2 of 7 choose YD = Arb Med 29%

Business Scenario 3:

High Relationship & Low Strength of Case {Prediction Med Arb}

4 of 4 chose process DY = Med Arb 100%

Business Scenario 4

Low Relationship & Low Strength of Case {Prediction Uncertain}

4 of 8 Choose process YD = Arb Med 50%

4 of 8 Choose process DY = Med Arb 50%

Appendix G

Q1. Which process option would you choose in this scenario?

Process YD Process DY

Q2. Why did you choose this process to deal with this scenario?

Q3. On a scale of 1-7 describe the importance of the relationship between you and Pat in this scenario?

1 = Relationship is of low importance - 7 = Relationship is of high importance

Q4. On a scale of 1-7 describe the strength of your case (the likelihood that your case would prevail in a court of law)?

1 = Low strength of legal case - 7 = High strength of legal case

Q5. How many employees are there in your organization overall?

1-5 6-10 11-20 21-50 51-100 101-150 151-200 200 & above

Q6. How many employees are there in your particular department (section, unit, division, etc.)?

1-5 6-10 11-20 21-50 51-100 101-150 151-200 200 & above

Q7. How many people do you supervise directly?

0 1-5 6-10 11-20 21-50 51-100 101-150 151-200 200 & above

Q8. Are you employed by an organization or are you the organization owner?

Employed by the organization Organization owner

Q9. Are you Male or Female?

Q10. What age range do you fit within?

18-25 26-35 36-45 46-60 61 & above

Q11. What is your highest level of completed education?

High school College University Undergrad University Masters Degree University Doctoral Degree

Q12. How many years of full-time work experience do you have?

Less than 1 year 1 2 3 4 5 6-10 11-15 16-20 21 & above

Q13. How many years of supervisor or management experience do you have?

0 Less than 1 year 1 2 3 4 5 6-10 11-15
 16-20 21 & above

Q14. In the past year how many times do you think your organization has used mediation overall? (Mediation refers to an approach where a third party facilitates the process but does not determine the outcome)

Completely unsure 0 1 2 3-4 5-10 11-15 16 or more

Q15. In the past year how many times do you think your department (section, unit, division, etc.) has used mediation?

Completely unsure 0 1 2 3-4 5-10 11-15 16 or more

Q16. In the past year how many times do you think your organization has used arbitration overall? (Arbitration refers to an approach where a third party determines the outcome of a dispute but does not facilitate the process)

Completely unsure 0 1 2 3-4 5-10 11-15 16 or more

Q17. In the past year how many times do you think your particular department (section, unit, division, etc.) has used arbitration?

Completely unsure 0 1 2 3-4 5-10 11-15 16 or more

Appendix H

Semi-Structured Interview Questions (For those who have used a hybrid process)

Context

1. Could you tell me a little about the conflicts you most frequently deal with?

Probes:

- Do you work alone or in an organization?
- Are you a lawyer or do you have legal training?
- How many years of work experience do you have in ADR processes?
- Approximately how many Hybrid (Med-arb or Arb-Med) processes have you done in your career?

The Case

2. What kind of conflict situations end-up using Med-Arb (or Arb-Med)? What is different about these conflicts?

Probes:

- In the majority of cases, are the parties at the table company owners, representatives of an organization, individuals who feel personally wronged etc?.

3. What do you think are the common thoughts or reasons behind choosing this process?

Probes:

- Of all the other process choices what made this process most appealing?
- What do you think were the expected benefits of using this process?
- Why was it important to have the Mediation (or Arbitration) as the first stage?
- Who was involved in deciding to use this process? Lawyers, parties, friends etc.

Relationship

4. In most cases do think the long term relationship between the disputing parties is important or not very important to the parties?

Probes:

- Do the parties more commonly know each other well? Are they usually *friends, close business partners, mere acquaintances* etc.
- Do you think concerns of past or future relationship in anyway influence the parties to choose this process? If so explain how?

Strength of Case

5. Do you think parties perceptions of having a strong legal case influence them towards choosing this process?

Probes:

-Did the strength of legal case impact whether it is important for the parties to mediate or arbitrate first? If so why?

Difference in Use of Hybrid Processes

6. Why do you think people commonly use Med-arb or informal arbitration that sometimes becomes a mediation but they rarely use a formal Arb-med process?

Probe:

-Why are people often willing to choose Arbitration that then at some point becomes mediation but yet people rarely are willing to choose an Arb-med process upfront?

-What are the external factors keeping Arb-med or Med-arb from more common use?

Appendix I

(Second Revised Survey Text and Description)

Title: 10 Minute Survey for \$80 Prize!

Complete the survey below and enter to win an \$80 dollar gift certificate to Chapters. The survey takes approximately 10 minutes and will help a Masters student with his thesis work on HR related disputes.

This research will help generate cost-saving dispute resolution practices of benefit to organizations and BC HRMA members. BC HRMA will share the results of the survey and the research.

To take the survey, please visit: www.pollcat.com/sr/B1Z7Y586139976555433

(Original Publication of Research Survey by the BC HRMA)

Title: Survey on Dispute Resolution

The following survey and research will add new knowledge about commercial disputes and issues around efficient cost-saving resolution practices that would be of benefit to organizations and BC HRMA members.

If you agree to participate, the information you provide will help a Masters student at the University of Victoria complete a thesis in the field of dispute resolution. BC HRMA will share in the results of the survey and research.

We would like to request 15 minutes of your time to address an important issue on commercial and organizational disputes. Please follow the link and complete the survey you'll find there.

All responses are confidential – your name, e-mail and personal information will not be requested or tracked. We ask for your support to make the study as detailed as possible. Thank you for your participation!

To take the survey, please visit: www.pollcat.com/sr/B1Z7Y586139976555433