

ADR: The Dangers of Diluting the Process

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Overview

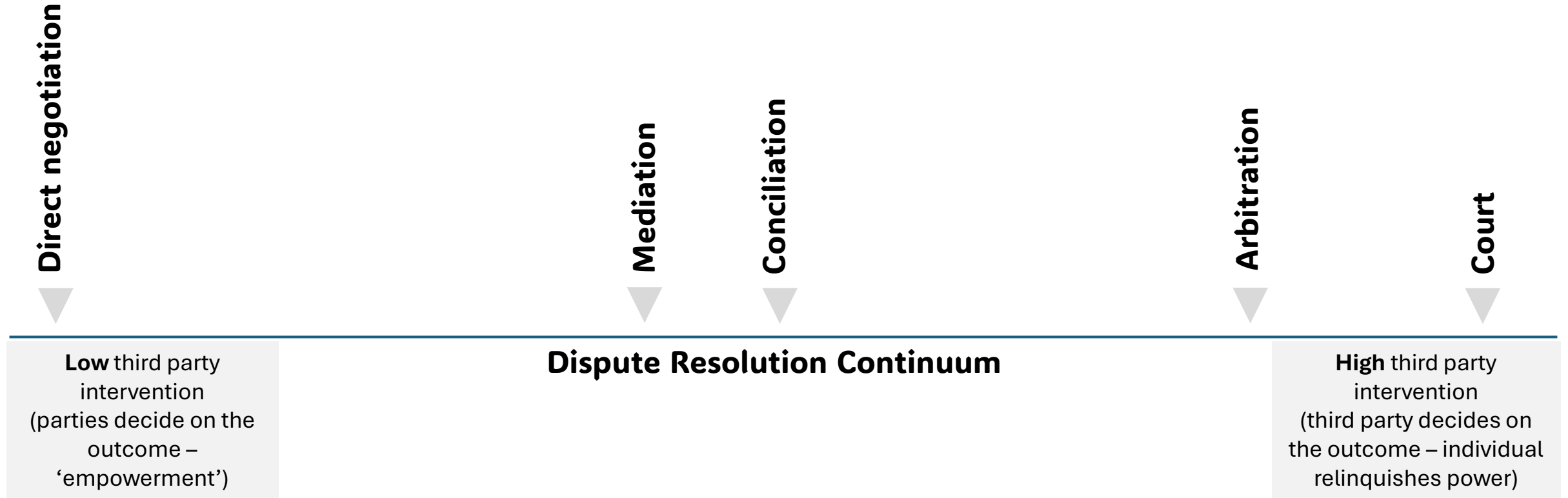
Welcome & Introduction

Today's goal: to consider what might happen if, in embracing mediation as a conflict resolution tool, we abandon some of the foundation principles.

Let's look at:

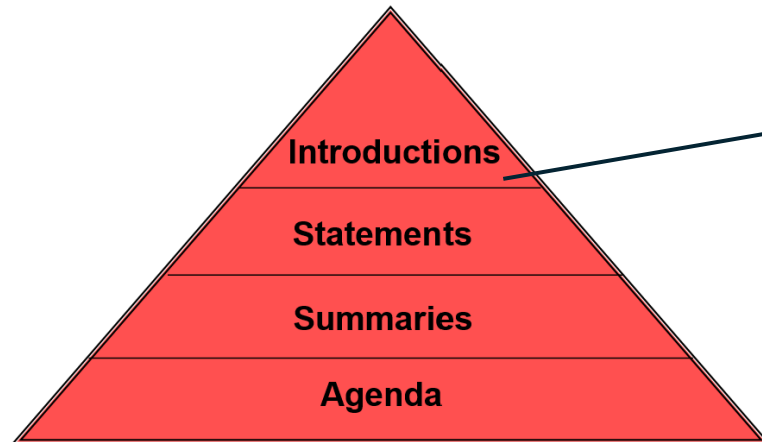
1. What is ADR / Mediation?
2. How does it work & Why does it work?
3. How diluting occurs (and the impacts it has)
4. The importance of the skills of the mediator

What is 'ADR' / Mediation?



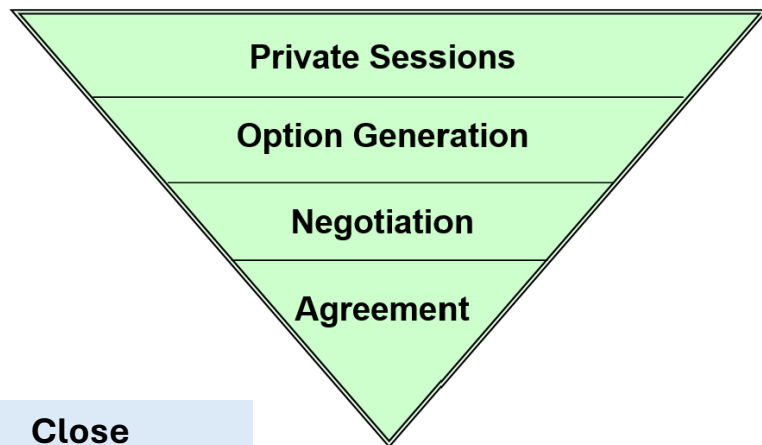
How it works – ‘The Process’

Preparation



Past and Present

Exploration



Future

Close
Debrief

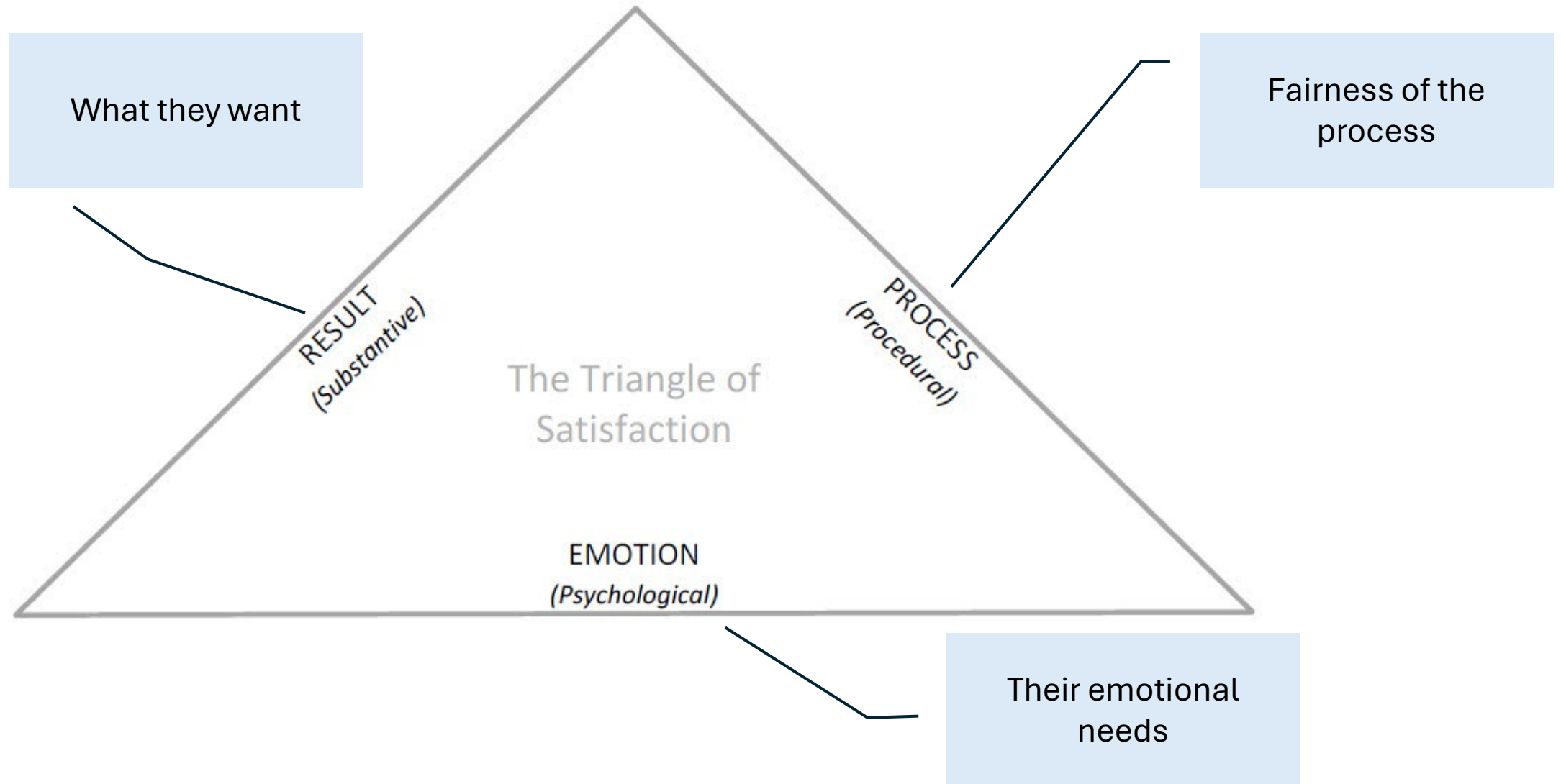
Introduction:

- Voluntariness
- Role of mediator
- Confidentiality
- Inadmissibility
- Not a legal process

The exploration/discussion of the issues

- Facts and feelings
- Past and present
- Broad to narrow
- Interests instead of Positions
- Clarity instead of Assumptions

Why it works – ‘The Triangle of Satisfaction’



Diluting the process: what we lose

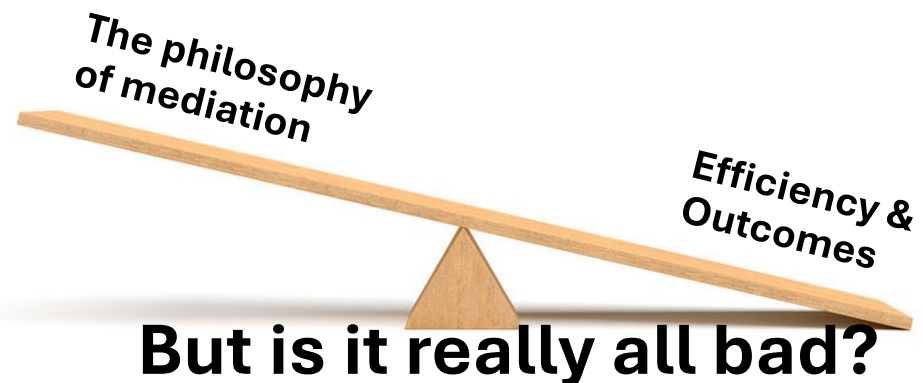


Independence

- Via in-house mediators & 'contradictory independence'
- Via Mediators providing advice

Voluntariness

- Via mandated first steps & referral to mediation
- Via being 'voluntold' to attend



Mitigating the loss: Mediation skills

If diluting is inevitable (or somewhat positive)

- Do no harm to parties and maintain prospects of success

Independence

- Run an independent process despite giving of advice

*Provide advice
in private*

*Remind the
advice is part of
the role*

*Restrict to only
that advice*

*Provide advice
'universally'*

Voluntariness

- Run a productive process despite mandated attendance

*Know when to
terminate*

*Highlight
positives
(independence,
opportunity)*

Acknowledge

*Impact and
Alternatives*

**The fundamental ingredient
to mitigating the loss is: skills**

The Value of Mediation Skills

● **Power imbalances**

● **Domestic violence**

● **Lack of trust**

● **Irrational, emotional, aggressive parties**

Empowerment

Independence

Voluntariness

Confidentiality



Training

- The how and the why
- The philosophy
- Allows Regulation

Other mediators

- Ongoing learning
- Co-mediation model
- De-brief

Regulation

- NMAS/AMDRAS
- Opt-in
- Be assured of training

Any questions?

