

**MEDIATION**  
**A VIABLE ALTERNATIVE TO**  
**COURT PROCEEDINGS?**  
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**PAUL JACOBS, Q.C., C.MED., C.ARB.**

Almost everyone has either heard or voiced a complaint about the cost, complexity, and time delay of court proceedings in the nineties. At present, it takes at least twelve months from the time that you place your case on the list for trial until the trial is finally heard. Delays of up to two and three years are not unheard of. This is, of course, in addition to the time required to go through the proceedings prior to the placing the case on the list for trial.

As the usefulness of the Court system as a method of resolving anything but major disputes declines, the prospect of turning to a modern variation of "pistols at dawn" comes to mind. However, there is a legal alternative to a regression to our earlier days. Many people are now turning to arbitration and mediation as methods to resolve disputes in a quicker and less expensive fashion. Typically, costs are shared equally.

Mediation is a process whereby two or more parties to a dispute use a neutral third party to assist them in reaching a settlement. The process is voluntary so that it only works if both parties are willing. It involves a negotiation where the parties themselves are present but the mediator works to facilitate settlement that the parties themselves have been unable to reach. The result does not bind the parties legally and if it does not work out, they can still take their dispute to an arbitration or to court.

The mediator is a person with special skills in resolving disputes and is knowledgeable in the subject matter of the dispute. The mediator helps the parties to identify the real issues between them and works at trying to find a settlement that mutually satisfies the interests of the parties.

By working with the parties on their underlying interests, a mediator can often achieve a result at settlement that no other form of dispute resolution can do. For example, in an arbitration, or a court proceeding, one party wins and the other party loses. Clearly, this is unsatisfactory in all cases to the loser. In a mediation there is no loser. It is a win win situation if the parties come to a

settlement.

The mediator achieves this by concentrating on the real interests of the parties and not on their positions or their rights in law. Often their rights in law are what entrench parties in opposite directions and lead to delays in the normal court system. By looking to the interests of the parties, the mediator can get right to the heart of the problems and work with the parties together and separately in the mediation process to achieve a mutually beneficial result.

Some of the obvious advantages to mediation include speed, cost savings, and confidentiality. When a mediator is appointed by the parties, time is scheduled for the mediation, and any relevant documents are exchanged in advance. There are no formalities to argue about concerning the relevance or admissibility of documents. The parties agree on their documentation or there cannot be a mediation. The appointed time is when the mediation is heard. There is no other mediation going on before the same mediator that day. In this way, there is no delay for hearing, and you do not waste your time.

From the point of view of cost, since procedures are very informal, there are no technical delays and no appointment backups. The parties share the cost of the mediation equally. Therefore, each has a commitment to a solution that works. In many cases, the parties have a need to continue doing business together and must put a dispute behind them quickly and with mutual satisfaction. Mediation achieves this result.

From the point of view of confidentiality, the parties set their own terms of reference for the mediation. Any discussions which go on at the mediation and any involvement by the mediator are not capable of being repeated before a court in a later proceeding if the mediation fails. In this way neither party is prejudiced by what takes place in the mediation in the event of failure, and the parties have every reason to be fully frank in their negotiations.

Mediations also contain the issues in a case; that is, sometimes when a case is allowed to go on longer, additional disputes arise in the framework of the case and it becomes more complex, delayed, more lengthy and more expensive. Mediation avoids all of these problems.

Mediations are extremely flexible and may be available to almost any kind of dispute.

The key is the willingness of the parties to work together creatively to find a settlement with the assistance of a skilled mediator. This person should have the trust of both parties involved and, of course, must be objective and neutral in order to facilitate settlement.

Mediation has been going on for a long time but has recently come to the forefront of dispute resolution. Parties have suffered delays in the judicial system for a long time and should be aware of their alternatives.

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