

What is Mediation?

Mediation is a voluntary process which engages the assistance of a neutral third party called a mediator. The mediator facilitates negotiations and assists parties in reaching a mutually acceptable agreement. The parties to the mediation control the outcome. The parties do not reach a resolution unless all sides agree.

A mediator facilitates communication, promotes understanding, assists the parties to identify their needs and interests, and uses creative problem-solving techniques to enable the parties to reach their own agreement.

The general types of disputes that use mediation are:

- Civil and commercial disputes;
- Disputes about divorce and matrimonial matters;
- Employment disputes; and
- Medical negligence.

Cases that are suitable for mediation include the following:

- Cases which are not clear-cut (i.e. evidential problems);
- Cases in which the value of the claim does not justify costs/time required for litigation; and
- Cases where relationships are forefront and emotions are likely to run high (i.e. family disputes).

Why choose mediation?

1. *Control over outcome*

Mediation focuses on the interests of all parties. The parties reach settlement only when they are satisfied with the terms that they have mutually agreed to, with the help of their mediators. One of its advantages is that it provides pragmatic solutions that the law may not be able to provide for. In these circumstances, one can be assured that the solutions will cater to the underlying interests of all parties. The settlement terms are binding on the parties.

Parties have control over the outcomes as they are able to mutually decide on the terms of settlement. By contrast, in a lawsuit or arbitration, one may face the risk of having a judge or an arbitrator deciding against one's case.

2. *Preserves relationships*

Mediation is a process that allows parties to work together to achieve their desired outcome. It is non-confrontational and mediators ensure

that communication is objective and positive, aiding in the improvement of relationships where possible. This dispute resolution method is recommended especially when there is the need to maintain on-going commercial, working or familial relationships.

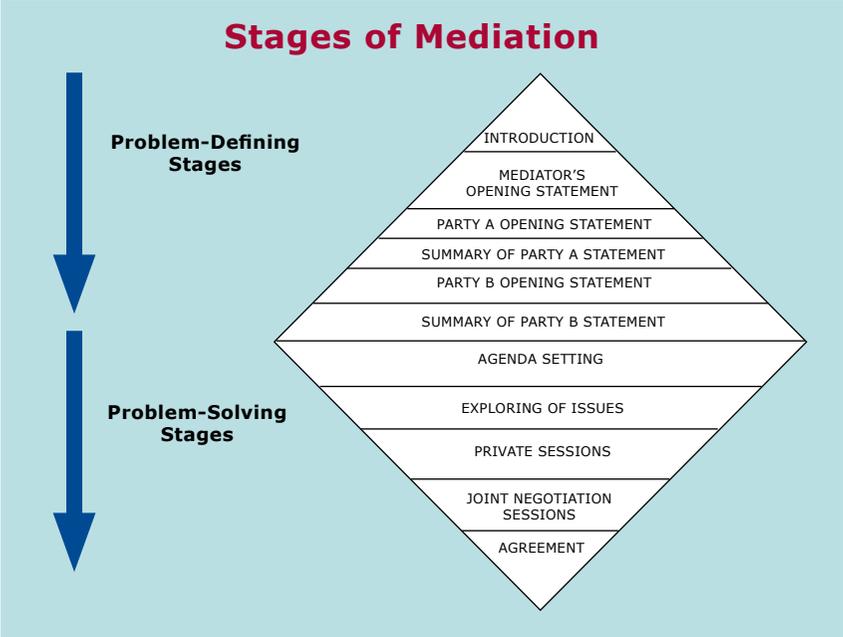
3. Confidential

Mediation is a process for parties who value their privacy as matters discussed in the mediation are confidential. As mediation is a “without prejudice” process, any matter discussed during the mediation cannot be used against parties in Court or in arbitration. As a result, the parties are given a safe environment to explore issues and different solutions. In such a setting, parties are more likely to arrive at creative and pragmatic solutions which fit their disputes.

4. Flexibility

Mediation is informal and flexible. Unlike litigation, there are no prescribed procedural rules to follow. Therefore, the process can be attuned to the dynamics of the dispute; bringing about less pressure to the parties involved.

Mediation process





"So... have you ever heard of mediation?"

A mediation will generally include the following stages:

1. The mediator will begin with an opening statement to introduce the parties to the process.
2. The parties will then be invited to share their concerns, which will be summarised by the mediator.
3. The next step in the process will be to make an agenda, where the mediator will assist parties to draw up a list of all relevant issues to be discussed.
4. The mediator will lead and encourage the parties to consider each issue in turn.
5. At some point in time, the mediator may request to see the parties privately for private sessions.
6. The parties may subsequently be brought together again for further joint discussions.
7. Where a settlement is reached in the mediation, the terms of the settlement (or at least the heads of agreement) will usually be recorded in writing and signed by or on behalf of the parties.
8. The parties are then bound by the terms of the agreement.