

# Representing your client well: how to work with the mediator

Collaboration between a lawyer and a mediator is crucial to achieving the best outcome for the client in mediation. Open communication, mutual respect, and a shared commitment to the negotiation process are key elements of this collaborative approach. Here are a few tips for working effectively with the mediator:

## **TIP 1: Establish Open Communication:**

Foster an open line of communication with the mediator from the beginning. There is no point retaining a mediator if you are simply using them as a “carrier pigeon”. Share relevant information about the case, your client's goals, and any concerns or issues that may impact the negotiation process.

This transparency helps the mediator understand the nuances of the dispute and work with you and your client to avoid potential impasses.

## **TIP 2: Provide the Mediator with the relevant documents early:**

Most mediators will think about potential roadblocks to resolution well before the mediation. To enable them to do that, and maximise the benefits to be obtained from the mediator's expertise, it is essential to provide them with all relevant legal documents, evidence, and information to help them prepare for the mediation.

A well-prepared mediator is more likely to be able to facilitate discussions more effectively and in line with legal considerations.

## **TIP 3: Discuss the legal Issues, including relevant case law, with the mediator**

Be prepared to provide the mediator with an overview of the legal strengths and weaknesses of your client's position if necessary. The extent to which this will be required will depend upon the mediator's background and any unique aspects of the case.

Discussing relevant legislation or case law with the mediator may assist them in facilitating discussions and reality testing, more effectively.

#### **TIP4: Advocate Effectively During Plenary and Private Sessions:**

**While maintaining a cooperative and respectful approach, advocate strongly for your client's interests. By presenting legal arguments persuasively, you ensure that the mediator and the other party fully understand the legal basis of your client's position.**

**However, remember that the mediator is not “the judge”; they do not need to be “convinced” of your client’s position. The mediator will be listening carefully and may ask questions to reality test your client's position. These questions and queries can assist you in advising your client.**

#### **TIP 5: Be Open to Mediator's Guidance:**

**Recognize and be open to the mediator's guidance in relation to any negotiating strategies. Mediators bring a neutral perspective and creative problem-solving skills. They also have the benefit of observing and understanding the positions and interests of both parties.**

**Consider their insights and suggestions as they work to facilitate a fair and balanced process and mutually agreed resolution of the dispute.**

#### **TIP 6: Manage Client Expectations:**

**Work collaboratively with the mediator to manage client expectations. Don't be afraid to discuss openly with the mediator and your client potential outcomes, what it could look like to settle, and what it may look like if a settlement is not reached. The mediator will tell you if they are unable to comment or provide an opinion on an issue.**

**While a mediator will not provide legal advice, or tell a party how to resolve a matter, some clients find a mediator's general thoughts and experience beneficial.**

#### **TIP 7: Strategize for Impasse:**

**Collaborate with the mediator to develop strategies in case of an impasse. Discuss potential barriers to resolution and explore alternative approaches or adjournment options. Being prepared for challenges enhances the likelihood of overcoming obstacles during mediation.**

**By fostering effective collaboration with the mediator, you will enhance the overall mediation experience and increase the likelihood of achieving the best possible outcome for your client.**