

Mediators and the Intake Process

by Patrick Scott¹

The University of Strathclyde Mediation Clinic (“the Clinic”) deals with mediations referred by the Court and the first stage in the process is that an intake is required. The parties have to be contacted to ascertain whether they agree to mediation, and certain details have to be obtained from them.

There are two options for the intake process, both of which are followed in the Clinic. The intake can either be done by a third party or by the mediator who will be doing the mediation. This presentation explains the difference between the two processes, and the benefits which I believe arise when the intake is done by the mediator.

Intake by Third Party:

1. This requires extra capacity in the Clinic as someone other than the mediator is required to do the intake.
2. This person is not always in a position to answer all of the questions that may be raised by the parties, particularly with regard to the process. The reason for this is that mediators follow different procedures – some mediators like to keep the parties in a joint session, whilst others prefer to have private sessions after the initial joint session. This is not something that the third party would know as they would not know who the mediator is going to be at the intake stage.
3. There is a certain amount of duplication, particularly where the mediator likes to commence the mediation with private sessions.

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Intake by Mediator:

1. The intake becomes part of the mediation process.
2. This helps the mediator to build up trust with the parties.
3. It relieves the workload of the intake mediators.
4. The mediator can deal with all of the pre-mediation issues that may arise and answer any questions that the parties may have about the mediation process.
5. It provides good experience for the mediators and helps them to prepare for private practice as mediators.

Content of Discussion by Third party:

The third party would usually canvas the following points with the parties:

1. The details of the case and the court.
2. The contact details of the parties.
3. The amount of the claim.
4. The basic details of the claim.
5. The third party would basically explain what mediation is, and the process that will likely be followed.

Content of Discussion by Mediator:

The mediator would deal with the following additional matters:

1. The mediator will discuss the case in greater detail with the parties.
2. Settlement options can be explored with them, even at this early stage of the process, to try and determine a Zone of Potential Agreement.
3. The mediator can explain the process that he or she will follow.
4. The mediator can check that the parties are familiar with Zoom (if the mediation is going to be online) by using Zoom for the intake.
5. The use of breakout rooms can be explained.

6. Even at this early stage, the mediator can start doing reality testing, about such things as the cap on expenses in Simple Procedure (small claims) matters.

Conclusion:

In summary, I believe that having the mediator do the intake by having a pre-mediation meeting with the parties has advantages over having third parties do the intake.