Mediation Explained: A Very Brief Outline by Conjoint Professor Kim Lovegrove, FAIB

Mediation is a process where a person is appointed to assist the parties with the resolutions of their disputes, differences or conflicts. Mediation can take place in a commercial, civil or geopolitical setting.

Mediators ordinarily will have experience in dispute resolution facilitation and the essence of mediation is that it must be facilitatory. A mediator cannot force or compel a conflict resolution outcome, for to do so would repudiate the integrity and rasion d'être of the mediators mandate. A mediator cannot make a decision. Decision making is the domain of judges, arbitrators, and adjudicators

Mediators are however permitted to encourage the parties to negotiate and they are permitted to impress upon the parties the merits of settlement. Likewise mediators are at liberty to advise the parties of the consequences of any failure to engineer a compromise and a resolution of a dispute. Ordinarily a mediator will state that an unsuccessful mediation may well culminate in an escalation of tensions and an exacerbation of the polarisation of partisan views and stances. If the dispute is within a litigious or adversarial setting, be it a court of law, be it a tribunal, be it a theatre of geopolitical tension, a failure to mediate and generate an outcome may well jeopardise the ability of the parties to have joint and cooperative control over the destiny of the particular altercationist dynamic.

Successful mediations typically take time; i.e, many hours and within the theatre of geopolitical conflicts, many days or weeks, and the mediator is well advised to take cognisance of both party's points of view with a dispassionate open mind and the meditator is at liberty to convey or allow the

airing of differences of opinion as long as the views are communicated with a certain level of civilised constraint. A good mediation will be devoid of histrionics and acerbic vernacular although at times, the mediator might need to allow people to let off steam and speak from the heart. Disputants are often very emotional and if a meditator is intent on totally repressing emotion, the "emotional claustrophobia" might thwart the opportunity to settle the mediation.

Sometimes mediators are jointly remunerated by both parties, sometimes they are nominated by independent bodies such as, government departments, tribunals, NGO's and courts, but in other instances they can be nominated as the dispute resolution circuit breakers in commercial and civil contracts.

There is very little regulation in the world of mediators, and unlike the judiciary, meditators do not have any statutory immunity. As the theatre of mediation is unregulated by law, there is no requirement for mediators to have any particular qualification or experience, although many of the venerated mediation institutes or nominating bodies require their mediators to have formal training and experience to get accreditation.

Is mediation an effective form of dispute resolution? Absolutely. A mediated outcome will in the main put an end to a conflict and in so doing, effect closure of the conflict or the dispute. Closure, however, must be manifested in a carefully and well thought through settlement agreement where in many instances "the devil is in the details" and the settlement agreement needs to be owned, understood, embraced and executed by both parties. A failure to honour such an agreement by either party will allow for a resuscitation of the sources of conflict that the mediator endeavoured to quell.

For more on this topic of mediation by Conjoint Professor Kim Lovegrove, please see the following:

- Mediation - Pros and Cons
- Some Essential Qualities For Mediators In Mediating Geopolitical Conflicts
- Curriculum Vitae of Conjoint Professor Kim Lovegrove FAIB