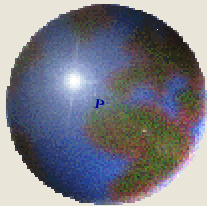




# *Nationwide Mediation Academy*



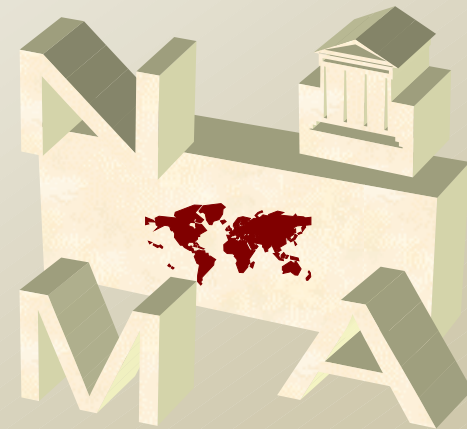
## **SEMINAR 4**

# **Introduction to Civil and Commercial Mediation**

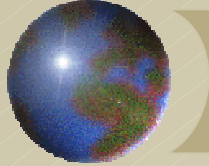
**Program Leader**

**Corbett Haselgrove-Spurin**

**An NMA program on behalf of NADR UK Ltd.**



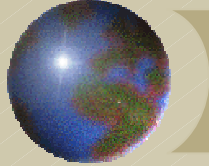
**NATIONWIDE MEDIATION  
ACADEMY**



# *Session Four*

## *The mediation process*

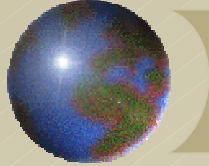
- ❖ **What is needed to make mediation work : reasons why it works.**
- ❖ **The five steps in the mediation process.**
- ❖ **Ground rules for its success and**
- ❖ **Reasons why parties might settle a dispute.**



# *Session Four*

## *Central Stages of a Mediation*

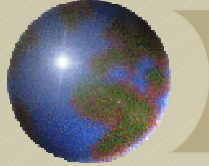
- ✚ **Preparation – exchanges**
  - 1. Joint session – establishing positions – and rules of procedure**
  - 2. Fact finding – getting a grasp of views**
  - 3. Brain storming options**
  - 4. Drawing up terms**
  - 5. Drafting and signing agreement**



# *Session Four*

## *Ground Rules for Successful Mediation*

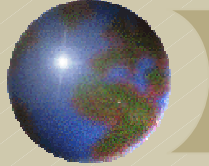
- ❖ **Preparation – mediator and parties**
- ❖ **Cooperation by the parties**
- ❖ **Suitable case for mediation**
- ❖ **Authority to Settle**
- ❖ **Room to compromise & willingness to do so**



# *Session Four*

## *Ground Rules for Successful Mediation*

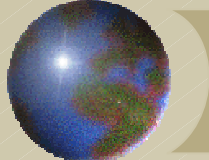
- ❖ **Competent mediator**
- ❖ **Experience in the relevant field**
- ❖ **Confidence in mediator – prior and earned**
- ❖ **Confidence in the process**
- ❖ **Representation where needed**



# *Session Four*

## *WHY CASES SETTLE*

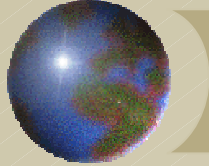
- 1. On going relationship**
- 2. Low risk threshold**
- 3. Cash flow**
- 4. Satisfied with the deal**
- 5. Attrition – worn out – bored with problem**
- 6. Avoid bankruptcy – economic coercion**



# *Session Four*

## *WHY CASES SETTLE*

- 7. Maintain privacy**
- 8. Intimidated by court process**
- 9. Litigation costs will take away gains**
- 10. Got things off their chest**
- 11. Undisclosed secret agenda**
- 12. Got an apology – main objective**

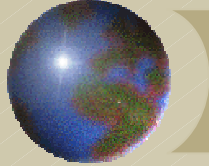


# *Session Four*

## *WHY CASES SETTLE*

- 13. Reality dawns pre-trial**
- 14. Degree of preparation for trial**
- 15. Avoid embarrassing public admissions**
- 16. Unpredictability of trial – bird in hand**
- 17. Unfavourable indications by court**
- 18. Witness problems – burden of proof**
- 19. Limitation acts – wrong party etc**

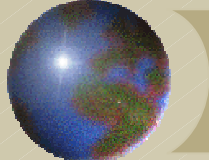




# *Session Four*

## *WHY CASES SETTLE*

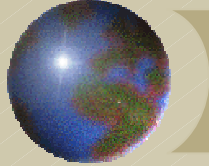
- 20. Defects in pleadings**
- 21. Lost, missing evidence**
- 22. Changes in personalities /  
circumstances**
- 23. New evidence / expert opinion/advice**
- 24. Change of legal team / advice**
- 25. Mounting costs - unsustainable**



# *Session Four*

## *WHY CASES SETTLE*

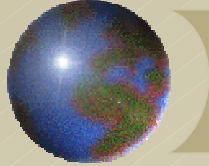
- 26. Needs to move on rapidly**
- 27. Eating up too much executive time**
- 28. Other claimants come on the scene**
- 29. Lawyer advises to settle**
- 30. Too much hassle**
- 31. Change in law**
- 32. Third party pressure**
- Etc .....**



# *Session Four*

## *WHY CASES DO NOT SETTLE*

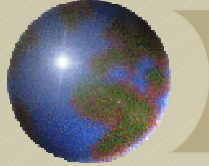
- 1. Not suitable for mediation – no reason for the claimant to compromise since he has a fully justified and enforceable debt.**
- 2. A party does not have the authority to settle**
- 3. A party cannot concede an essential element because of outside influences or personal factors**
- 4. The parties need to establish a legal precedent for future dealings**
- 5. Bloody-mindedness**



# *Session Four*

## *WHY CASES DO NOT SETTLE*

- 6. Party perceives that the mediator is biased**
  - 7. Enmity too great to bridge**
  - 8. Lawyer advises against it**
  - 9. Not enough time**
  - 10. Party sets out stall too high – walk out**
  - 11. Party sets out stall too low leaving no room for an appearance of give and take**
  - 12. It's a complete mystery**
- Etc .....**



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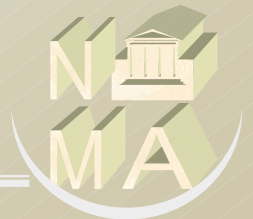
Wallington, Surrey, UK SM6 8RZ

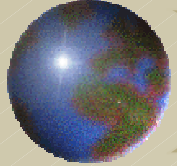
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