



## **MEDIATION: FREQUENTLY ASKED QUESTIONS**

**Mediation is about solving a problem or issue...It is not about winning the war.**

### **WHAT IS MEDIATION?**

Mediation is a dispute resolution process that involves a neutral third party who is skilled in facilitated negotiation. Mediators assist the parties to develop a common understanding of the issues.

Mediation allows parties to come together to check facts and assumptions, exchange perceptions and ideas and work towards mutually acceptable settlements.

Mediation can be voluntary or mandatory. In the case of multi-party public policy disputes, mediation is frequently more successful when it is a voluntary process – that is, the parties make the decision to participate.

Mediation is confidential. Matters discussed during a mediated session are ‘without prejudice’ and cannot be used in any future proceedings.

Mediation is a transparent and respectful process that is aimed at interest-based decision making.

Mediation is based on mutually acceptable solutions. Only the parties to mediation can determine if an outcome is acceptable.

Mediation is about collaboration and engagement. Decisions that are reached collaboratively can result in high-quality outcomes that are easier to implement, subject to fewer legal challenges, make better use of resources and better serve all stakeholders and constituents. Research has also shown that collaborative processes often create a long term “network dynamic” of shared learning, improved relationships and an engagement process that produces social capital.

Mediation offers a structured and focused environment that will assist parties to reach a fair settlement – one that meets their needs.

### **WHAT BENEFITS DOES MEDIATION OFFER?**

Mediation offers a number of advantages:

- Significant issues are represented and respected;
- Parties are able to deal with each other directly;
- Parties are given an equal and effective voice;
- Parties are able to control the process and the outcome;
- Solutions emerge that maximize all interests and promote long-term, doable and durable solutions.

### **WHY IS MEDIATION PARTICULARLY BENEFICIAL FOR MULTI-PARTY PUBLIC POLICY DISPUTES?**

Multi-party public policy disputes are markedly different from two-party disputes. There is frequently a complicated network of interests. New parties emerge as the process unfolds. Participants in multi-party public policy disputes come to the table with varying degrees of expertise. Parties frequently adhere to different decision-making procedures and protocols. Accountability among the participants varies and often there are no formal guidelines or institutional mechanisms for resolving issues of concern. Finally, technical information tends to play a prominent role in public disputes and nearly all public policy disputes revolve around strongly held values about what is right and what is wrong.

Mediation allows multiple parties to voice their concerns to reach a mutually acceptable, enduring decision efficiently and effectively. Mediation involves the parties directly, encourages timely resolution and yields more satisfying and successful results for all parties involved.

In the case of multi-party public policy disputes, mediation offers distinct advantages:

- Improved working relationships among participants in the process;
- An enhanced understanding and respect for different perspectives;
- An ability to view an issue from the perspective of a “different lens”
- Better informed, more creative, balanced and enduring decisions;
- Shared commitment to and responsibility for the process and the outcome of the process.

#### HOW DOES MEDIATION WORK?

In mediation, the parties (stakeholders) are identified and work with a neutral mediator. The mediator will first undertake a conflict or situation assessment to determine the issues under debate, the history of the issue and the opportunity to move toward collaborative resolution.

The first step in undertaking a conflict assessment is to identify the parties that need to be involved. First, the mediator will identify the interests that must be present and secondly, will identify the appropriate representatives of those interests. For mediation to be successful, usually two types of groups/individuals need to be engaged in the process: those who are essential for making the agreement work and those with enough power to stop the process or block implementation of any terms of agreement.

The mediator will meet with each representative to determine the level of interest in proceeding. Based on the results of these meetings, the mediator will design a process to facilitate discussion of the issues and their resolution.

#### WHERE WILL THE MEDIATION TAKE PLACE?

The mediation will occur on neutral ground, as agreed by the parties and the mediator. The mediation itself consists of a meeting with all parties. In the case of a complex multi-party mediation, the process will likely unfold over several days. The mediator will convene the meeting and will establish some fundamental ground rules, with the involvement of the stakeholders. The mediator will explain the role of the parties and the role of the mediator. The mediation process may consist of whole group sessions and from time to time may require the parties to break into caucus – individual meetings with the mediator. Caucus meetings allow the parties an opportunity to speak candidly with the mediator, and to consider and assess options and solutions in private, before committing to move forward.

#### WHEN DOES MEDIATION WORK BEST?

Mediation is most likely to succeed when:

- All parties are willing to participate.
- The issues can be clearly defined.
- There are a number of underlying interests that allow room for trade off.
- The primary parties can be readily identified.
- Each party can identify a legitimate spokesperson – someone with the authority to make a deal.
- There is a balance of power between the parties.
- A continuing relationship is important for the parties.
- Parties want a measure of control over the outcome.
- There is a realistic deadline to complete the process.

#### WHEN IS MEDIATION NOT APPROPRIATE?

Mediation is not a panacea for every problem or issue. Mediation is not appropriate if:

- The matter is better handled through another venue;
- Parties reject mediation;
- Parties are not prepared to bargain in good faith;
- Parties are not willing to consider settlement;
- Parties are seeking a punitive process.

#### WHAT IS THE ROLE OF EACH PARTY IN THE MEDIATION?

- Be committed to the process. Attend all sessions and stay for the entire session. Do not book other meetings; do not send an alternate to represent you or your constituents.
- Be committed to finding resolution.
- Come prepared to develop ground rules.
- Come prepared to share information and data.
- Bargain in good faith – be honest, open and upfront.
- Be willing to talk and listen effectively.

#### WHAT IS THE ROLE OF THE MEDIATOR?

The mediator is a non-partisan facilitator. The role of the mediator is to act as a neutral, objective third party. The mediator is responsible for: establishing the order of discussions, assisting the participants to identify common ground and for working with the parties to develop creative solutions while continuing to remain focused on relevant issues. The mediator is responsible for helping the parties reach a mutually acceptable resolution, with a win-win outcome for all participants.

#### WHAT CONSTITUTES A SUCCESSFUL OUTCOME?

If mediation leads to a settlement, the mediator may prepare Minutes of Settlement. If they are in agreement, the parties would sign the settlement, which is usually confirmed in writing. In some cases, terms of settlement may not be appropriate, or cannot be completed right away. In these instances, a Report may be prepared by the mediator to highlight those issues that have been resolved and those issues that remain under dispute.

In some instances, mediation may lead to a partial settlement or resolution of the issues. In this way, mediation may also be successful if the process results in a scoping or narrowing of the issues.

In the event that an agreement is not reached, parties may still enter into a private agreement to settle at any time. It is worth noting however, that confidentiality is not a built-in feature of settlement negotiations unless agreed to by all parties.

#### WHAT IS THE LEGAL EFFECT OF A MEDIATED SETTLEMENT?

Mediation provides the parties with an opportunity to develop a settlement or agreement that meets their needs. The settlement or agreement is a legally binding contract.

#### FOR MORE INFORMATION ABOUT MEDIATION CONTACT:

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