

## **MEDIATION – AN ALTERNATIVE**

### **Teri-Ann A. Lawson, Contributor**

Following the September 2006 amendments to the Civil Procedure Rules which govern proceedings in the Supreme Court, many matters are now being automatically referred to mediation. Simply put, mediation is a client-driven non-judicial method of bringing about a resolution to disputes between parties with the assistance of a neutral third party (a mediator) who is trained in disputes resolution.

Mediation is process by which the parties to a dispute come together outside of court and with the help of a neutral party attempt to resolve their differences or in any event reduce the number of differences and hopefully arrive at a solution beneficial to all the parties involved. Mediation provides the parties to the dispute the opportunity to play a more active role in the resolution process, as compared with the court process.

Note however, that not all cases are automatically referred to mediation, and in certain cases an application can be made to the court to dispense with mediation and proceed to case management conference. Also note that mediation is not restricted only to matters in the Supreme Court, as this method of dispute resolution may be employed by parties involved in any kind of dispute, whether or not it has reached the court system.

The main organization which handles mediation is the Dispute Resolution Foundation, and parties can select from a current roster of 34 approved Supreme Court Mediators to handle the matter. There is a larger number of approved Resident Magistrate's Court Mediators. Each party is allowed to have their attorney present (in Supreme Court matters the attendance of the parties' Attorneys-at-Law is mandatory), however it is the parties who take this opportunity to "air" their concerns and problems. It is the mediator who controls and directs the proceedings. Each party will have an opportunity to tell his or her side of the problem and by asking questions, the mediator assists the parties in coming to some type of resolution. The mediator is an impartial and neutral party to the proceedings and merely serves as a guide for the discussions.

Note however that it is a voluntary procedure, albeit the direction in which the court is inclined to move towards. Therefore if at anytime during the mediation process either party wishes to

end the proceedings and leave, he or she is free to do so. Parties are not obliged to come to any agreement, it is only a method to be explored in dealing with your case.

There are benefits to be had from mediation. It is much easier to get a date for mediation than it is a trial date at court and things move at a quicker pace. There is also the fact that it is more cost effective to proceed by mediation than through the court system, since the current backlog of court cases makes it problematic for a matter to be heard in a timely manner. Note that whilst there is a cost involved in going to mediation, this is much less than proceeding in court.

Also important is the fact that mediation proceedings are bound by the strict rules of confidentiality, in that no one is permitted to speak about what may have occurred during the proceedings, including the mediator. When an agreement is arrived at, the mediator writes up the terms of the agreement and sends a copy to the court, but no details as to discussions leading up to the agreement are disclosed. All the court is informed of is whether an agreement has been arrived at and its terms, however the parties also have the option of not disclosing the terms of the agreement.

What is most important about mediation though is that whatever agreement that is arrived at, it is enforceable by the court. Therefore if a party should for some reason default on his or her obligations under the agreement, the compliant party can have recourse through the courts.

Mediation is therefore viewed by some as a viable medium through which a claim may be expeditiously dealt with and which will allow the parties the power to determine any possible agreement to settle the matter. Where the parties are unsuccessful in resolving the dispute by mediation the matter will thereafter continue in Court (whether Supreme Court or Resident Magistrate's Court), with the holding of a case management conference and proceeding to trial.

**Teri-Ann A. Lawson**  
**Associate**  
**DunnCox**  
**Attorneys-at-Law**  
**48 Duke Street, Kingston**  
[teri-ann.lawson@dunncox.com](mailto:teri-ann.lawson@dunncox.com)  
**Trained Resident Magistrate's Court Mediator**