

# Thinking mediation



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## THINKING MEDIATION

with Richard A. Morris

Workplace disputes, disagreements, relationship breakdowns, partnership splits and falling outs are an unfortunate fact of life. Whether it be as a result of a misunderstanding, an indiscretion, a change of focus or gradual change, it is human to have disputes.

How these disputes are handled can be the difference between a continuing commercial relationship, a happy workplace or an amicable post-divorce and something akin to hell for all parties – being both time-consuming, expensive and emotionally draining.

The traditional legal method of resolving disputes has involved parties presenting arguments to an independent third party. The nature of this adversarial system involves relatively disinterested parties arguing matters based on impartial legal argument and persuasion at considerable expense. When the parties give away control of the decision making process,

a judge or tribunal member may determine matters that may not satisfy either party. But it doesn't have to be approached this way.

### Mediation

Parties have an array of methods open to them to resolve a disagreement and find a mutually acceptable outcome. One such avenue is that of 'mediation'. Mediation is where the parties are assisted by an independent third party to find common ground, discuss all of the issues involved and ultimately look for a way forward that will benefit all involved.

A mediator does not tell the parties what to do like a judge may do; this power lies with disputants. A day spent in mediation may forego the need for months tied up in Court. Mediation in the workplace can nip problems in the bud, leading to greater cooperation and productivity.

### Collaborative Law

Collaborative law is another option available for resolving delicate issues. It is where the parties and their representatives agree, via Contract, that they will not take the matter to Court but rather work together to find an acceptable solution.

The agreement states that if the matter cannot be resolved, then their representatives are not allowed to represent them in formal Court proceedings. This approach is particularly useful when applied to business partnerships

that for whatever reason have to be dissolved, or other complex family or commercial matters. With all parties and their advisors working towards the same goal, it provides scope for lateral thinking and solutions that may not be possible using other methods.

### Assisted Negotiation

Taking direct control with professional assistance may be a simpler approach to resolving some disputes. Parties utilise the benefit of professional legal and financial advice to attempt to negotiate an appropriate resolution. Apart from helping to take the heat out of a dispute, which may allow a more rational approach, most people are far more comfortable agreeing on a course of action when they are aware of their rights and what

tax and financial implications it may have.

### Arbitration

Arbitration is similar to Court in that the arbitrator hears each party's submissions, evidence and arguments and makes a determination. However, one critical difference is that the

arbitrator can be an expert in the field of dispute. For instance, if two builders are having a disagreement over a technical issue, it is far easier for an expert in that field to firstly understand the matters in dispute and make an appropriate determination.

The decision that an arbitrator makes can be binding or non-binding on the parties. This and any other process can be agreed upon by the parties prior to conducting the arbitration, which again provides for greater flexibility compared to the prescribed technicalities of litigation through a Court.

Depending on whom the parties agree to appoint as arbitrator, the process may also be cheaper and faster than going to Court.

There are many options available for parties to find a solution when in dispute. While litigation through a Court may have its advantages, alternative dispute resolution may be more appropriate and capable of delivering a faster and more cost effective result.

If you are involved in a dispute and considering formal proceedings, first talk to your solicitor or accountant, the North, North West Community Legal Service, or contact a local mediator or arbitrator about what is available and what would best suit your needs. Richard A. Morris Solicitor, Mediator (LEADR), Director Legal Minds.