

Can a Good Mediator also be a Good Arbitrator?

Reflections on the role of Mediators and Arbitrators

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Abstract

This Article considers whether a good mediator can also be a good arbitrator. It provides examples of domestic legislation which allow mediators to serve as arbitrators, even in the same dispute. The requirements of natural justice, which are integral to the arbitration process, are largely ineffective in mediation proceedings. It is argued that, because of the ineffectiveness of the application of the rules of natural justice in mediation proceedings, the roles of mediators and arbitrators are distinct and incompatible.

1. Introduction

Although it is theoretically possible for a good mediator to also be a good arbitrator, the question should be asked whether it is appropriate to perform both roles in the same dispute or even to act as a mediator in some disputes and as an arbitrator in other cases. In answering this question, it will be argued that mediators cannot realistically respect the rules of natural justice when seeking a settlement by mediation (or conciliation) because these rules are largely

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