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MEDIATION

Why is mediation increasingly popular?

Because mediation is a particularly sophisticated and satisfying mode of conflict resolution, which today's stakeholders find quite appealing. Its users — lawyers, clients, organizations, companies — now see mediation as a preferred tool whose multidimensional nature not only maximizes the possibilities of conflict resolution, but satisfies their quest for justice.

The success of mediation is rooted in a number of factors. Firstly, the emergence of a generation of better educated and informed individuals who refuse to allow an unyielding authority to make their decisions for them. Secondly, a trend that recognizes the importance of emotions and psychological needs in all human activities and interactions. Thirdly, the evolution of law and the way of conducting trials. These have become long, complex and costly and users of the courts are seeking another way of meeting their need for justice.

Given these social trends, today's individuals are developing their own definition of what is fair in a conflict, and feel a need to settle a case accordingly. Their definition of justice is highly personal and often based on human and emotional considerations, which the rules of law and evidence cannot satisfy.

Mediation provides a pertinent response to this quest, given the variety and sophistication of the tools for analysing a case as well as the advantages it offers clients and their attorneys:

- the opportunity of presenting the strong points of their case during the plenary session, and to be heard
- the possibility of previewing, during this plenary session, what would be said in a courtroom, and of assessing testimonies
- the possibility of learning or informing others of new elements of the case
- the active participation of the client in the analysis of the conflict based on the information obtained
- the helpful and proactive presence of an impartial third party in addressing the human and intangible aspects of the dispute and helping participants become aware of their feelings with regards to the dispute
- impartial and objective feedback on the issues at hand, by someone who has no decision-making power in the case
- a privileged opportunity for negotiation
- the assistance of a mediator who possesses the detachment and confidential information required to unblock impasses and explore avenues for solution that take into account the needs of the parties
- the development of original, customized solutions that are not possible with a court ruling.

It is important to recognize that mediation would not have the valued-added it offers in the resolution of disputes without the parallel existence of the exceptional legal system based on the rule of law enjoyed in democratic societies. Thanks to the integrity and effectiveness of these systems, mediation emerges as a preferred opportunity to exert control over the outcome of the conflict and to develop a settlement consistent with the participants' quest for justice. As a result, it is viewed as the best process for obtaining, before trial, concrete, complete and risk-free justice, at a much lesser cost. On the other hand, the reassuring existence of our functional legal system constitutes the best assurance that mediation will not become a forum for the most powerful.