

Effective December 2017

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 include my standard mediation agreement together with this engagement information.

6. Often it is useful for counsel to meet with me by telephone prior to the mediation if there are preliminary issues (such as documentation, who should attend the mediation etc) needing discussion, however I do not routinely convene a premediation telephone conference and instead would appreciate your advice if you think one is necessary. I will normally telephone lawyers a couple of days before the mediation to talk generally about how things may unfold on the day.

7. All my written correspondence is by email.

Fee Structure

8. I am based in Wellington however offer myself as a local mediator all NZ centres – that means I do not charge for getting to or from different parts of the country.

9. As a result, I seek to give parties to mediation certainty of cost from the outset by charging a flat fee per mediation that includes all my costs apart from those below.

10. That means there are no airfares, taxi or accommodation and no hourly rate for intake work or preparation and importantly, nothing extra if we go late on the day – the only cost not included in my session fee is 1) any large volume copying of documents and 2) any venue charges, should we have to hire rooms.

11. My flat fee for mediations;

11.1 In Wellington and Christchurch my flat fee per mediation session is **\$12,000.00 plus GST**

11.2 Elsewhere, my flat fee per mediation session is **\$12,500 plus GST**

11.3 As a guide, a mediation usually consists of around 14/15 hours in total – 4/5 hours of intake (including case administration and management, phone/email, pre-mediation telephone conference call, timetabling, preparing the mediation agreement and reading background documents) often with about 10 hours running time on the day

12. My fee for a half-day mediation is \$10,500 plus GST.

13. A half-day consists of up to 7 hours - with 2 hours allocated to premediation matters as above and up to 5 hours on the half day of the mediation. Generally, mediations outside of Wellington, Christchurch or Auckland are not half days.

14. Fees are usually shared equally among the parties and are plus GST and disbursements, however parties are free to agree otherwise.

15. I do not bill for routine after care/follow up. However, if post mediation work takes significant time or if a further face to face mediation session or conference call are required my fees as above (or a prorated hourly rate) will apply.

Billing & Payment

16. I will normally email a tax invoice within a day or so of the mediation in .pdf format. If you would prefer to receive a hardcopy please advise me and that can easily be arranged.

17. 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.

18. If possible, I prefer to receive payment by direct credit.

19. My account details are:

Bank: BNZ, Wellington Branch / Account: Geoff Sharp – Practice Account
Account # 020500 - 0924998 – 00

20. 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 to counsel to decide how to protect my fee. 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.

21. Please feel free to request a premediation invoice if this is the case.

22. I emphasise, I assume counsel and any instructing solicitor have turned their mind to protecting payment of my fee. 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

23. I may ask for payment in advance however I usually try to avoid this, especially if counsel is involved.

24. If I am appointed as mediator by the parties directly it is more likely that I will require advance payment.

Professional Indemnity Insurance

25. A copy of my Certificate of Currency for my Professional Indemnity Insurance (Berkley Insurance Australia/AON) is available on request.

26. My indemnity cover is NZ\$10 million for any one claim and NZ\$40m in aggregate. Public liability is NZ\$20m.

27. My mediation agreement contains the following;

27.1 '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.'

27.2 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

28. When a mediation date is booked my diary, I am then committed to that date and also to reserving a period of preparation time in advance of it. Where parties cancel or postpone a mediation it is rarely possible to make use of the slot reserved and virtually impossible to do so where this occurs close to the date fixed.

29. My cancellation policy is designed to cope fairly with this situation.

30. Once a date in the diary has been fixed, all parties who then participate in the preparations for that day do so on the basis that they accept liability in equal shares for any cancellation fees that may be incurred. Please note that this liability is not dependent on a mediation agreement being between the

parties; this often will not be signed until the day of the mediation.

31. If you or your clients have difficulty with this policy or wish your booking to remain provisional, please contact me and we can discuss alternative arrangements.

32. If a mediation is cancelled or postponed at any time after we have set a date and I have sent out my standard email and documentation, I will normally charge a \$2000 fee covering my intake time.

33. If a mediation is cancelled or postponed within 21 days of the mediation date I will normally charge 50% of my fee. If it is cancelled or postponed within 7 days of the mediation date I reserve the ability to request my full mediation fee be paid, together with any disbursements as above.

34. Where I reasonably incur expenses in respect of travel or accommodation prior to a mediation and these cannot be recouped after cancellation or postponement then the parties will be liable in equal shares for these.

35. I do understand that postponement is sometimes unavoidable so I will attempt to avoid such requests wherever possible - as I would much rather you consider me for your next mediation than receive a cancellation fee.

Pro Bono Work

36. 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

37. 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 at the conclusion of the mediation. All other documents I will return to counsel upon request or destroy by a secure method soon after the mediation.

Conflicts of Interest

38. 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.

39. 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

40. By appointing me as mediator you accept these terms of engagement unless we otherwise agree in writing.

41. Thank you for the appointment.

Disclosure - my wife, Susan Thomas, is a High Court Judge sitting in Wellington. I am quite comfortable mediating matters in which she may be involved however if this raises any concern for you, please discuss it with me. Naturally, I take my obligations of confidentiality extremely seriously and may not know that your matter is one she has involvement in, so I rely on you advising me of that.

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