



MEDIATION

There are three recognised methods of dispute resolution:

1. Litigation,
2. Arbitration, and
3. Alternative Dispute Resolution, which is more popularly known as “ADR” and includes, among others, conciliation, mini-trials, Dispute Review Boards, adjudication and mediation.

One definition of “mediation” is that it is a voluntary dispute-resolving process in which a third party, a neutral mediator, facilitates and co-ordinates the negotiations of disputing parties. Ninety percent (90%) of all ADR is mediation.

Mediation may be conducted in the court system, in community centers, churches, schools, police stations, the work place or in any center where the disputing parties have chosen to use a mediator to help them settle their differences. It involves an organized negotiation, a structured process in which a mediator guides the disputants through a discussion of their mutual problems, concerns and differences, organizes the parties’ presentations of alternatives for resolving their differences and aids the parties in a final resolution of the dispute.

A mediator is unlike a judge or an arbitrator in that he or she does not have the authority to impose a decision upon the disputants. In mediation, the parties decide on the resolution of and the terms on which to settle the dispute.

Mediation has been the fastest growing method of dispute resolution worldwide in the last two decades. Most countries, whether developed or developing, have been relying more on mediation as a system for dispute resolution in all aspects of life: economic, environmental, social, religious, sports, family, employment, the civil and criminal law and any other area in which there are disputes.

More recently, our courts have started to refer matters to mediation as an adjunct to litigation and adjudication. The Resident Magistrates Courts, by virtue of amendments to The Resident Magistrates Court Rules in 1999 and amendments to the Criminal Justice (Reform) Act in 2001, now have the power to refer matters to mediation. Also, the Supreme Court, with the consent of the parties, can now refer matters to mediation pursuant to the new Civil Procedure Rules of 2002.

The Dispute Resolution Foundation, through its Peace Centre, has embarked on the training of mediators island-wide both for community-based as well as court-referred mediations. This method of dispute resolution has become more popular and the Centre has been effectively conducting mediations for the last 10 years.

The following are five (5) of the reasons why mediation is beneficial to parties:

1. They have nothing to lose and everything to gain. This is because a party’s legal rights are not affected by mediation. Litigation or arbitration can be commenced or continued even whilst mediation is being pursued. The fact that parties choose to refer their dispute to mediation in no way affects the parties’ right to pursue their remedies in court or by arbitration if the mediation is not successful. All disclosures in a mediation session are confidential.

2. It is as fast as they want it to be. The mediation can be arranged within days or weeks rather than months or years as has been the case with arbitration and litigation. Usually mediation is completed within a few hours, while litigation and arbitration tends to last months or years.
3. It is far less expensive. Early settlements save management and legal costs.
4. Mediation is confidential. Therefore, it should avoid adverse publicity and information being transmitted to unwanted parties, such as competitors.
5. Mediation can assist in facilitating an early settlement of the dispute, thereby reducing the stress and uncertainty of outstanding litigation.

It is expected that mediation will soon take on more significance in commercial matters since it is provided for in the new Civil Procedure Rules. Also, more attorneys-at-law are becoming familiar with and are even being trained in the mediation process.

Stephen Shelton

Steve Shelton is a Partner at Myers Fletcher & Gordon and member of the Firm's Litigation Department. Steve is a highly trained arbitrator and mediator and may be contacted at stephen.shelton@mfg.com.jm or through www.myersfletcher.com