

## **MEDIATION PLAN WORKSHEET**

\*\* This worksheet is a tool designed to aid your planning for mediation. You may wish to work through it with your client. It can be made more or less detailed, depending on the nature of the dispute. (It is easy, for example, to factor in a third party claim.)

### **KEY DETAILS OF CLAIM / DEFENCE**

- Causes of action
  
- Nature of defences/counterclaims
  
- Amounts

### **THEORY OF THE CASE AND INFORMATION MANAGEMENT**

- What is your theory of the case?
  
- In light of this, what are the helpful facts? How strong is the evidence?
  
- What are the unhelpful facts? How strong is the evidence?
  
- What further information do you need?

### **WHAT ARE YOUR CLIENT'S INTERESTS? THE OTHER SIDE'S?**

What is important to your client/the other side? Consider commercial/financial, reputational/precedent, psychological/social, personal/health.

### **DISPUTE DYNAMICS**

How did the dispute get to this point? What have you learned from the history of the matter about the people involved and the interpersonal dynamics? Have there been previous attempts to settle? Why did they not succeed?



## STRATEGY

**Opening:** What will you say in your opening statement? What do you want the other side to understand about your client's case? What tone do you want to set? Who will deliver it (client/lawyer/both)?

**Information exchange:** How will you use helpful information? How will you manage unhelpful information? Consider how the mediator can help.

**What sticking points are predictable?** What can you do to get around them? Consider how the mediator can help.

**Beginning the negotiation:** Subject to what you learn at the mediation, what will your opening offer be? What justification will you give it?

**Generating movement:** Subject to what you learn at the mediation, what concessions can you plan to make? What justification can you offer for each?

**Achieving agreement:** How will you plan for the "last gap"?<sup>2</sup>

**Documenting settlement:** What does the settlement agreement need to say? Any formality requirements? Prepare/circulate in advance?

**If no settlement:** How will you leave the door open for resolution in the future?

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<sup>2</sup> See John Wade "The Last Gap in Negotiations - Why is it Important? How can it be Crossed" [1995] ALRS 1, available at <http://classic.austlii.edu.au/au/journals/ALRS/1995/1.html>.