The Power of Mediation - by Andrew Clemow

I received the following very encouraging email regarding a family business dispute I had mediated (names have been altered to protect confidentiality):

“Yesterday I witnessed something I never thought would occur. Megan and I got involved (reluctantly) in Mediation to sort out the 7 years of separation between us and the Smiths. We went armed with boxes and files of evidence and accusations ready to “put our case”. We were both nervous and not wanting to face them, almost hoping they would not turn up. They did however, and we put the issues to them that caused us hurt and grief.

They responded to some of these issues and then Alastair told us of some of his recent journey with illness and reassessing his values. He and Cheryl admitted that the stuff in the past could have been handled better and we were all set for an afternoon session to address more issues. Listen to this…

Without warning, Megan rose to her feet and grabbed the folder containing all the stuff she had gathered for this particular moment and said to Andrew (our mediator), “You have these and shred them, we won’t be needing them anymore. We are satisfied we have heard enough to realise that Alastair has changed and we wish to get back to loving family relations!!!” You could have blown me over with a feather! I kept repeating, “I don’t believe it. I don’t believe it!”

The above email speaks to me of the power of mediation. The parties were related and had fallen out over a business deal. To see such genuine reconciliation (a substantial offer was made and accepted) was a highlight of my legal career.

Mediation is a voluntary, private dispute resolution process in which the mediator helps the parties reach a negotiated agreement. The mediator’s role is to guide discussion, isolate issues, identify underlying needs and objectives and help move the parties from fixation on the past to a focus upon the future. Not every mediation results in settlement, but the process (if properly applied) at least focuses on what the real issues are, tests strengths and weaknesses in the parties’ positions, and helps them look past their positions to their real interests and needs.

Mediation has the following advantages over litigation (court):

- Quicker (Defended court cases can take a year or more before judgment is obtained and even then further steps are often necessary to enforce a judgment that has been imposed on an unwilling party)
- Cheaper (court cases regarding a debt or property of value up to $50,000 generally cost in legal fees most, if not all, of the sum at stake)
- Flexible
- Controlled by the parties (the mediator makes suggestions but does not impose decisions)
- Repairs, rather than destroys, relationships

Gaze Burt has a number of senior staff who are trained and experienced mediators. We are also skilled at representing clients at mediation (or in negotiations).

If you think mediation may be right for you, contact Andrew Clemow at our city office or Neil Evans at our Albany office.