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- Thanks to Pamela for allowing us to use her slides.

Effective Hearing Management

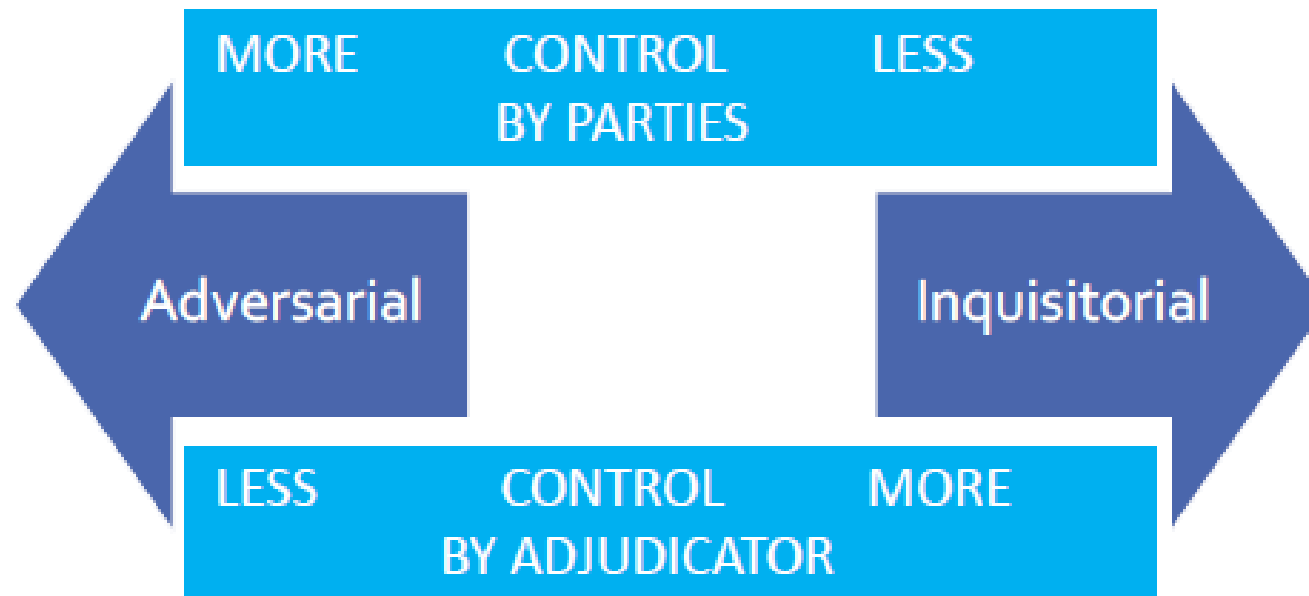
BCCAT Annual Conference

November 5, 2024

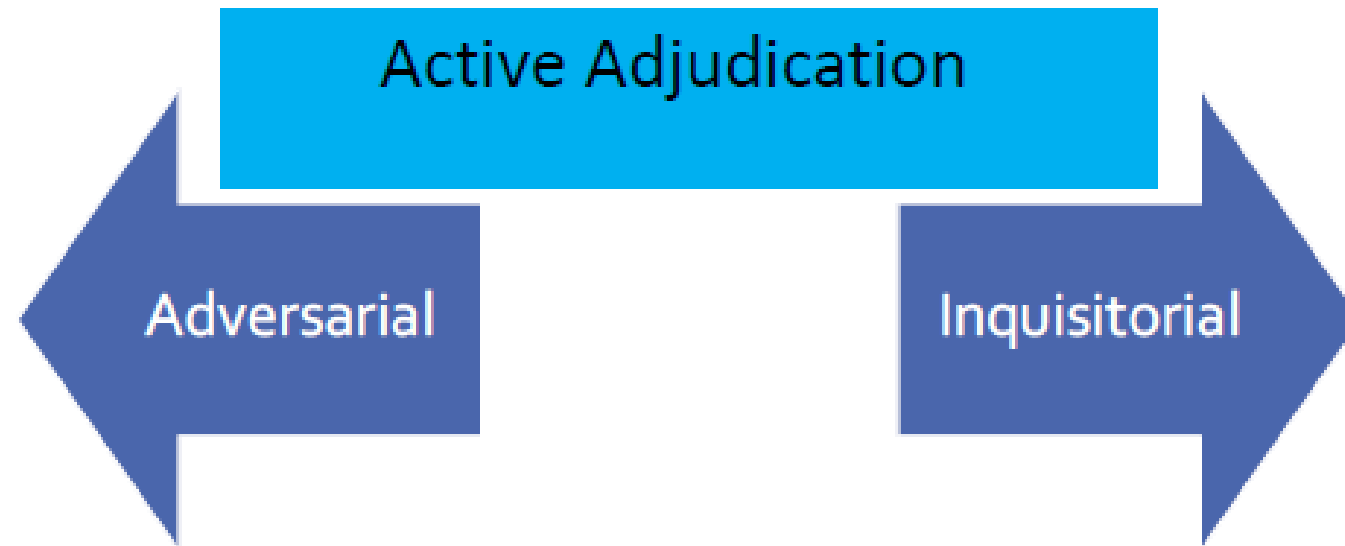


Pamela Chapman
LEGAL EDUCATOR & CONSULTANT

The adjudication spectrum



Active adjudication on the spectrum



Best practices to strike the right balance:

How do we balance benefits and risks?

- Adopt best practices to manage difficult behaviour
- Respect appropriate limits
- Maintain the perception of impartiality



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Active adjudication toolkit:

1. Pre-proceeding preparation and management: to ensure that ready to actively adjudicate
2. Assistance to understand process and legal requirements: explain legal standards, evidentiary requirements, etc.
3. Hearing management: active intervention to organize, focus and shorten proceeding; to narrow the issues and get evidence needed to determine facts in issue
4. Adjudicator questioning: of witnesses, parties, counsel
5. Time management: time-limits on evidence or submissions



Adopt best practices to manage difficult behaviour

1. Use empathy to gain insight
2. Set the right tone
3. Set & manage expectations
4. Use effective communication tools
5. Bring attention to your own reaction
6. De-escalate in stages



Proportionality in the courts: “affordable and efficient justice”

*“...the time and and expense devoted to a proceeding ought to be proportionate – that is, **relative – to what is at stake....***

The unfortunate truth is that if the adversarial process is left to itself, it often actively discourages proportionality. There is always one more issue that can be raised or one more expert who can be consulted in an attempt to vanquish the other party.”

The Honourable Warren K. Winkler, former Chief Justice of Ontario, *The Advocates’ Journal*, March 2009



Concerns about active adjudication

- Compromise procedural fairness?
- Compromise perception of impartiality?

ACTIVE
ADJUDICATION



CONCERN
ABOUT
FAIRNESS/
IMPARTIALITY



The limits of assistance

Explain how the game is played	NOT	How to play the game
Explain the rules	NOT	How to win

Example:

<i>The batter hits the ball with the bat</i>	NOT	<i>You should aim for right field because that player is not paying attention</i>
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ACTIVE
ADJUDICATION



CONCERN
ABOUT
FAIRNESS/
IMPARTIALITY



Canadian Judicial Council Statement of Principles on Self-representation

Principle: Promoting Equal Justice

Access to justice for self-represented persons requires all aspects of the court process to be, as much as possible, open, transparent, clearly defined, simple, convenient and **accommodating**.

- Providing the required services for self-represented persons is also necessary to enhance courts' ability to function in a **timely and efficient manner**.



Canadian Judicial Council Statement of Principles on Self-representation

When one or both parties are proceeding without representation, **non-prejudicial and engaged case and courtroom management** may be needed to protect the litigants' **equal** right to be heard. Depending on the circumstances and nature of the case, the presiding judge may:

- (a) explain the process;
- (b) inquire whether both parties understand the process and the procedure;
- ...
- (d) provide information about the law and evidentiary requirements;
- (e) modify the traditional order of taking evidence; and
- (f) question witnesses



Thank you

