

## WHAT TO EXPECT AT COURT – MEDIATION

### What will happen?

In advance of Mediation, we will organise a conversation, either on Zoom, by phone or in-person to discuss what is most important to you and to discuss preparing for Mediation.

Before mediation, we should exchange a Position Paper (also known as a Mediation Paper or Outline of Case Document) which is a summary of the primary factual and legal arguments to support your case. The document will also include a settlement proposal. The document focuses the mediation and enables the other party to prepare.

On the day, Mediation will proceed in this order:

1. In the morning, the mediator will meet with you and your legal team, and the other party and their legal team, to discuss their role and the process. We highlight the following:
  - a. The mediator is a facilitator, designed to help people reach an agreement.
  - b. they cannot give legal advice but, may provide their views throughout the day, as to the strength of a particular argument or each party's case on the whole,
  - c. mediation is confidential. With limited circumstances, what is said and done at mediation cannot be produced in Court. This principle assists fruitful and efficient negotiation.
2. Mediation will formally begin by way of a "shuttle" conference; you and the other party will be in separate conference rooms, and the lawyers and mediator will meet in a third joint conference room. Both legal teams will talk to their Position Papers and argue their client's case. The mediator will then direct what happens next. Usually, they will direct the lawyers to seek further instruction from their clients about major factual issues or invite one party to make an offer.
3. We then "break out" into our respective rooms to discuss the joint conference. The lawyers will take instructions about the issues that arise, to see if they can be limited or resolved.
4. There will be further joint conferences to discuss and progress the issues in dispute.
5. At some time, we will discuss with you whether you want to make an offer of settlement. Usually, if mediation is going to be successful, compromise offers are exchanged before 12.30pm.
6. Once the first offer of settlement is made, mediation continues in a point-for-point manner until either there is a resolution, or one party does not wish to continue.



### **Will I need to speak?**

Yes, you will need to speak with us and, in our conferences, with the mediator.

You will only speak with the other party if you both consent to doing so.

### **Will any decisions be made on the day?**

If neither party wishes to continue to make offers of settlement, the mediation ends.

If there is no agreement, the mediation ends.

Usually, the mediator is not a judicial officer who has the power to make Orders by consent. If an agreement is reached, the lawyers will document that in a simple non-enforceable Heads of Agreement. In the days / weeks following, the lawyers draft the necessary documents to ensure the settlement is legally binding and enforceable. Those document/s could be any one or more of:

- an Application for Consent Orders (if you are not in Court) or a Minute of Proposed Consent Order (if you are already in Court),
- a Financial Agreement,
- a Child Support Agreement,
- a Parenting Plan,

That said, if you are attending a Court-ordered parenting Family Dispute Resolution Conference before a Judicial Registrar, that judicial officer can make Orders by Consent, at Mediation.

### **What should I wear?**

You should wear something you feel comfortable in that looks professional. Think of the kind of thing you might wear to a job interview.

### **Can I have someone with me?**

You can have a support person if they sign the Mediation Agreement, and the other party agrees to them attending. If they are a witness in the case, they cannot attend.



## **What will the costs be?**

Depending on the circumstances, we may brief a barrister to appear for you on your behalf or alternatively, your solicitor will appear for you. Either way, we will also be involved on the day. We will choose a barrister who will suit your case, and we will advise you of their costs. We will need to obtain the barrister's funds into our trust account before the court date, as well as ensure that our own costs are paid to date. We will let you know precisely what we need from you.

If you have any questions during the process, please let us know, as we want to make the experience as comfortable for you as possible.