



:: MARCEL ALTER
LL.B. (HONS), B.E.c.o, A.I. Arb A
SOLICITORS & RESOLUTION CONSULTANTS

I have been able to put together a panel of four eminent parties to answer the burning questions of the day

One a Mediator
One a Facilitator
One an Arbitrator, and,
One a Conciliator

Dear Mr Con F.Medarb

Question.

Can you please tell me what to do where there are unrepresented party/parties, who believe in justice, but have little or no knowledge of the Law and justice means their way only.

signed Frustrated

MEDIATOR

Dear Frustrated.

Knowledge of the Law is a wonderful thing but even Judges can get it wrong. It is not always essential for the parties to know the Law to have an effective Mediation. The important thing is that the parties are together and the skill of the Mediator is to get them to articulate the issues and to listen to each other. Getting them to listen to each other may require ensuring the parties stick to the rules, that is, only one speak at a time; Effective use of re-framing, restating, going over the issues, focussing on the end result can also be a help. If in fact it becomes obvious that legal knowledge is required and that it requires more than 'phone a friend' the Mediation may be adjourned to another date to enable the required information to be made available and for the parties to reflect. The Mediator's role is not to decide or to advise but to open the parties' eyes to the issues and to explore solutions.

FACILITATOR

Dear Frustrated.



:: MARCEL ALTER

LL.B. (HONS), B.E.c.o, A.I. Arb A
SOLICITORS & RESOLUTION CONSULTANTS

As a Facilitator, it is not my role to make a judgment or even try to bring about a solution. What I would do is to have everybody have their say and that would be my starting point. I believe that after hearing the parties, even if they do not listen to each other, my role is to direct them to places where they can effectively gather more information and then bring them together to decide on a course of action best suited to their circumstances.

ARBITRATOR

Dear Frustrated.

The parties are required to come before me, equipped to argue their case. As an Arbitrator, it is not for me to advise the parties on the Law or to be reasonable if they are ill-equipped, that is on their head. However, I am always mindful of the requirement of natural justice to give a fair hearing. If I consider the parties are so far off the track and are not in a position to understand the case or the issues, I may stand the matter down or adjourn it. This will be at the cost order against the party necessitating this action. However, when an Arbitration is scheduled, the parties know they are going to get a decision, and it is up to them to come to the Arbitration equipped to argue for their point of view.

CONCILIATOR

Dear Frustrated.

Being a Conciliator, my initial role is very much that of a Mediator in getting the parties to articulate the issues and to listen. Whilst I do not give legal advice, part of my role is to advise the parties of recommendations which I may be inclined to make and suggest. If one party is being difficult or is obviously not equipped for the session, especially in private sessions, I can be quite forceful in saying that on what I have heard, this would be my recommendation. It has the effect of having the parties re-think and have them seek proper advice.

-----o0o-----