

Releasing the pressure gently, with mediation

When disputes get out of control and you're stressed to the max, "who you gonna call"? The Mediate team!

Two mediators told EMA members at a seminar last month how mediation works and why it's a smart alternative to adjudication, and especially to going to court, or litigation.

Presenters Danny Gelb (Mediate.co.nz) and John Isaac advised that mediation is defined as a confidential decision-making process where the mediator assists the parties to discuss the issue in dispute and find a solution (that could be multifaceted). They then document the parties' agreement on how they will resolve the issue. The resulting document/contract might be drawn up with the help of a lawyer and is legally binding.

Case study

Because confidentiality is critical to the process, case studies are heavily altered to protect the identity of the parties. However, Danny provided the following example of how mediation is beneficial in resolving business-to-business disputes.

A dispute arose over payment for the re-print of a large printing job that had gone horribly wrong. In the initial print the client had signed off the proof but later discovered the printer had run a wrong graphic, and as well the client's proof-reading had not picked up a typographical error. Both errors contributed to the problem but the parties could not agree who was liable and therefore who should pay what for the re-print. Neither wanted to go to court as it was too

expensive compared to the value of the dispute, and the uncertainty over what a court would decide.

For a charge of \$999 + GST and disbursements to each party per day, a mediator helped them resolve the conflict. The mediator does not decide the outcome; he or she helps the parties negotiate an agreement of their own making.

Sharing the damage

The parties ended up agreeing the client paid 75% of the reprint and the printer gave the client a credit on her account equivalent to 25% of the invoice for use on a future print job.

"Effectively they split the cost 50/50, but the printer secured further work and maintained the business relationship. Our courts cannot reach outcomes like this," says Danny.

or agents, and business partnership disagreements.

The barriers to their resolution are commonly about money but also ego and emotion can be important – or all three.

Special features of mediation

Mediation is increasingly popular worldwide since it offers key advantages:

- A neutral person (agreed by both parties) facilitates;
- The entire process is confidential and uses the 'without prejudice' process;
- Good faith negotiations are integral. A good chance of preserving relationships to do future business is retained;
- The consensual process decides the outcome;
- Sessions are quick, e.g., they can take place in a couple of days from booking the mediator unlike a courtroom which can take six months or more to get a hearing.
- It's cost effective. For example, litigation costs from \$20-30,000 for each party, and offers little control over the outcome, and there is always a winner and a loser.

Win win

With mediation the outcome is often win-win, and at worst, a liveable solution and a quick end to the stress of conflict.

Danny says mediators are trained to turn confrontation into co-operation, to attack the problem not the people and focus on the parties' needs as opposed to their wants, as well as how to break stale-mates. Approximately 85% of mediations result in a settlement.

To find a mediator, google "mediation" or select one from the Arbitrators and Mediators Institute of New Zealand or LEADR NZ. Or go to www.mediate.co.nz

**"...litigation costs from
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Neutral facilitation

A mediator is a neutral facilitator; the parties involved agree on the particular person to hire. The mediator is not a lawyer, though lawyers can be consulted, e.g., the parties might have already discussed the issue with their lawyers and they might provide useful information to the mediator, or suggest their clients use a mediator.

Business disputes can arise for many different reasons: customer complaints, supplier issues, property disputes with landlords