

MEDIATION

- ***Mediation is assisted negotiation with a mediator facilitating the negotiation. The mediator facilitates communication between the parties. “The parties, not the mediator, ultimately make the decisions about the terms of the agreement”.***
- A good reference is the Ministry of Justice Dispute Resolution Office website –

1. WHY MEDIATE

- Cost, timely, finality and input into the result
- See brochures
- ‘Where is it Written That Disputes Have End up In Court?’- BCAMI

2. WHEN TO CONSIDER MEDIATION

- Most Counsel wait until the litigation has proceeded to the point that a trial date is imminent or further expenditure must be laid out to obtain expert reports. In these cases Plaintiff's Counsel have a good idea what the expert will say and they bring that to the opposing Counsel's attention.
-
- It has been my experience that mediation is appropriate at any time after a dispute arises and negotiation has failed.
-
- Sometime a Client's expectations are too high and Counsel needs a third party to be the agent or reality (AKA Devil's advocate).
-
- You may use mediation to get an advance look at your opponent's case.

3. WHAT TO LOOK FOR IN A MEDIATOR

- Expertise in the field of dispute, expertise in mediation or both?
-
- Proactive or not? Ask the mediator – what style he/she uses.
-
- Does the mediator usually like to hear from the clients themselves?
-
- Will the mediator meet with the parties and their Counsel before the actual Mediation Session?
-
- Does the Mediator use the caucus approach (meet with one party to the exclusion of the others) or does he/she keep the parties in joint session as much as practical.
-
- Fees – does the mediator have a daily rate beside the hourly rate? What about travel, cancellation and facility costs?
-

4. SELECTING A MEDIATOR

- Look at the Rosters
- BC Mediator Roster Society
- BCAMI