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Mediation an Alternative to Litigation in Lockdown and Beyond

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MEDIATION AN ALTERNATIVE TO LITIGATION IN LOCKDOWN AND BEYOND

Mediation, a meeting or meetings, joint and private between people in dispute chaired by a mediator to assist in reaching a joint resolution, manufactured and agreed by the participants.

The trite saying that Mediation is a key form of Alternative Dispute Resolution is ever so relevant in these concerning times. It appears that the court lists will be further stretched and cases will take even longer to be heard. Mediation is and remains a quicker, more cost-effective approach to resolving disputes and importantly can be completed remotely. Participants reach their own decisions and do not have a declaration forced upon them, owning the process is empowering. Each mediation is unique as the “process” is always a flexible one, allowing participants to express themselves fully in a safe environment.

A mediator can bring a clear mind to the process. Sometimes matters need clarity when very complex or have been ongoing for several months or years. A fresh pair of eyes that encourages alternative thinking, with no advice given.

Moreover, if the mediator has knowledge of the sector the dispute involves, although not essential, this empowers deep questioning leading to alternative thinking, enabling participants to create ideas for a settlement.

The mediation process allows participants to discuss their real needs and weaknesses. These needs may not even be central to the dispute at times, but can be of significant importance. Each participant may have different requirements that can fit into a final resolution without compulsion.

“More than 90% of people leave the mediations expressing satisfaction with the process – a consumer rating that would be envied in most sectors of commerce”.

Practical Mediation by Jonathan Dingle & John Sephton (2017)

There is no doubt that whatever issues you are facing, parties could benefit from mediation and thus avoiding costly litigation and time-consuming ongoing disputes, especially during a lockdown.

What are the advantages of mediation over litigation?

Mediation is cost effective: Costs run at a fraction of that of litigation and are usually shared equally by participants.

Mediation is quick: Matters can come to mediation far quicker than they would to court and generally will be resolved on the day of mediation.

Emotional Advantage: Because individuals have been involved in the process and ultimate resolution, any trauma is greatly reduced, especially given that litigation can cause an ongoing stress for months even years.

Mediation is personally satisfying: It is led by the participants with the guidance of a professional mediator. Individuals are involved in determining the process and the resolution. This means that the participants are at the heart of the mediation of process.

Mediation is not statutory: A decision is never forced upon the people involved.

Mediation is without prejudice: Mediation is not part of the public court and matters discussed in the meetings cannot be used in subsequent litigation.

Mediation is confidential: Matters discussed with the mediator in private sessions will remain confidential between the individual and the mediator, unless express consent is given to disclose information.

Mediation is voluntary: All participants agree to take part in the process.

Remote Mediation:

Mediation can take place remotely during the pandemic (and thereafter of course!) by using video conferencing facilities such as Zoom or Skype. The process is the same, participants can be in breakout rooms with advisors and also come together in the main virtual meeting room. Confidentiality is assured.

Concluding remarks:

There is no doubt that mediation a very positive way of resolving disputes, especially during these tumultuous times.