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# mediate.co.nz

## Dispute Resolution

### THE MEDIATION MINUTE

Private Mediation for Business and Individuals

May 2010

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#### Introducing mediate.co.nz

Mediate.co.nz is a new organisation that comprises of like minded professional dispute resolution practitioners that between them have many years of experience in a diverse range of disciplines that have successfully settled thousands of disputes.

Currently we are four dispute resolution professionals residing in Auckland and Hamilton. We all have the ability to travel throughout New Zealand to hold mediations in your local areas. Our organisation will grow so that over time we will have dispute resolution professionals residing in most of the main areas of New Zealand.

A philosophy that we all have in common is the dislike and frustration of the New Zealand courts system. Our court system is necessary however **“Going to court should be the exception rather than the rule.”**

There is now a way to mitigate this power imbalance. By including specific dispute resolution clauses in your contracts you help reduce this potential power imbalance. Talk to your lawyers or talk to us and we can show you where these generic clauses can be found.

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Unfortunately our court system does favour the individuals and organisations that have very deep pockets as they can hinder and delay a person of limited means from pursuing what they believe that they are entitled to.

Virtually all new legislation being passed includes mediation as the first action in dispute resolution. Add our website to your bookmarks.

**We are here to help you out.**

## Is Mediation really a confidential process?

In answering a question with a question, "Who wants to know?" There are two answers to this question being the legal answer and what can happen in reality. It is not too different from the courts name suppression issue in the media a few months ago.

A Court of Appeal decision last year reconfirmed that the happenings at a mediation are considered the same as "Without Prejudice" negotiations to resolve a dispute. In other words any act, admission and or statement made during a mediation is inadmissible as evidence in a latter judicial process. Opponents to this started publishing editorials stating comments like,

**"Say whatever you like about whoever you like so long as it is in mediation!"**



One of the reasons mediation is so effective in resolving disputes is that the parties can talk openly and freely without the fear of this free speech coming back to haunt them at a later date. It allows a mediator to explore in depth the real and underlying issues at hand in order to help the parties come up with their own creative solution.

**So, yes you can be assured that what happens in mediation will stay confidential from being**

**used as evidence against you at a later date.** Don't forget that this works both ways. You can't use information gained at a mediation against your opponent either.

How then do I stop the other party opening their big mouth breaking confidence to others subsequent to a mediation? As disappointing as it may sound, you can't, unless you are publically defamed then you may have a defamation case.

How else do I protect myself against this? Most people only have a need to tell their story to the masses when they feel hard done by or mistreated. Treat the other party with respect and dignity during the mediation will help mitigate this risk as a successful mediation builds the relationship between the parties.



**"How much control do you really have when you roll the dice of litigation?"**

## How much is a Mediation going to cost me?

The amount our Mediators charge is only a tiny fraction of the value of the dispute. For a dispute of up to \$50k **the fee is less than a thousand dollars per party** plus disbursements for a single day mediation. See our website for our [scale of fees](#).

Now what is this equivalent to? Think of the last time you visited your lawyer, briefed them on an issue in dispute. They then completed some research and they sent off one letter.

Yes we like you to bring your lawyer or other advisors to your mediation and they will charge you for the privilege, however the work that they will do will be more than likely

needed if the mediation does not settle and it is off to the courts or arbitration so it is money well invested. Not only that you will have a far better appreciation of the merits and weaknesses of your situation.

The real question to ask yourself is **how much is it likely to cost me if I don't go to mediation.** There is a tab on our website "[Cost Efficiency](#)" that has a case study on the likely best and worse case scenarios.



## Introducing Conflict Coaching

Conflict coaching is a thought provoking, structured and creative process that inspires people to make the most of their skills, knowledge and potential to effectively manage and resolve interpersonal conflict. Voluntary and confidential, it focuses on the individual's conflict management goals. Conflict coaching is not therapy or counselling. It is a process of conflict analysis involving one disputant and one conflict resolution professional.



the method, particularly in workplaces.

The term 'conflict coaching' was first used about 1996 at Temple University, Philadelphia, where professors Joseph P. Folger and Tricia S. Jones, developed a model as a campus dispute resolution service. Over the past 16 years North American resolution professionals, managers and consumers have seen great benefits from using

### What the Coach does

The coach supports, assists, and encourages people to reach stated goals. S/he provides a supportive framework and non-judgemental feedback. Input and insights are sought at every stage from the person. The coach does not provide advice, or act as an advocate or representative. The aim is

to deliver increased awareness about choices in managing either a particular dispute or conflict in general.

### Cinergy® Model

Cinergy® conflict coaching was created by Cinnie Noble, a Toronto lawyer-mediator and International Coach Federation certified coach. Courses have been run in Australia over the past few years, and the first New Zealand LEADR-affiliated Cinergy® course was held in Auckland in March 2010.

The Cinergy® and other models integrate the disputant's point of view and context with a coach who is both facilitator and expert. Over the past 5 years conflict coaching has gained popularity as a distinct method of dispute resolution by itself. Another important use is to prepare parties for mediation.

**“Successful  
Mediation is to  
wake up the  
next morning  
knowing that  
you have an  
agreement you  
can live with”**

## Mediation Presentations - *Let us come and talk to you*

There is a great misunderstanding of what exactly mediation is. It is commonly confused with arbitration and adjudication.

To help clarify exactly what mediation is, how it is beneficial and how it differs from other forms of dispute resolution, we have put

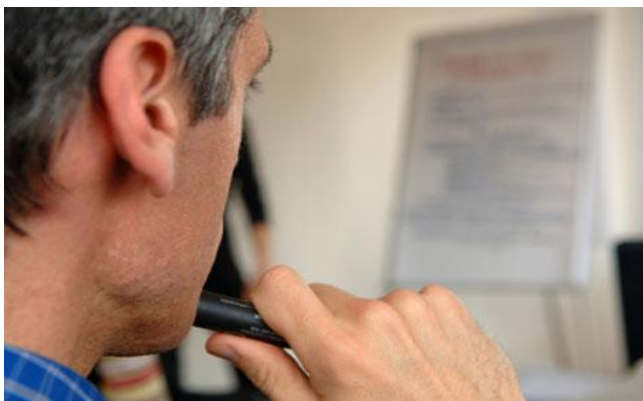
together a 30 - 40 minute interactive presentation that we can deliver to your staff, members of your organisation or a client networking function.

The presentation is interactive thus requires comment and input from the audience. Part of the presentation involves an

exercise showing the audience how easy it is for two people to interpret the same document in different ways. It is normally delivered by two of our mediators together. We can customize these presentations to suit your particular environment.

At the conclusion of the presentation the audience will have a clear understanding of what mediation is and more importantly what it is not. They will also have some useful tips on how to avoid disputes in the first place along with tactics of resolving a dispute by themselves.

Contact us now to book a time for us to present for you. [presentation@mediate.co.nz](mailto:presentation@mediate.co.nz) or Danny Gelb 357 6085



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**Dispute Resolution**

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## Dispute Resolution Professionals with Integrity

### Danny Gelb Mediator and Founder of [mediate.co.nz](http://mediate.co.nz)



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

He established his consultancy, Land & Building Solutions Limited 10 years ago and has been predominantly working in the commercial and industrial property sector in various capacities. A fair proportion of this time is resolving disputes or conflicts utilising alternate dispute resolution (ADR) involving

property owners, tenants, construction companies, suppliers, contractors and employees.

The Real Estate Institute of New Zealand appointed Danny to their panel of mediators in January 2010.

In March 2009 Danny was admitted as an Associate of AMINZ (Arbitrators and Mediators Institute of New Zealand). Danny is also a member of LEADR

### Anet Kate Mediator and Conflict Coach



Anet Kate is a legally trained, highly experienced mediator, facilitator and dispute consultant, with over 20 years' of resolving disputes. She has practiced commercial litigation, building arbitration and family law.

Anet has successfully mediated over 3,000 disputes in tenancy, construction, partnership, health, employment, and family areas.

At the Auckland University School of Law Anet has tutored and lectured in mediation, negotiation, and advanced family law, and judged mock trials and negotiation competitions.

The Weathertight Homes Resolution Service appointed Anet to its Panel of Mediators in 2006, and she was appointed to the Advanced Panel of LEADR in 2007. Anet worked as a Disputes Tribunal Referee for 10 years, and is an Associate Member of AMINZ.

### John Isaac Arbitrator and Mediator



John's 39 year business career started when he qualified as a Chartered Accountant.

After spending 10 years in Chartered and Corporate Accountancy roles and 4 years as a Merchant banker, he became a Licensed Real Estate Agent where for the last 22 years he has successfully specialized in business sales and acquisitions via his own company, Business Sales Ltd .

In 2008 he set up a business called Mediation & Arbitration Ltd to specifically assist clients with resolving disputes via mediation and arbitration .

He is on the REINZ (external practitioners) disputes panel and assists parties to resolve disputes before they escalate and need to reach the REAA (Real Estate Agents Authority) or courts.

He has been involved in successfully negotiating with a wide variety of parties, acting as an expert witness in mediations/arbitrations and in Court .

### Erin Burke Mediator



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

She is the director of Mediation Services New Zealand Limited as well as a practising Barrister admitted in the High Court of New Zealand.

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.

Erin firmly believes that whilst there are occasions when litigation is necessary, it is the exception rather than the rule.