

Catalyst Mediation

Mediation Role Play

AGENDA

10.00 – 10.15	Welcome
10.00 - 10.45	"Theory" of advocacy in mediation
10.45 - 11.00	Question & Discussion
11.00 - 12.00	Mediation Role play
12.00 - 12.45	Question & Discussion
12.45 – 14.00	Lunch

SEMINAR PLAN

The idea behind the seminar is to allow you to see both the theory and practice of mediation; how it can provide a “safe” negotiating forum for the parties to attempt a mutually satisfying resolution; how it may allow the emotional issues surrounding the dispute to be aired and resolved; how it can work with current legislation rather than supplanting it.

The format is intended to provide some facts, dispel some myths and provide you with an opportunity to ask questions that may help you to see if and when it may be a relevant option for the future.

A SUMMARY OF THE MEDIATION PROCESS

To provide a backcloth for the role play, it may be helpful to outline the broad structure of a mediation. It is a very flexible process which, within a structure “managed” by the mediators, can be varied to suit the needs of the parties and to adapt to the flow of the discussions. A skeleton of the process, parts of which will be seen in the role play, looks like this:

1) Pre-Mediation Meeting

A private session held with each Party, approximately a week before the first joint meeting.

The objective is to enable each Party to decide whether mediation is a suitable choice. By answering the Party’s questions, the mediator seeks to reduce any concerns about the process itself, addressing issues such as confidentiality, how the mediators can protect individuals who may feel threatened and what sort of outcomes may be possible and how they could be put into place.

By considering with the Party how they may be able to prepare for the mediation, it reinforces the relationship between the Party and their advisor and the independent, non-advisory role of the mediators.

Finally it is an opportunity for the Party to “tell their story” to an independent listener and for the mediators to gain valuable information.

2) Main Mediation – Mediator’s Opening

This will nearly always include a joint session where the mediator explains the ground rules under which the discussions will be held, including confidentiality and the ability to retire to a private meeting at any time. This is nearly always a joint session because there are some occasions where initially at least, the Parties simply will not meet together.

3) Main Mediation – Parties Opening

Following this each Party will be given the opportunity to speak, without interruption, for 5 – 10 minutes, about how they see the conflict and what they hope the mediation will achieve. This is a crucial step where either Party may say something which is entirely new to the other and provides a valuable insight which can be used to further later discussions. By stating their objectives from the mediation, each side provides the other with a clear goal, which again can be discussed and agreed later on.

4) Main Mediation – Parties Joint Discussions

Once both sides have finished their opening, the mediators will normally ask each side if they have heard anything they would like to respond to, or raise a point of interest, and then let the discussion go on for as long as the Parties are comfortable and the discussion is producing positive results.

The idea of this joint discussion is to identify the key issues – both rational and emotional – that both parties wish to include in the negotiations. They are encouraged to decide which ones they would like to address first and also how – by continuing the joint discussion or by moving to a private session, where the mediator can be briefed on points to discuss with the other side.

5) Main Mediation – Parties Private Discussions

Private sessions can be requested at any time and for any number of reasons. The mediator may suggest it where nothing positive is developing in the joint session; or a party may wish to consider a particular point with their advisor; or either side may simply need time to relax and think about how they wish to proceed.

The key element is that private discussions are strictly confidential and the mediators will be careful to identify exactly what they may and may not reveal to the other side.

It may also be useful for the advisors to hold their own private sessions, with the agreement of their clients, to discuss how a particular legal issue could best be addressed. The advisors can then brief their clients on their conclusions either individually or in a joint session.

6) Main Mediation – Final Discussions

Through a combination of joint and private meetings, the issues identified at the beginning will have been discussed, alternative solutions aired, modified and hopefully agreed. Normally the Parties will wish to have a final joint meeting to review any written agreement before signing it – although a written agreement is not always either relevant or useful.

It is important to stress that the elements of any agreement will have been created by the Parties and their advisors – not by the mediators, although they may help with alternative suggestions. In addition any written agreement will be drafted by the advisors for signature by the parties when they are both happy with the contents and their implications. The mediators are not signatories.

THE ROLE PLAY

These are based on actual mediations, although for obvious reasons the characters and situations are changed. The issues raised are ones frequently addressed in mediations, where the case is based on a mixture of facts, hearsay, recollections and opinions. Needless to say the views of the parties will be wildly different.

The role play will take the form of three “snapshots”:

- **the pre-mediation meeting** – with the audience as the Client and Advisor, allowing a free ranging question and answer session based on what would happen.
- **the opening session** where the two parties and the mediators meet for the first time in a joint session. The idea is to show how the mediators encourage the parties to accept the ground rules in which the discussions will be held and explain their role. Each Party will then give a short explanation of how they see the conflict and what they hope to achieve from the mediation.
- **two private meetings**, one with each Party, where a mix of legal and emotional issues are discussed. The idea is to show how the mediators help the Parties to reduce the tension between them and look towards practical solutions for the future.