



Company to Company Dispute Resolution  
“Transforming Conflict into Opportunity” by David B. Savage



**COMPANY 2**  
**COMPANY 2**  
**ADR COUNCIL**



## C2C Background- Some of the Challenges in the upstream Canadian Petroleum Industry

- n Increased recognition of, respect for and duty to the needs of all stakeholders and affected parties,
- n Incredible complexity in industry and regulatory matters,
- n Transitory management, shareholders and changing directions common in companies,
- n ***Existing processes and contracts, at times, encourage abuse,***
- n Recognition of *need for more effective negotiations, processes and conflict management*
  - n few industry negotiators have more than a few days training in communication, negotiation and conflict management skills



## Why?

- n We all are “doing even more with less”
- n We are challenged to:
  - n Capture stakeholder interests
  - n Explore and develop lands efficiently
  - n Bring production on stream quickly
  - n Bringing closure on audit disputes
  - n Maintain receivables at reasonable levels
  - n Prevent operational disruptions
- n Avoid lengthy, expensive, and adversarial processes
- n ***Keep internal resources focused on productive opportunities***



## Why C2C is Important

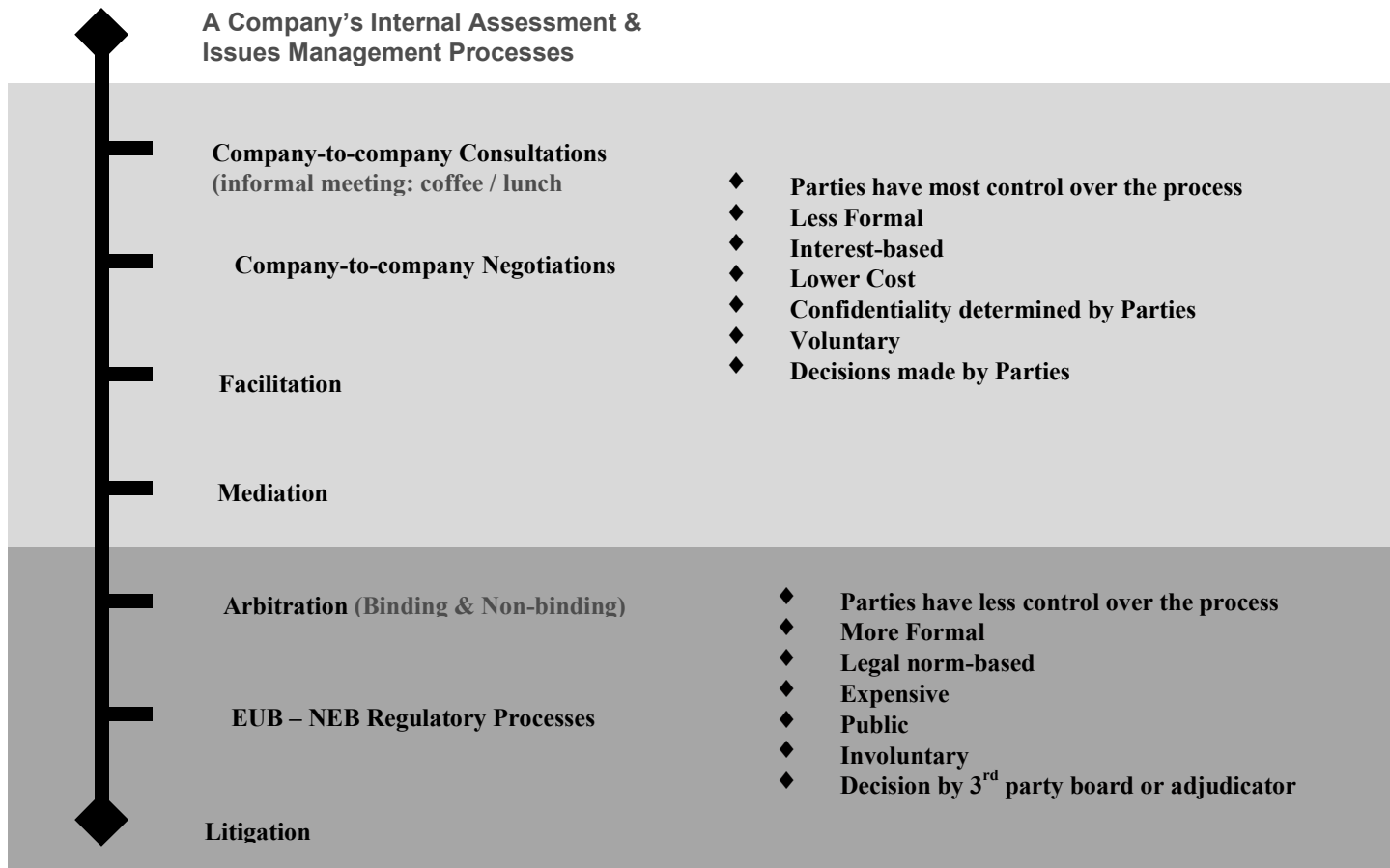
Does your organization have;

- n long time frames available,
- n big wallets,
- n ownership of all production facilities,
- n A significant staff of multi- disciplinary professionals, and
- n Leverage to make things happen.
- n Only a few things to achieve
- n No need for a constructive relationship in our industry....?



# Conflict Management Continuum

“If the only tool you have is a Hammer,  
everything looks like a Nail”





## C2C Background- the Canadian Petroleum Industry and Appropriate Dispute Resolution

- n 1970-1990: Industry agreements only refer to the Arbitration Act,
- n 1995- 2003: CAPL and PJVA Model Agreements provide “guidance” toward appropriate dispute resolution “ADR”,
- n Conflict Solutions 2000 Conference hosted,
- n 2001 EUB ADR Program formally launched,
- n 2003 NEB ADR Guidelines published, and
- n Increasing numbers of industry professionals adding interest based negotiation and ADR skills and expertise.



## C2C ADR Council objectives

- n Assist in the awareness and understanding of the recommendations
  - n Industry Negotiation and ADR Education
  
- n Support the use of C2C tools and techniques for unresolved issues and concerns within the Canadian petroleum industry
  - n Encourage, facilitate, collaborate, and
  - n let companies manage and control their own DR
  - n Liaison potential for multi stakeholder conflicts
  
- n Provide effective vehicle for industry organization, liaison, reporting and continuous improvement.



## C2C Theme: Proactive vs. Reactive

- n Themes:
  - n Proactive, collaborative communication among parties;
  - n Resolve issues while they are small;
  - n ***Provide industry with enhanced tools, contractual provisions and processes to resolve conflict on their terms, creatively and early,*** and
  - n Optimize the value of current and future projects.



## C2C: Guidelines and Procedures

- n Situation Assessment Meeting/ Pre-ADR
  - n helps determine the most appropriate dispute resolution option(s)
    - n “seek first to understand” vs.
    - n “I want someone to tell them they are wrong”
  - n identifies the rules of conduct and process
- n Problem Solving Tools and Case Studies
  - n Ask questions to help with analysis of problem
  - n Assess and analyze the current situation and plan for the changes and results you would like to see
  - n Identify the best fit of available resolution choices



## C2C: Contractual Provisions

- n 2007 CAPL Operating Procedure Dispute Resolution Article
  - n With ADR Continuum, financial threshold, option to elect out
- n Potential Improvements for PJVA Agreements
- n Potential Dispute Resolution Procedure
  - n Could become the “model” for a stand alone dispute resolution agreement for parties in older (or no) agreements



## C2C: Regulatory Alignment

- n Completed interviews with 31 companies who used the EUB regulatory process for C2C Disputes.
- n Investigated and analyzed all feedback including any concerns raised:
  - n Abuse of the process
  - n Timing
  - n Communications/information exchange
- n Worked with numerous companies in disputes and gained their support while improving C2C knowledge
- n Still searching for “mis-use” / improvement



## C2C: Regulatory Alignment

### Recommendations:

- n EUB quickly establish standing and validity of objections
  - n Enhanced case management
  
- n Set deadlines for 1<sup>st</sup> ADR meeting and date for hearing
  
- n EUB ability to award costs
  
- n Clarify admissibility of new hearing evidence not provided in mediation.
  
- n JP 90/95/ 05 (non owner access to facilities)
  - n (EUB/ PJVA/ SEPAC/ CAPP/ CGPA)



# C2C ADR Council is a multi- disciplinary groups of volunteers with the endorsement of industry



*"We endorse the C2C Task Force Report and, in particular, the Report's focus on fostering ways to better manage, control and resolve conflicts within the industry. We strongly encourage companies to consider the Report's recommendations and use the guidelines as we believe they will assist companies in selecting the most appropriate process for resolving conflict, improve business relationships and minimize the diversion of internal resources from other productive opportunities."*

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 <hr/>  <p>ADR Institute of Canada, Inc. Institut d'Arbitrage et de Médiation du Canada Inc.</p>	 <hr/>  <p>Alberta Arbitration and Mediation Society</p>



## C2C ADR Council- What's Next

- n Education
  - n How many trained negotiators vs. positional conduits?
  - n Strategic management of ADR
  
- n CAPL 2007 Operating Procedure
  - n DR Article and more
  
- n JP-05 DR provisions and more
  
- n EUB & NEB
  - n Ensure the staff at the regulators are doing their part
    - n Schedule that hearing!
    - n Make informed decisions
    - n Multi- track



## C2C ADR

- n Open discussion
  - n Experiences/ learnings
  - n What do you need to tell and need to know?
  - n Strategies that work
    - n Situation Assessment Meeting
    - n Level playing field
    - n Disclosure
    - n Deadlines
    - n Cost/ Benefit Analyses
  
- n What can you do to make this a better industry with constructive conflict?
- n [www.c2cadr.org](http://www.c2cadr.org)