

Looking to the Future — Mediation of Estate Disputes

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Anyone who practises in the Estates arena knows how highly charged the issues can get. Even contentious family law matters can be overshadowed by the emotional complexities involved with trying to resolve a disputed estate matter. Once mired in these complexities, it is all too easy for the disputing parties to lose sight of the actual issues that need to be resolved.

This is why alternate dispute resolution is so well suited to estate matters. It seems almost immediately obvious that a resolution facilitated by a mediator is to be preferred to the adversarial process of litigation: mediation does not impose a solution on the parties but allows the parties to explore the possibilities of a common ground solution. Mediated solutions are more likely to be successfully implemented; and, they give a better opportunity for the disputing parties to reach a solution that improve the chances of the parties (usually family members) having a positive on-going relationship once they leave the room.

Unique to estates disputes is the inherent problem that one of the critical individuals in the piece is no longer there to speak. In addition, there are many parties' rights and interests that have to be taken into consideration in formulating a resolution that may be implemented successfully. More often than not, some of those interested parties will not be present in the mediation. Therefore, it is important to assess the skills a mediator in an estates dispute may require to best facilitate a successful result.

If the dispute involves interpreting a testamentary document or trust arrangement, an important skill for the mediator will be a firm grasp on the interpretation of such documents and testamentary capacity issues. Where litigation looms, experience with estate litigation will be important. In virtually all situations, the mediator will have to be aware of to the various parties whose rights may be impacted by the dispute and its resolution such as dependant's relief candidates, minors, or disabled persons. Estate disputes involving a family business will need skills such as familiarity with corporate documentation, contracts and shareholders' agreements. Sophisticated estate disputes with complex and varied estate assets will benefit from mediation skills that include an understanding of complex financial information and analysis.

And let us not forget the ubiquitous impact of taxation issues to which the dispute and the options to resolve it give rise. It won't be a successful resolution if its implementation results in an unintended tax consequence.

With the variety and complexity of issues that may arise in an estate dispute, mediation offers a very appealing alternative to litigation. It offers a better chance of a successful resolution with a process that is far more economical. The chances of a successful and efficient result will be markedly improved if the right skills can be brought to the mediation.



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