

# MEDIATION

## THE WAY TO GO IF FORWARD IS THE WAY

### Introduction

- Dead-locked
- Not a cop out
- Can be a win-win outcome
- Consensual Resolution
- Traditionally Labour and Family disputes



## MEDIATION

| MEDIATION   | LITIGATION   |
|---|--|
| <ul style="list-style-type: none"> <li>• Consensual</li> <li>• Facilitatory process</li> <li>• Parties architects of own solution. Mediator controls process not outcome.</li> <li>• Deals with principles, beliefs and positions</li> <li>• No huge bundles of evidence</li> <li>• Solution is creative and holistic</li> <li>• Preserves relationships</li> <li>• Private and confidential</li> <li>• Greater compliance</li> <li>• Much quicker</li> <li>• Much cheaper</li> </ul> | <ul style="list-style-type: none"> <li>• Imposed</li> <li>• Adversarial process</li> <li>• Decision-maker Judge controls process and outcome</li> <li>• Deals with legal enquiry</li> <li>• Huge preparation and evidence</li> <li>• Solution is a determination of right v wrong</li> <li>• Destroy relationships</li> <li>• Public document</li> <li>• Greater non-compliance</li> <li>• Slow</li> <li>• Very expensive</li> </ul> |



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When is it appropriate to use Mediation ?



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MEDIATION  
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Where mediation will not work: Legal enquiry



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Where mediation will work: Stakeholder disputes



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## THE WAY TO GO IF FORWARD IS THE WAY

Where mediation will not work: Ulterior motives



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## MEDIATION

Where mediation will work: Authority Discretion



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Where mediation may work: Imbalance of Power



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## THE WAY TO GO IF FORWARD IS THE WAY

Where mediation will not work: Imbalance of Power and Public interest



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Where mediation will not work: Public Policy



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#### The New Road

- About 50 Acts, including all the environmental acts
- Draft NEMA accreditation regulations

*"An agreement reaching process in which the mediator assists parties to reach agreement in a collaborative, consensual and informed manner in an environment of trust. The mediator has no power to decide disputed issues for the parties and it is the mediator's objective to facilitate the parties themselves reaching their most fair and constructive agreement."*



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The New Road

- King Report III
- Companies Act
- Case Law
- Mediation rules: Dept of Justice and Constitutional Development



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#### The New Road

- MB v NB
- Egan v Motor Services

*" This case cries out for mediation...Feelings are running high, early positions are taken, positions become entrenched, the litigation bandwagon will roll on, experts are inevitably involved, and before one knows it there will be a two/ three day trial and even, heaven help them, an appeal. ...And what benefit can mediation bring. It brings an air of reality to negotiation... In so many cases, and this is just another example of one, the best time to mediate is before litigation begins. It is not a sign of weakness to suggest it. It is the hallmark of common sense.... The results are astonishingly good. Try it more often.*





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## THE WAY TO GO IF FORWARD IS THE WAY

### The Process

- The Introduction
- The problem identifying stage
- The problem solving stage



## MEDIATION

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#### The Mediator

- Impartial
- Listens
- Perceives
- Empathises
- Creates Trust
- Inventive/ Creative
- Effective in managing process
- Cope with conflict
- Have authority and control
- Self awareness of own bias etc
- Substantive knowledge
- Respect



MEDIATION  
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The Unique nature of Environmental mediation

- Natural systems and their relationship to the human dependent
- Environmentalness of things



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THANK YOU!



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