

MEDIATION AND ARBITRATION

Conflict Management Resources

THIS RESOURCE WAS PREPARED FOR VIASPORT BRITISH COLUMBIA BY NOW WHAT FACILITATION, A TEAM OF FACILITATORS WHO HAVE EXTENSIVE EXPERTISE AND EXPERIENCE IN THE FIELD OF CONFLICT MANAGEMENT, INSTRUCTIONAL PRACTICE AND MEETING FACILITATION.

WHAT IS MEDIATION?

Mediation is a conflict management tool used to assist individuals who are engaged in a dispute to move forward in a collaborative way. The nature of conflict is that it does not go away without active work. Mediation is one way to assist.

Mediation helps people resolve or better manage disputes by developing agreements to help both parties move forward using mutually agreeable solutions.

WHAT IS ARBITRATION?

Arbitration is an alternative dispute resolution process whereby parties involved in a dispute submit their evidence to an arbitrator who is then able to make a final decision. As in mediation an arbitrator holds a neutral position. Unlike in mediation, the arbitrator will find in favour of one party.

THE ROLE OF THE MEDIATOR

Mediators play a neutral role as they help you resolve or better manage your dispute. They do not take sides with either party. Their job is to assist you to understand one another and develop agreement. To do this, they establish mediation guidelines for communication and ask great questions! They will help you identify the issues and interests in need of resolution. Once issues and interests are identified, they will encourage you to brainstorm solutions. After the mediation, they will write drafts of agreements and, after gaining your approval, give them to you to sign, date, and exchange.

WHAT IS MEDIATION NOT?

Mediation is not debating. It does not require you to prove that you are right and the other person is wrong or convince them to give up what they think is important. Unlike debating, mediation is not intended to have a "win-lose" outcome. In fact, it is often the failure of "debating" that leads people to seek the help of mediators! Mediation is not capable of changing anyone's personality or values. Unlike the justice system, the mediation process is not intended to find fault, assign blame, or punish anyone.

Mediation is not something people are likely to do successfully if they are mandated to participate in it against their will. It needs to be voluntary.

WHAT DON'T MEDIATORS DO?

Mediators do not:

- make decisions for you and/or the other person about how your dispute will be resolved.
- talk with others without your permission about how the mediation went.
- determine who is “right” or “wrong.” There is no value in trying to persuade the mediator of the “merits of your case” as their role is to remain impartial.

MOVING FROM WIN-LOSE TO AN ALL-WIN OUTCOME

Mediation is a different way of working through problems that many of us are not used to. Through media, sports and culture we have been acclimatized to address conflict with a win-lose mentality. Mediation seeks to achieve a win-win outcome for both parties. The key to a win-win outcome is understanding the positions and the interests of each person involved.

Positions are perceived fixed solutions to a problem. A position is typically a stance taken by the person who raises the dispute or takes issue with something.

Interests are what is important to each person involved in the dispute. Positions are based on interests. Interests show us the deeper reasons for the dispute as well as why those issues are important to them.

UNDERSTANDING POSITIONS

It is natural for people to hold on to their positions, particularly when they are feeling threatened in some way. Here are the types of threats that support positions:

Personal: When our sense of self is at stake

Practical: When something we care about, need to make our life function or want to achieve is at stake.

Relational: When our sense of how people should interact in their roles is at stake.

Structural: When our sense of the way systems are set up or functioning is at stake.

By considering the reason that you or the other party are holding on to a position you are better able to understand underlying interests which are not always apparent.

MEETING GUIDELINES

Prior to a mediation the mediator or facilitator will ask the group what they need to establish a safe and brave space to have the conversation. The group will develop guidelines to be used in each session. The mediator will ask for elaboration on each guideline so that a common understanding of what it means is reached. For example they may ask what does confidentiality mean? Who is not hear that will need to have some of the information shared during this meeting? Here are some examples of commonly used Group Guidelines.

1. Confidentiality
2. Listen to understand
3. Focus on the future
4. One person speaks at a time
5. No blaming or shaming
6. Give feedback, not criticism
7. Take a break if you need one
8. Phones away

THE FIVE STEPS OF MEDIATION

1. Name the problem by framing it as an ISSUE.

Sometimes we get so wrapped up in a dispute that the two sides may not even agree on what the problem is. The first step of mediation is to name the problem using neutral language.

2. Identify all POSITIONS.

Positions are set answers to a problem. These may be demands, threats, or terms and conditions. For example: "If this doesn't happen, I will . . ."

3. Explore INTERESTS

Our interests are what is important to us and what we really want. They are the reason underneath our position in the dispute. They are our hopes, feelings, concerns and needs.

4. Widely consider OPTIONS and POSSIBILITIES

This conversation starts with identification of common interests for all parties. Next, creativity is key in considering which options will serve the interests of each party.

5. Develop an AGREEMENT

Identification of which options can be agreed upon and put into a plan. The steps in the plan will be clearly defined in plain language with concrete timelines attached.

FOLLOW-UP MEETINGS

Managing conflict is rarely a one-off event. By the time a dispute has reached the level where mediation is involved there can be years of issues to work through. It is common for mediations to have several follow-ups. This allows for all parties to reflect on the discussion and come back to the table with new ideas. Although the first session can sometimes be frustrating often the magic is in the second and third sessions. It is important to trust the process rather than focusing on the outcome. The process provides a unique opportunity to open new channels of communication and understanding.