



## MEDIATION: WHAT IS IT REALLY ABOUT?

**Mediation is a non-binding, voluntary, informal dispute settlement option, designed to avoid litigation and its tolls.**

Mediation is successful more than 75% of the time, minimising costs in terms of time delays, frustration, and emotional impact on parties and their families.

Mediation usually takes a few days to settle – at a fraction of the cost of lawyer/ litigation based processes.

Litigious actions settle in some 90% of cases anyway, but that is usually in the last lap - just before trial - after disproportionate costs of all kinds have already taken their toll.

Mediators focus attention on needs and interests, rather than on rights (or power) in order to circumvent the descent from conflict to crisis.

They stimulate parties to explore creative ways of approaching a problem to produce outcomes that satisfy their needs and interests.

As a result, relationships tend to remain intact which is always better - particularly between people in the same industry. Legal rights are unimportant in mediation.

Most of the work is often done privately with each party, in separate and strictly confidential side sessions. As such, each party can comfortably divulge and discuss hoped-for change in the conflict that they would not do with a counterpart present.

Like an iceberg, people in dispute only reveal their “20% that is above the water” to the other side. The 80% below is where settlement lies. That is where mediators work with each party confidentially to generate creative solutions.

Tactical advantages and weaknesses are not revealed to the other side because of these side meetings, or caucuses, and the option to

proceed with litigation or arbitration remains intact - without losing that ‘strategic edge’.

Mediation is also without prejudice and with all rights reserved. Mediators will not testify on behalf of either party – in fact, notes are destroyed at conclusion.

Courts in many jurisdictions frown on actions brought to trial without attempting mediation first. Some are even penalising litigants that do not make that attempt.

Lawyers may or may not attend mediation sessions – that would be up to the individual parties. Lawyers that favour early settlement can be valuable in Mediation sessions. They can provide their clients with ‘reality checks’ and can be resourceful in addressing “what if” scenarios. Mediation is often more successful with lawyers present.

***The outcome of the mediation process is controlled by the parties themselves. No agreement can happen without mutual consent.***

Mediators must act without bias, be seen to act without bias, and refrain from expressing opinions. It is the mediator’s open-ended-questions that prompt the parties to examine alternatives, play devil’s advocate, and test assumptions. This outsider objectivity provides an uncluttered approach to solving problems.

Agreements reached can be reduced to writing, signed, and become enforceable by the courts. Such agreements do not need to divulge anything more than the facts of the settlement; again maintaining confidentiality as the bedrock of the mediation process.