

Differences between conciliation and arbitration

Conciliation	Arbitration
Informal - non-legalistic	More formal – a legal adjudicative process
The process is facilitated by a neutral conciliator.	The process is controlled by the arbitrator.
Proceedings are without prejudice and off the record.	The proceedings are recorded and everything said will be considered by the arbitrator.
The conciliator controls the process – has no decision-making powers over the merits of the case.	The arbitrator controls the process and may make decisions, called rulings, throughout the process. A binding arbitration award is issued.
The parties control the outcome – whether to settle the dispute or not.	The arbitrator controls outcome by making a determination to decide which party succeeds in the dispute.
The conciliation is relatively short – one to two hours at most.	The arbitration is usually longer, depending on the number of witnesses.
The parties ‘tell their story’.	Parties and their witnesses give evidence under oath or affirmation.
The parties may ask each other questions for clarity.	All witnesses may be cross-examined by the other party.
The parties are frequently separated into side caucus.	Parties are never separated, but remain in the arbitration room together throughout process.
Documents can be presented and discussed, but are not treated as evidence.	Documents used to prove any fact must be formally submitted to the arbitrator as evidence.
The parties are not entitled to legal representation (unless a jurisdictional point has to be considered, such as a condonation application).	In certain dismissal disputes, such as misconduct and incapacity disputes, parties may only be represented by a legal practitioner on application for this.
The conciliator cannot force parties to resolve the dispute and even an advisory award is not binding on the parties.	The arbitrator determines the dispute by issuing a final and binding arbitration award.

