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Dispute Resolution

THE MEDIATION MINUTE

Private Mediation for Business and Individuals

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Employment Personal Grievances - Avoidance Tips

Did you hear those employment ads on the radio recently? A claim of about 70% of failed job appointments are due to internal staff conflicts as opposed to not being able to do their job properly.

And who pays the price for this conflict? Of course it's you the employer, or it comes out of your department's budget. People state that the true cost of replacing a person is over 60% of their salary plus your lawyer's cost and the go away money paid in order to settle the Personal Grievance (PG), no matter how unjust it may be.

This can be nipped in the bud in a very cost effective manner. How many PG's have you heard about where the



employer had no idea it was coming? The signs in the work place are normally glaringly obvious to the people they report to. Normally the actual issues involved start off quite minor, but like a speck of rust, unless it is fixed quickly it can spread out of control.

The sooner an issue like this nature is addressed the sooner you can have peace restored to the workplace and then there is one less burden for you to carry.

So, do I call mediate.co.nz at the first sign of trouble within my staff? In a word, no. If you address the issue early enough then it should be easy to resolve internally. However if you do not find it easy to resolve then do give us a call. We are happy to talk you through the first steps prior to any formal engagement.

It is important that you follow the correct protocol when dealing with staff issues of this nature. Call the EMA if you are a member or talk to your HR or legal people first.

Many an employer has been correct on the substantive matter but has fallen down due to correct procedures not being followed.



**“Reduce
the time, cost,
disruption,
negative
publicity and the
loss of control by
resolving
disputes with
mediation”**



Mediating your Business Dispute.

Business buyers sometimes discover after settlement that something is not quite as they expected with the business.

Sales might be substantially less than expected or key staff members may resign shortly after settlement date.

There are many issues a buyer of a business may face. However expensive litigation is not generally an ideal way to solve them. Your precious time is better spent learning the new business you have bought.

There are several causes of disputes in new businesses just purchased can be varied. Perhaps due diligence was not carried out thoroughly or maybe the Vendor is not performing as agreed. Sometimes a sale and purchase



agreement might not clearly provide for a specific situation that arises.

Shareholders in business do not always agree on a range of matters including: the value of the business, capital injections, strategic direction, operating policies, marketing plans, dividend distribution levels etc.

The benefits of utilising mediation to resolve such matters is its cost, efficiency, speed and confidentiality.

Is there any point in commencing a lengthy very expensive litigation that takes your focus away from the new business? By the time you have proved your point the costs have outstripped the benefits and the business that you purchased with your hard earned cash has now all but gone.

John Isaac originally qualified as a chartered accountant, has worked in a variety of businesses, spent 22 years successfully selling businesses. John has also appeared as an expert witness on business valuation matters in mediations, arbitrations and in Court.

With his experience John is ideally placed to resolve a wide range of business related disputes.

How is a Mediation different to Arbitration?

You have had a disagreement with one of your top 20 customer who is threatening to take you to court. You neither desire, nor can afford this. You invested in securing the business and you don't wish to lose it. You realise that this dispute needs to be settled quickly and the previous good relationship restored. So how can you resolve this situation?

Mediation is a decision making process whereby a impartial person, the mediator, helps the people in dispute (the parties), to discuss and re-evaluate the issues in order to come up with solutions of their own making, resulting in an agreeable outcome for all parties involved. The mediator helps the parties

reach their own decisions. Once reached the decisions are recorded in a Mediated Agreement which stipulates what should be done, by whom, where, when and how. When signed by the parties's, the Mediated Agreement is legally enforceable similar to other contractual agreements.

Mediation reduces the time, cost, disruption, negative publicity and the loss of control compared to taking a dispute through the courts.

The ongoing relationship between the disputing parties can be preserved. Mediation is confidential to those present and is held on a "Without Prejudice" basis. The results are often uniquely customised solutions to suit the situation at hand. You cannot prevent disputes arising, but you can choose to deal with them in a way that minimises time cost and disruption to you

Arbitration resolves disputes by a neutral third party (the Arbitrator) imposing a decision. The parties to the dispute have some control over the process but unlike Mediation, no control over the outcome. The process normally requires the parties to present their arguments (known as pleadings) to the arbitrator who listens to both sides. Witnesses can be called to give evidence and the parties can have their lawyers present to act for them. The arbitrator's determination, known as the award, is legally binding and can if necessary be enforced by the courts.

A major point of difference between Mediation and Arbitration is that in mediation the outcome reached by the parties is consensual; however in arbitration the outcome is imposed by the arbitrator.

Managing family conflict with your teenagers

How parent teen relationships are handled is so important to the well being of your children's future. Conflict is an inherent part of family life. If this is not managed constructively it can cause relationships to break down, families to separate and possibly be the start of a life of crime for the youngster.

Teens and parents are caught in a paradox of the teen being too old to have every decision made for them and too young to be given total control of their life. So what is the answer? Unfortunately there is no silver bullet, however here are some thoughts that may help.

Teens and parents do have more things in common than you might realise. These include frustration, financial stress, disappointment, fear of failure and the general stress of life. As hard as it may appear at times both generally want the best for each other.

Understanding is one of the keys. How do we help to understand the other? Listening, giving undivided attention will go a long way, however it has to be undivided one on one attention, not a conversation over doing the dishes together or while driving somewhere.

It is important to set some ground rules at this stage, such as no swearing, name calling or making hurtful statements about each other.

Repeat back to your teen in your words what they have said to you and confirm with them that is what they have said. This acknowledgement alone will go a long way to them knowing that they have been not only heard, but also understood.

Remember that you can't un-ring a bell so there is not much point on spending too much time talking about the wrongs of the past. The aim

now is that we are talking in the present, with a view to focussing on the future.

It will help you to imagine being in your teen's shoes. When you were that age, given the same circumstances, how may you have felt in this situation? Voice your concerns in the big picture format, not micro specific, such as your concerns for their safety, well being, future etc.

Now ask them what they think may be a solution to this issue. Reality check with them their ideas in relation to your concerns. Effectively you are getting them to see it from your perspective.

You will not fix everything in one go, however if you manage to address one item with what you think is better than previous you are both better off.



“Teens and parents do have more things in common than they might realise”

Mediation Myths - *Discussing or proposing mediation is a sign of weakness*



This statement is completely false. The origin of this myth is from the mistaken belief that an offer to mediate demonstrates an uncertainty in one's case.

To those who have not been through a mediation this myth does sound as though it may have merit. Irrespective of how weak your opposing party might be does not

change the basic fundamentals of mediation. It's potentially quicker, cheaper, and less stressful than the courts.

Why then spend the tens of thousands going to court only because you perceive that the other side has a weak case. If your case is so strong, say your lawyer says 75%, then why are they fighting it? Why don't they just simply roll over and pay?

If your lawyer says you have a 75% chance, does that translate to the other party's lawyer must be telling his client that he or she only has a 25% chance?

Would it be a possibility that the other party's legal team

also believe that they have a 75% chance? This is not an uncommon scenario. The outcome we can now guarantee is that at least one party is going to receive a major disappointment with the court result. The only question now is; is it going to be you or the other side? Welcome to the world of litigation.

Discussing or proposing mediation does demonstrate that the client wants to save time and money by resolving the dispute constructively with a chance of a creative solution being found that is a win for both parties.



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Danny Gelb Mediator and Founder of mediate.co.nz



Danny Gelb is a well educated commercially minded person who has the ability to appreciate disputes from both sides.

Specialising in property, construction and business disputes Danny works with owners, tenants, construction companies, suppliers, contractors and their

employees. Recently he has been assisting the Real Estate industry with the new legislative changes that recently came into effect regarding the complaints procedure and he is on the mediation panel for the Real Estate Institute of New Zealand.

Danny is an Associate of AMINZ (Arbitrators and Mediators Institute of New Zealand), and is a LEADR accredited mediator.

Anet Kate Mediator and Conflict Coach



Anet Kate, BA (Political Studies); LLB (Hons) (Auckland); MCR (La Trobe, Melbourne); LEADR Advanced Panel; AAMINZ (Med).

Anet has been a mediator, coach, dispute consultant for some 20 years.

She has lectured or tutored mediation, negotiation, and advanced family law. Anet is a barrister, and conducts mediations in the health, health & disability, construction, employment and family areas.

She coaches trainee mediators, and offers conflict coaching for employment matters.

John Isaac Arbitrator and Mediator



John's successful 39 year business career has spanned 13 years in Chartered & Corporate Accountancy, 4 years in Merchant Banking, 22 years in business sales and acquisitions (via Business Sales Ltd) before in 2008 setting up Mediation & Arbitration Ltd to assist clients resolve disputes and facilitate meetings.

John has a B.Com (Auckland University) is an associate member of REINZ and affiliate of AMINZ (Arbitrators and Mediators Institute of New Zealand), is on the REINZ (Real Estate Institute) disputes panel and has studied dispute resolution at Massey University. He has published articles & presented speeches on alternative dispute resolution methods including both Mediation & Arbitration.

Erin Burke Mediator



Erin has a BSc (Auckland), MSc (Aston, Birmingham) and LLB (Hons)(Waikato).

Erin is a qualified and registered member of the LEADR panel of mediators.

Prior to entering the field of mediation, Erin was a solicitor specialising in commercial and

employment law. After experiencing first hand the escalation of disputes that could have been settled more quickly and inexpensively through mediation, she trained as a mediator and set up Mediation Services New Zealand.

She continues to act as a Barrister but sees the Court process as a last resort only when all other approaches have failed.

Malcolm Mendoza Mediator



Malcolm's background is in aviation engineering, marketing and management. After gaining aviation engineering, management and business qualifications he moved into the airlines marketing area specialising in international contracts for aircraft maintenance. In 2006 Malcolm set up Mendom Limited a contracting

and consultancy company to utilise his skills in working with people in resolving problems. Malcolm is an Associate of the Arbitrators and Mediators Institute of New Zealand (AMINZ) and is currently completing the final paper for a Graduate Diploma in Alternate Dispute Resolution, at Massey University. Malcolm has been involved in resolving a range of dispute that include, technical, planning, logistical, community, contractual and personal.