



MEDIATIONSOPHILEX

MEDIATION

Is going into mediation a sign of weakness?

Many fear that resorting to mediation may be perceived to mean that one's case has certain weaknesses or that one is prepared to make major concessions. This fear is understandable, and was particularly prevalent some 15 years ago when the process was unknown. The implementation and institutionalization of mediation in all western judicial cultures since the 1990s show that it is now considered by governments as well as tribunals, Bar associations and many organizations, as a sophisticated and advantageous mode of conflict resolution, which has been added to existing avenues for obtaining justice.

While it is true that any negotiated settlement involves concessions or compromises, these will only be made if the full mediation exercise convinces and satisfies the parties that they have an interest in making them. **It is the process that leads participants to make concessions, and not the will to make concessions that leads participants to the process.** Consequently, concessions are not a form of surrender, but rather intelligent and satisfying solutions for settling a dispute.