



Neutral Evaluation Process Model

Description

Neutral Evaluation is understood by the Tribunal as:

An advisory process in which a Tribunal member, officer of the Tribunal or another person appointed by the Tribunal, chosen on the basis of their knowledge of the subject matter, assists the parties to resolve the dispute by providing a non-binding opinion on the likely outcomes. Neutral Evaluation is used when the resolution of the conflict requires an evaluation of both the facts and the law. The opinion may be the subject of a written report which may be admissible at the hearing.

Neutral Evaluation Process

Neutral Evaluation may be undertaken at any time in the Tribunal process. Neutral Evaluation is a process of assessing a dispute in which the evaluator seeks to identify and limit the issues of fact and law that are in dispute and, by that process, assist the parties to resolve the dispute.

The Neutral Evaluation process is undertaken in confidence and without prejudice to the parties. Neutral Evaluation will usually be conducted in the presence of the parties, following the receipt of oral or written submissions, but may be conducted on the papers alone. The evaluator will determine the method of evaluation in consultation with the parties. Where the evaluation is conducted in the presence of the parties, the Applicant and the Respondent are expected to attend in person. Representatives may play an active role in the process, with a focus on the parties' prospects of success and consequently the outcome of the issues to be determined.

The evaluator examines factual information provided by the parties, listens to the parties submissions and provides a non-binding opinion. An oral opinion will usually be given on the same day following a brief adjournment. In more complex matters, the evaluator may issue a written opinion within 48 hours of the Evaluation.

1. PREPARATION AND REFERRAL

Referral to Neutral Evaluation will usually take place following a conference in which the conference convenor may make directions for the provision and exchange of documents in preparation for the Evaluation. The conference convenor, in consultation with the parties, may prepare a list of suggested factual and/or legal issues in dispute or questions for determination in the Evaluation. A date for the Evaluation will be set at the conference or shortly after.

The evaluator may conduct a telephone directions hearing prior to the evaluation to discuss or amend the list of suggested issues and/or questions. The parties are encouraged to discuss with each other and the evaluator whether they may want the neutral evaluation process to include the possibility of settlement discussions instead of, or in addition to, a formal evaluation.

2. EVALUATOR'S OPENING STATEMENT

The evaluator will explain the process and his/her role to the parties and/or their representatives.

The evaluator will focus specifically on key issues raised by the facts of a case (as presented by the parties) and relevant questions of law.

3. IDENTIFICATION AND LISTING OF ISSUES

At the commencement of the Neutral Evaluation, the evaluator may seek endorsement from the parties as to the agreed list of issues and/or questions for determination and make any appropriate changes.

The parties are encouraged to prioritise issues for discussion from the agreed list of issues in dispute. The evaluator may facilitate negotiations between the parties and may hold private meetings in order to explore options with either party prior to the giving of an opinion.

4. PARTIES PRESENTATIONS

The parties present their cases on the agreed issues either by written submissions, by oral presentation, or by a combination of both.

The evaluator manages the length of any oral presentations. The evaluation process will be informal; rules of evidence will not apply and there will be no formal examination or cross-examination of parties. The evaluator considers the factual information and applicable law as presented by both parties. The evaluator may ask questions and will summarise the submissions and presentations made by the parties. The parties are encouraged to ask clarifying questions of each other.

5. EVALUATOR'S ORAL OPINION

At the conclusion of the Evaluation, the evaluator will offer the parties a non-binding oral opinion on the issues in dispute, based on an objective, independent and impartial analysis of the evidence available at the time of the evaluation. This opinion may include advice as to the possible or probable outcomes.

The purpose of the non-binding opinion is to provide the parties with an objective basis for further negotiation. The evaluator's non-binding opinion will indicate how the key disputed issues between the parties may be resolved and suggest options to the parties for negotiation and compromise.

As the Evaluation will also include an opinion regarding legal issues, the parties should be in a position to re-assess their risks regarding the final outcome of the dispute and that risk re-assessment will provide the parties with an objective basis for proceeding with further negotiations.

6. CONCLUDING JOINT SESSION

The evaluator will usually facilitate settlement negotiations following the giving of the opinion. Where an opinion has been given on the papers, a face-to-face or telephone session will be convened within 7 days to discuss possible settlement options or to prepare the matter for hearing. Where possible, this will be conducted by the evaluator.

Where agreement between the parties is reached and the matter is settled, the evaluator must ensure that the terms of settlement are in accordance with the law, before making a consent decision.

If settlement is not reached, the evaluator may record a plan or make directions to identify and exchange further relevant information which may assist in achieving resolution through the use of some other ADR process or to progress the matter to a hearing.

The fact that an Evaluation has occurred will be reported to the Tribunal hearing the application. However, the details of the Evaluation will not be reported unless all parties consent.

7. EVALUATOR'S WRITTEN OPINION

If the matter has not resolved by negotiation, the evaluator may, at the request of a party, give a written opinion about the factual and legal issues in dispute. The report will only be a summary of the likely outcome at a hearing of the evaluated factual and legal issues based on the evidence available at the time of the Evaluation. The opinion may be admitted in evidence at the Tribunal hearing unless a party objects.

As in all ADR processes, the parties involved in a Neutral Evaluation must act in good faith (section 34A).