

MEDIATING BUSINESS DISPUTES

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Traditionally businesses and their lawyers have embraced the adversarial approach to dispute resolution where the adversaries square off to do battle, and the cheering section chants, "Come on team, let's Fight! Fight! Fight!" Litigation costs, personal relationship costs, and productivity costs, however, are leading to a much different approach to dispute resolution. Businesses want to know how to quickly, effectively, and inexpensively resolve their disputes. They expect their lawyers to provide them with a broad range of effective options to accomplish their goals. Mediation is one of those options.

A. What is mediation?

Mediation is a dispute resolution process. In mediation, an impartial third person (a "neutral") helps the parties work toward a resolution that is acceptable to everyone. Unlike a judge or an arbitrator, a mediator does not make a decision. Rather, the mediator uses an interest-based, cooperative approach to problem solving to assist the parties to work through all aspects of the dispute toward their own solutions. In a nutshell, mediation is assisted negotiation.

B. What is mediation used for?

Mediation can be used for everything from a simple dispute over the terms of a supply contract to complicated debtor-creditor problems. In the labour/employment area mediated matters include collective agreements, grievances, employee terminations, harassment, internal organizational disputes, and much more. Mediation is used for partnership and company disputes, environmental problems, construction problems, insurance claims and personal injury claims. The list is endless. The only pre-requisite is a willingness to talk.

C. What does the mediator do?

As a third party neutral, the mediator facilitates communication between the parties—without taking sides and without making decisions for the parties. The mediator is a referee who assists the parties to review the background, define and understand the issues, explore possible solutions and work toward a solution agreed to by all. The mediator helps the parties to communicate in a respectful and effective manner.

D. Some benefits of mediation

- Mediation permits results you can't get elsewhere. Remedies of courts and arbitrators are limited. In mediation you can agree to whatever you want.
- Instead of a judge or arbitrator making a decision for you, you maintain control of the process and of the decisions, with the result that you are more satisfied with the result.
- Parties are more likely to honour a mediated agreement than one imposed by a third party.
- Mediation promotes communication and cooperation. Having learned from this, parties are in a better position to resolve their own conflicts in the future.
- Mediation is confidential.
- Mediation will often be less costly and will resolve the conflict more quickly.

In Saskatchewan, mediation is mandatory in all civil cases commenced in the judicial centres of Regina, Saskatoon, Moose Jaw, Swift Current and Prince Albert. As a lawyer encouraging my clients to use mediation where possible, I have seen excellent results—earlier and more satisfactory settlements, long term relationships salvaged, and other relationships severed in a respectful and dignified way. As a mediator, I never cease to marvel at the effectiveness of this process once effective communication has been established. Mediation may not be the appropriate dispute resolution mechanism in every case, but it is worth a look in every case before you choose more costly and lengthy options.

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