

January 2011

## Engagement Information

1. The purpose of this engagement information is to set out the basis upon which you appoint me as mediator.
2. Unless we agree different terms of engagement in writing these terms, in addition to those applicable parts of [my mediation agreement](#), apply to my appointment.
3. Please [click here](#) for my profile.

### **My Role as Mediator**

4. My role is detailed in my standard mediation agreement, in particular clauses 3-6 as follows:
  - '3. The mediator and each party will use their best endeavours to resolve the Dispute by:
    - 3.1 systematically identifying the issues in dispute;
    - 3.2 developing alternatives and options for the resolution of the Dispute;
    - 3.3 exploring the usefulness of each alternative; and
    - 3.4 seeking to achieve a resolution which is acceptable to the parties and which meets their interests and needs.
  4. The mediator will be neutral and impartial.
  5. The mediator will not:
    - 5.1 give legal or other professional advice to any party;
    - 5.2 impose an outcome on any party; or
    - 5.3 make any decision for any of the parties.
  6. The mediator can meet with the parties jointly and/or separately, as the mediator determines.'

### **Intake Process**

5. Once my appointment has been agreed by counsel, I will send an e-mail confirming the appointment and listing a number of preliminary matters to be agreed by counsel (such as documentation to be provided to me, venue etc) and including my standard mediation agreement together with this engagement information
6. Often it is useful for counsel to meet with me by telephone some weeks prior to the mediation date if there are any preliminary issues (such as documentation, who should attend the mediation etc) that need discussion, however I do not routinely convene a premediation telephone conference and instead would appreciate your advice if you think a telephone conference is needed in this case.
7. Most of my correspondence tends to be by email.

### **Fee Structure**

8. My standard fee for mediations;
  - 8.1 In **Wellington, Christchurch and most provincial centres** for a full day\* of mediation is **\$6,000**
  - 8.2 In **Auckland** for a full day\* of mediation is **\$7,000.00** (to reflect the longer day and the 4/5 hours travel involved).
  - 8.3 \*A full day consists of 12 hours - 3 hours allocated to intake process (including case administration and management, phone/email, pre-mediation telephone conference call, timetabling, preparing the mediation agreement and reading background documents) with 9 hours running time on the day of the mediation. I do not count time travelling to the mediation (for instance Wellington to Auckland) as part of the mediation day.
9. Additional time on the day of the mediation will be billed at the rate of **\$500.00 per hour.**
10. My standard fee for half-day mediation is **\$4,500.**
11. A half-day consists of up to 5 hours with 1 hour allocated to pre-mediation matters as above and 4 hours on the day of the mediation. Generally, mediations outside of Wellington or Christchurch are not half days.
12. Fees are usually shared equally among the parties and are plus GST and disbursements, however parties are free to agree otherwise.
13. I do not bill for routine post mediation follow up calls and there is never a charge for these or any other post mediation work without consultation.

### **Disbursements / Out of Pocket Expenses**

14. Expenses for mediations in Wellington & Christchurch;
  - 14.1 My practice is a national one although I primarily work out of Wellington and Christchurch and I present myself as a *local mediator* in both those centres.
  - 14.2 Therefore, although I am based in Wellington, I do *not* charge costs of travel (airfares, taxis, accommodation) for travelling to/from Wellington/Christchurch for mediations.
15. Expenses for mediations in other centres;
  - 15.1 When mediating in other centres, I simply pass on my out of pocket expenses such as airfares/taxi and any accommodation when it is necessary to overnight.
  - 15.2 I will attempt to book the most economic airfares available on Air New Zealand to the mediation but usually book a flexible ticket for the return leg so it can be changed should the mediation finish particularly early or late.
  - 15.3 Because of the amount of domestic travel I undertake on Air New Zealand, I have negotiated a 15% discount on all airfares to *provincial centres* which I pass directly on to clients.
16. Disbursements such as room hire, catering etc are to the parties in the normal way.

### **Billing & Payment**

17. I will normally send a tax invoice within a day or so of the mediation by email in a .pdf format. If you would prefer to receive a hardcopy by mail please advise me and this can easily be arranged.
18. Payment is due within seven days of the mediation and any outstanding fees and costs attract interest at the rate of 2% per month or part thereof.
19. If possible, I prefer to receive payment by direct credit.
20. My account details are:
 

**Bank:** BNZ, Wellington Branch / **Account:** Geoff Sharp – Practice Account  
**Account #** 020500 - 0924998 – 00
21. Given that I have no way of assessing any risk of non-payment of my fee and many mediations result from financial stress I leave it up to counsel to decide how they should protect my fees. As the parties to mediation are usually known only to the lawyers instructing me, counsel may wish to obtain their

client's share of the mediation costs upfront to be held pending invoice, especially where there is a concern as to ability to pay or timely payment.

22. Please feel free to ask me for an estimate of your client's share of my fee if this is the case.
23. I emphasise, I assume counsel and any instructing solicitor have turned their mind to protecting payment of my fees. **In the event of non-payment, I reserve the right to look to the lawyer(s) who engage me in the usual way when counsel is instructed.**

### **Payment in Advance**

24. I may ask for payment in advance however I usually try to avoid that request.
25. If I am appointed as mediator by the parties directly it is more likely that I will require advance payment.

### **Professional Indemnity Insurance**

26. A copy of my Certificate of Currency for my Professional Indemnity Insurance (Dual Australia/AON) is available on request.
27. The renewal date is 1 October each year and my indemnity cover is NZ\$10 million for any one claim and NZ\$30m in aggregate. Public liability \$20,000 any one claim.
28. My mediation agreement contains the following;
  - 28.1 'The parties agree that the mediator will not be liable to any party for any act or omission in the performance of the mediator's duties and obligations under this agreement, unless the act or omission is fraudulent.
  - 28.2 The parties, together and separately, indemnify the mediator against any claim for any act or omission in the performance of the mediator's duties under this agreement, unless the act or omission is fraudulent.'

### **Cancellations**

29. If a mediation is cancelled or postponed within 10 days of the mediation date, I will normally charge a \$500 fee covering my intake time (usually a conference call, reading, preparation and email) together with any wasted disbursements (such as non-refundable venue costs or air fares) to be shared by both parties.
30. In situations where I have lost other appointments as mediator because of a late cancellation or postponement, I reserve the ability to request up to half the mediation fee be paid, together with any disbursements as above.
31. I will attempt to avoid such a request as I would much rather you consider me for your next mediation.

**Pro Bono Work**

- 32. I wish to ensure an appropriate proportion of my practice remains pro bono mediation work and I undertake this at no fee or at a discounted fee in deserving cases, usually involving community issues. If your case is in this category please discuss it with me.

**Mediation File**

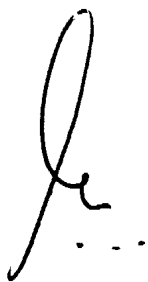
- 33. I will normally keep *only* the mediation agreement signed by the parties which I scan to you after the mediation and any settlement agreement that I am provided with at the conclusion of a successful mediation. All other documents I will return to counsel upon request or destroy by a secure method soon after the mediation.

**Conflicts of Interest**

- 34. I will disclose to the parties and/or their legal advisors any conflicts that I am aware of, in particular any properly disclosed prior association with any of the parties to the mediation.
- 35. If in the course of the mediation I become aware of any circumstances that might reasonably be considered to affect my capacity to act impartially, I will inform the parties and/or their legal advisors.

**Acceptance**

- 36. By appointing me as mediator you accept these terms of engagement unless we otherwise agree in writing.
- 37. Thank you for the appointment.



**Geoff Sharp  
Mediator**