From: Paul Conway
Sent: August-31-16 3:05 PM
To: Truus Souman
Subject: FW: Chartered Arbitrator Waiver for Retired Judges

From: Stan Galbraith [mailto:Stan@galbraith.ab.ca]
Sent: April-20-16 2:58 PM
To: Marshall, Barrie; Paul Conway
Cc: Wendy Hassen; Joanne Munro; Dolores Herman; Don Goodfellow; Michael Hokanson; Michelle Simpson; Chuck Smith; John Welbourn
Subject: RE: Judges / C ARB Applications

I agree with you Barrie. Seems to be the appropriate call by ADRIC.
Stan

From: Marshall, Barrie [mailto:Barrie.Marshall@gowlingwlg.com]
Sent: Wednesday, April 20, 2016 2:54 PM
To: Paul Conway (paul@adralberta.com)
Cc: Stan Galbraith; Wendy Hassen; Joanne Munro (joannepmunro@gmail.com); Dolores Herman; Don Goodfellow; Michael Hokanson; Michelle Simpson; Chuck Smith (chucksmithaams@hotmail.com); John Welbourn
Subject: FW: Judges / C ARB Applications

Very interesting. Instead of elevating the status of Provincial Court Judges to the same status of Superior Court Justices, ADRIC has chosen to demote Superior Court Justices to the status of Provincial Court Judges – by eliminating the waiver altogether. This is somewhat consistent with Michelle's comments at our last board meeting. I think that it's the right call but would be interested in hearing John Welbourn's views on the matter.

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F +1 403 263 9193

From: ADRIC - Janet McKay [mailto:janetmckay@adric.ca]
Sent: April-20-16 2:02 PM
To: Paul Conway
Cc: John Welbourn; Stan Galbraith; Chuck Smith; Marshall, Barrie; ADRIC - Mena Sestito
Subject: RE: Judges / C ARB Applications

Paul, I want to share the results of ADRIC Board meeting on this issue:

1. Chartered Arbitrator Waiver for Retired Judges

ADRIC Principles, Criteria, Protocol, Competencies section IV C: *WAIVER*
Where the Regional Committee determines that the applicant has satisfied or exceeded IV A and IV B above, through proven skills and competency, longevity in practice and recognition and recommendation by peers, the

requirements listed above may be waived. The decision of the Regional Committee ***must be supported by documented reasons*** *for the recommendation including its determination that the applicant has the competencies of an arbitrator as per Appendix A.*
The Committee will waive requirements under IV A and IV B for a retired justice of a superior court or higher.

While answering a question from an ADRIA member about why ADRIC's Principles, Criteria, Protocol, Competencies for the designation Chartered Arbitrator required the Regional Committees to waive the education and practical experience requirements for a retired judge of a superior court or higher, but not for a retired judge of the provincial court, the Arbitration Designation Standards, Audits, Appeals & CEE (ADSAAC) Committee considered whether that document should provide that Regional Committees were required to waive those are requirements for any retired judges. It was the unanimous view of the committee members who participated in that discussion that it should not.

While they have some conceptual similarities, arbitration and litigation are in practice two very different dispute resolution mechanisms. That's the whole point of arbitration. That's why we are the **Alternative** Dispute Resolution Institute of Canada.

The value of the Chartered Arbitrator designation is that it gives the public the assurance that those bearing it are competent arbitrators. Education and practical experience in adjudicating litigation are virtually irrelevant to that competence.

Retired judges may well become competent arbitrators. But they are not competent arbitrators solely by virtue of having been judges. Indeed, given that while they were judges they could not serve as arbitrators, newly retired judges cannot, almost by definition, have that competence. A blanket requirement to waive the education and practical experience requirements for all retired superior court judges devalues the Chartered Arbitrator designation.

It may be that there are special cases. (e.g. Someone who was a very experienced arbitrator **before** he was appointed a judge, and has now retired and returned to practice.) The Regional Committees already have the ability to waive the education and practical experience requirements in those cases, if supported by documented reasons and the Committee's determination the applicant does in fact have the necessary competence (section IV C)

The ADSAAC committee recommends the board changes that document to delete the requirement in the document that the Regional Committees waive the education and practical experience requirements for retired judges of a superior court or higher, **retaining the Committees' ability to waive those requirements on a case by case basis, where appropriate.**

Moved by Stephen Antle to delete the requirement in the document [sentence highlighted above] that the Regional Committees waive the education and practical experience requirements for retired judges of a superior court or higher. **Seconded** by Jim McCartney. **Motion carried.**

As you can see, it is left to the Regional Committee to determine whether requirements be waived if appropriate, but not based solely on the applicant's former role as a judge.

Best regards,

Janet

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From: Paul Conway [mailto:paul@adralberta.com]
Sent: Saturday, April 09, 2016 10:30 AM
To: ADRIC - Janet McKay
Cc: John Welbourn; Stan Galbraith; Chuck Smith; Barry Marshall
Subject: Judges / C ARB Applications
Importance: High

Janet - In addition to Judge Nancy Flatters question and thoughts (below) which you already have, the item was placed on our Board agenda for discussion. Unfortunately, time did not permit, so the Board has NOT discussed NOR made any recommendations. Nor have I heard from our Arbitration Designation Committee on this issue. The Board may yet have opportunity to discuss when they meet by phone on the 12th, in which case I will send Chuck and you their thoughts.

One Board member has, however, forwarded her personal thoughts on the issue (below), which have been shared with Chuck and are forwarded to you below. Again, these do NOT represent a Board consensus at this point.

Have a great flight home, and a great meeting in Winnipeg!

Paul Conway | ***Executive Director***
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From: Michelle Simpson [mailto:Michelle@simpsonlaw.ca]
Sent: April-04-16 11:09 AM
To: Paul Conway
Cc: Chuck Smith
Subject: CArb waiver for Retired Judges

Hello Paul and Chuck,

Further to this weekend's ADRIA meeting, item 7.2, CArb waiver for retired judges, here are a few comments that I threw out at the meeting for consideration by ADRIC. We should likely determine rather quickly (and before ADRIC responds to the CArb Application) how we should submit our combined thoughts to ADRIC so, to start the ball rolling, here are my thoughts:

Retired Judges should be encouraged to apply for their CArb designation as we would love to bring them into the fold. That having been said, there should be some criteria and here are a few to be considered:

1. There should be a maximum time period from retirement to the time of making his/her application for CArb. I suggest 6 months;
2. CArb application should be accompanied by a letter of reference from the Chief Judge under whom the candidate for CArb last worked. If the candidate is the Chief Judge then the letter of reference should come from the Associate Chief Judge; and
3. The CArb applicant must take the National Arbitration Introductory Course because being a Judge under the Court of Queen's Bench Act is different in many respects from being a private arbitrator and those are all set out in the Course.

I welcome your thoughts. Again, I believe that time remains of the essence.

Thank you,
Michelle M. Simpson JD, CMed and CArb
Lawyer, Chartered Mediator, and Chartered Arbitrator

Simpson Law
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From: Nancy Flatters [mailto:nancy.flatters@shaw.ca]
Sent: March-31-16 3:24 PM
To: Paul Conway
Subject: RE: please delete C ARB Application e-mail just sent - replacement to be provided
Importance: High

Dear Paul – I mistakenly sent the e-mail below in error as I was proof-reading it. Please delete it and I will send the replacement a bit later. You get the drift but I prefer you have the final and not a draft which I had not finished proofing and "touching up".

Thanks – Nancy

From: Nancy Flatters [mailto:nancy.flatters@shaw.ca]
Sent: March 31, 2016 3:20 PM
To: 'Paul Conway' <paul@adralberta.com>
Subject: C ARB Application

Dear Mr. Conway:

I write to advise that at this time I will not be applying for a C Arb designation. As you know I am a retired Provincial Court Judge. I have reviewed the Judicial Waiver and noted it applies to a Section 96

appointment (judge of a court of superior jurisdiction and thereby excludes a judge who has been appointed to a Provincial Court. In my case, I was appointed on July 8, 1996 to the Provincial Court of Alberta, and sat in Calgary Family and Youth Court (although in Civil Division as well). In my capacity as a Judge, I was a member of an independent Judiciary where as with a section 96 judge, it was necessary that I had practiced for a minimum of 10 years. I submitted a written application for appointment and thereafter was interviewed by the Judicial Council, which assessed my suitability as an appointment (an added step to that required for a section 96 judicial appointment at the time).

In my work as a Judge, I wrote judgments, including those constitutional. I delivered oral judgments. I presided over my courtroom. I was in control of the proceedings. I applied the Alberta Rules of Court. I applied the evidentiary rules. I assessed credibility. I qualified experts. I maintained decorum. In fact, I did all that a section 96 judicial appointment, as a Judge, would do. In light of this, I fail to understand the differentiation of judicial appointment and the lack of inclusion in this respect. As a matter of principle, I take exception to the narrowness of the waiver in the context of an arbitration designation. As a Judge, now retired, I submit I have met the requirements for a C Arb Waiver just like any other judge regardless of court appointment.

In the event the Board of ADR Canada decides to enlarge the waiver to include Provincial Court Judicial appointments, then I will apply. Otherwise, I do not wish to apply for C Arb status which, by its nature, excludes a significant number of jurists without a principled nor justified basis.

In the event you have any questions, please do not hesitate to contact me. In the event the Board in its wisdom enlarges the waiver, then I would appreciate being advised of that change.

Thank you for your assistance.

Regards,

Nancy Flatters
Retired Judge,
ADR teacher, trainer, practitioner

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From: Paul Conway
Sent: March-22-16 8:17 AM
To: 'ADRIC - Mena Sestito'; Truus Souman; 'Nancy Flatters'
Cc: Tammy Borowiecki; Jocelyn Christian; Jennifer Warren; Stan Galbraith; ADRIC - Janet McKay; 'Siemens, Scott'
Subject: RE: Chartered Arbitrator Waiver for Retired Judges

Thanks you Mena. We will await further feedback.

Nancy - FYI. I believe you should still submit your designation application(s) this month while we seek clarification on the issue. Your thoughts on the views expressed below are welcome.

Truus - Please add to our own Board agenda as an info item for April, and distribute this email chain to the to the ADC for info and/or comment.
Please track the issue until we have a definitive answer from ADRIC

Paul Conway | ***Executive Director***
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From: ADRIC - Mena Sestito [mailto:mena@adric.ca]
Sent: March-22-16 7:56 AM
To: Paul Conway
Subject: FW: Chartered Arbitrator Waiver for Retired Judges
Importance: High

Hi Paul… I'm afraid we don't have a definitive answer yet to your question about a waiver (education and experience) for retired judges at the provincial level. The matter is on the Agenda for the next board of directors meeting. I will let you know the outcome after this meeting.

In the meantime, here are the responses/comments (below) from the various members of the National Audit and Appeal Committee, for your information.

Thank you for your patience.

Mena

From: bceffler@mymts.net [mailto:bceffler@mymts.net]
Sent: Monday, March 21, 2016 10:59 PM
To: Glen Bell
Cc: Guy G. Couturier; ADRIC - Mena Sestito; Stephen' 'Antle; Michael Erdle; rm@robertmasson.ca;

JMusgrave@coxandpalmer.com; ADRIC - Janet McKay; barry.effler@outlook.com
Subject: Re: Chartered Arbitrator Waiver for Retired Judges

Hello all,

My apologies for not responding earlier. I lost access to this email account a couple of months ago with a change in providers. Finally got it back today.

The comments of Glen Bell are accurate. The related reason was that provincial court jurisdictions vary across the provinces. In Manitoba as an example, the provincial judges are solely criminal court jurisdiction.

Each of the provincial reviewing accreditation committees may use the other waiver provisions to respond to individual applications where the relevant experience relates to arbitration.

my understanding is that this committee may recommend amendments to standards. In the end, the decision belongs to the Board of Directors.

If possible, please send future messages to me at

barry.effler@outlook.com

Barry Effler

From: "Glen Bell" <glen.w.bell@shaw.ca>
To: "Guy G. Couturier" <ggcouturier@nb.aibn.com>, "ADRIC - Mena Sestito" <mena@adric.ca>, "Stephen' 'Antle" <SAntle@blg.com>
Cc: bceffler@mts.net, "Michael Erdle" <michael.erdle@practicalresolutions.ca>, rm@robertmasson.ca, JMusgrave@coxandpalmer.com, "ADRIC - Janet McKay" <janetmckay@adric.ca>
Sent: Monday, March 14, 2016 11:18:22 AM
Subject: RE: Chartered Arbitrator Waiver for Retired Judges

The reason the automatic exemption does not apply to provincial court judges is that the standards for appointment to a provincial court bench are not consistent across the ten provinces. Some members of the committee with experience in provincial court were concerned that some unqualified ex-judges could be granted the designation. Provincial court judges may nevertheless apply for C.Arb. designation under the general waiver for equivalent experience.

Glen W. Bell, C.Arb.
Arbitrator – Mediator

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Fax. 604 688-0933

From: Guy G. Couturier [mailto:ggcouturier@nb.aibn.com]
Sent: March 4, 2016 8:29 AM
To: 'ADRIC - Mena Sestito' <mena@adric.ca>; 'Antle, Stephen' <SAntle@blg.com>
Cc: glen.w.bell@shaw.ca; bceffler@mts.net; 'Michael Erdle' <michael.erdle@practicalresolutions.ca>; rm@robertmasson.ca; JMusgrave@coxandpalmer.com; 'ADRIC - Janet McKay' <janetmckay@adric.ca>
Subject: RE: Chartered Arbitrator Waiver for Retired Judges

Good afternoon everyone,

I apologize for my tardiness. As I was not a party to the initial discussions, I prefer not to comment on the existing standards, or how and why they came to be. Nevertheless, I do agree with Stephen's perspective on the issue.

Best Regards

Guy

From: ADRIC - Mena Sestito [mailto:mena@adric.ca]
Sent: March-03-16 2:12 PM
To: Antle, Stephen
Cc: glen.w.bell@shaw.ca; ggcouturier@nb.aibn.com; bceffler@mts.net; Michael Erdle; rm@robertmasson.ca; JMusgrave@coxandpalmer.com; ADRIC - Janet McKay
Subject: RE: Chartered Arbitrator Waiver for Retired Judges

Thank you, Stephen. I agree. Let's wait for a decision until we receive comments from the other committee members.
Cheers,
Mena

From: Antle, Stephen [mailto:SAntle@blg.com]
Sent: Thursday, March 03, 2016 11:45 AM
To: ADRIC - Mena Sestito
Cc: glen.w.bell@shaw.ca; ggcouturier@nb.aibn.com; bceffler@mts.net; Michael Erdle; rm@robertmasson.ca; JMusgrave@coxandpalmer.com; ADRIC - Janet McKay
Subject: RE: Chartered Arbitrator Waiver for Retired Judges

Mina:

Short answer: I don't know.

I recall some debate some time ago (presumably in 2012 when the C.Arb. principles, criteria, protocol and competencies were approved by ADRIC's board of directors) about whether regional committees should have the option of waiving the education and practical experience criteria for retired judges at all, but not about provincial vs. superior court judges.

My personal view, which I expressed at the time, is that arbitration and litigation are so different that experience as a judge is irrelevant to competence as an arbitrator, and so the regional committees should not have this option, for any retired judges. I think that's almost too obvious for words. But the board obviously disagreed.

Given the regional committees do have this option, I can't think of a principled reason it shouldn't apply to retired provincial court judges as well as superior court judges.

I'm new to this chair gig, so I'm not sure how to proceed. Does this committee have any authority to change the principles etc.? Or is that for the board, on our recommendation?

I suggest the other committee members share their views by email. Let's see where it makes sense to go from there.

Stephen

From: ADRIC - Mena Sestito [mailto:mena@adric.ca]
Sent: March-03-16 7:25 AM
To: Antle, Stephen; glen.w.bell@shaw.ca; ggcouturier@nb.aibn.com; bceffler@mts.net; Michael Erdle; rm@robertmasson.ca; JMusgrave@coxandpalmer.com
Cc: ADRIC - Janet McKay
Subject: Chartered Arbitrator Waiver for Retired Judges
Importance: High

TO:
Arbitration Designations Standards, Audits, Appeals & CEE
Chair: **Stephen Antle** ; Glen Bell, BC ; Guy Couturier, Atlantic ; Barry Effler, MB ; Michael Erdle, ON; Robert Masson, QC; Jim Musgrave, Atlantic

Dear Members of the Arbitration Designation Standards Committee:

There has been an inquiry about the C.Arb criteria from an Alberta Member who is a retired provincial court judge. She is questioning the educational and practical experience waiver for retired judges (**C.Arb Criteria...**, **Section C. Waiver - last paragraph).** According to our criteria, the accreditation committee will waive the educational and practical experience requirements for a **retired justice of a superior court or higher.** She is asking why the waiver is not inclusive of provincial court judges. Paul Conway, ADR Alberta's E.D. is also seeking clarification.

Thank you very much for taking the time to respond to this inquiry.

Mena Sestito
Manager, Membership, Accreditations & Arbitration Admin /
Directrice, Adhésions, accréditations et administration des arbitrages

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unsubscribe/*désabonner*

From: Paul Conway
Sent: March-02-16 11:53 AM
To: 'ADRIC - Mena Sestito'; 'ADRIC - Janet McKay'; 'Nancy Flatters'; Tammy Borowiecki
Cc: Truus Souman
Subject: RE: Designation application forms + waiver

Let me check Nancy - I don't think ADRIC intended to make such a distinction.

Mena/Janet/Tammy - can you clarify this issue for us?

Paul Conway | ***Executive Director***
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From: Nancy Flatters [mailto:nancy.flatters@shaw.ca]
Sent: March-02-16 11:19 AM
To: Truus Souman; Paul Conway
Subject: RE: Designation application forms + waiver
Importance: High

Dear Paul and Truus:

I have reviewed the waiver form for the judiciary and it speaks to only superior court judges and not provincial court judges. I am surprised it is not inclusive of the Provincial Court. On this basis as a retired Judge, I am ineligible to apply for the waiver.

Can you help me understand this distinction please.

Thanks.

Nancy Flatters
Retired Judge

From: Truus Souman [mailto:membership@adralberta.com]
Sent: February 25, 2016 1:29 PM

To: nancy.flatters@shaw.ca
Subject: Designation application forms + waiver

Good afternoon Nancy,

Nice talking to you!

Please see attached the forms requested.

With kind regards,

Truus Souman | *Executive & Membership Coordinator (part-time)*

ADR Institute of Alberta

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