

## **CONTENTS**

- 1. Introduction**
- 2. Role of CODA**
- 3. How the Process Works**
- 4. Golden Rules**
- 5. Skills Required**
- 6. Breaking Deadlock**
- 7. Do's and Don'ts**

## **INTRODUCTION**

Informal dispute resolution (“IDR”) should be the first step in resolving a Complaint.

Under the CODA Rules a Complaint is to be resolved in the following filtered way: -

Firslly by IDR and only if IDR fails to achieve resolution, then secondly by Mediation and if the Mediation fails to achieve resolution, then finally a formal hearing before a Hearings Committee.

IDR should always be the first step to resolve a Complaint.

IDR is a confidential process. That means that anything that is said or any document that is disclosed by any party during the IDR process cannot be recorded, repeated or circulated outside of the IDR process.

IDR may be overseen by the CODA or any person the CODA nominates.

The CODA or nominee is not a judge, arbitrator or disciplinary body in the IDR process.

The role of the CODA or nominee in IDR is to facilitate the parties in reaching an amicable resolution.

The CODA or nominee must be neutral if overseeing IDR.

The parties remain in control of the outcome of the IDR process. They cannot be forced to do anything they do not want to do.

If the parties reach agreement during the IDR process then the CODA or nominee should record the terms and each party should sign the record of agreement.

If the IDR process does not result in agreement between the parties then the CODA should then refer the parties to Mediation.

IDR can take place anywhere that affords privacy to the parties. Ideally each party will have a separate room and the CODA or nominee will also have a larger room to accommodate all the parties.

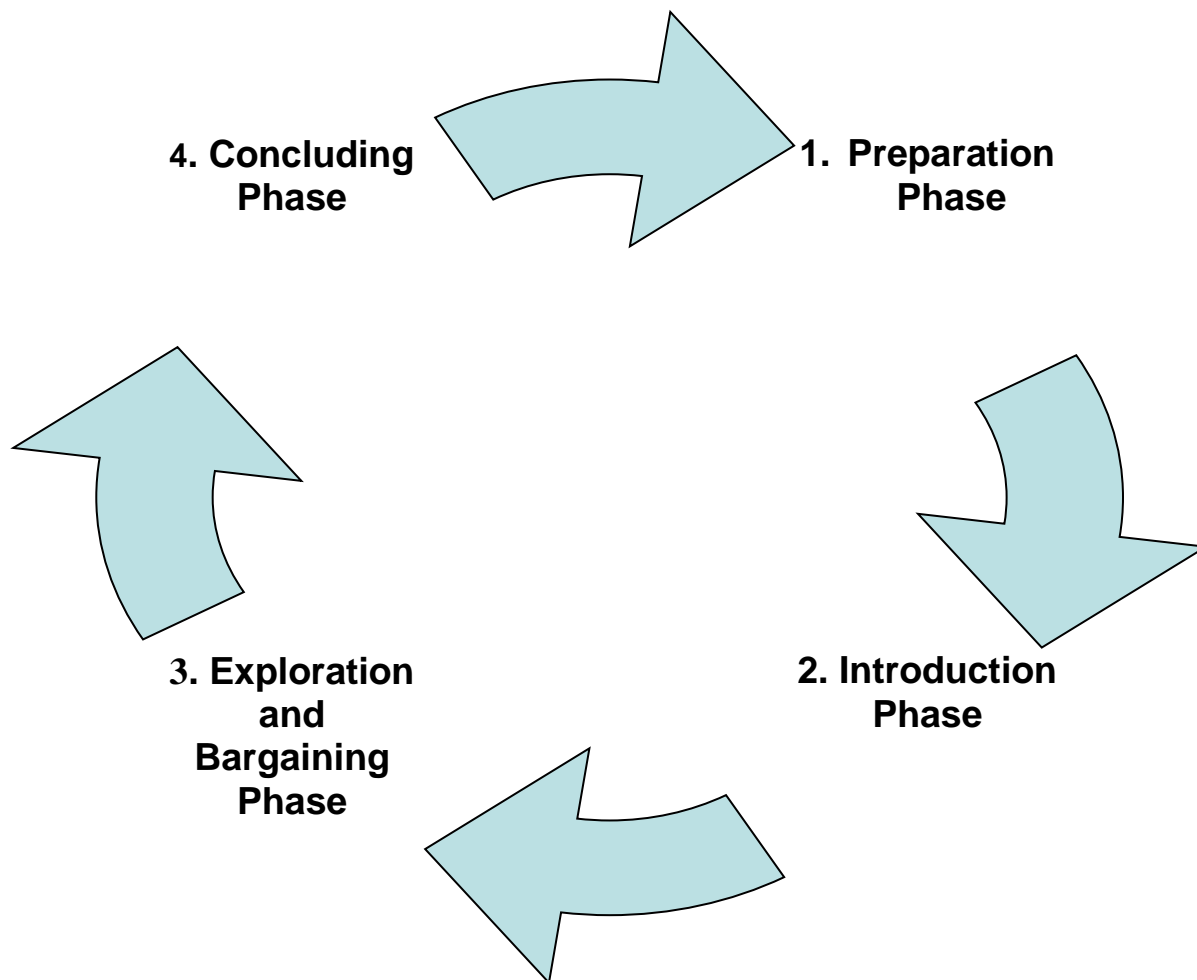
IDR can take as long as is necessary to facilitate the parties.

## ROLE OF THE CODA

During the Informal Dispute Resolution process, the CODA fulfils several important roles that might include:

- **a manager of the process**, arranges the meeting, the venue and facilities, providing firm but sensitive control over the process, conveying confidence in the process, and giving a sense of purpose and progress;
- **a facilitator**, helping the parties to overcome deadlock and to find a way of working co-operatively towards a mutually acceptable settlement;
- **an information gatherer**, organising data, identifying common ground, shared goals and zones of agreement;
- **a 'sponge'** that absorbs the parties' feelings and frustrations, helping them to channel their energies into positive approaches;
- **an enabler**, helping the parties re-evaluate their position by providing new perspectives from the other side's point of view;
- **a reality tester**, helping the parties privately to take a realistic view of the dispute, rather than hide behind public posturing;
- **a problem solver**, a catalyst for problem solving, bringing a clear head and creative mind to help the parties construct an outcome that best meets their needs, when contrasted with the alternatives of non-agreement such as imposed sanctions and directions by a Hearings Committee, helping the parties to use effective strategies for making progress towards agreement, an overseer of the drafting of any record of agreement, checking that all issues are covered and that the agreement is workable;
- **a settlement supervisor** (this is occasionally requested), being available if problems occur in implementation of the agreement;
- **a settlement prompter** who, if no agreement is reached at the Informal Dispute Resolution, will help parties to keep the momentum towards settlement and directing them to mediation.

**Table 1 - Internal Dispute Resolution Process**



**HOW IT WORKS PRACTICALLY**

- **Prepare**
  - CODA will have read the Complaint form and deemed it to be valid
  - contact parties and agree a suitable date and venue (with different rooms) for IDR
- **Initial separate private meeting with each party –**
  - welcoming, greeting and settling parties;
  - answer any immediate questions answered;
  - rapport building with parties.
- **Initial joint meeting:**
  - the CODA clarifies the process and sets out common sense ground rules;
  - the parties present opening statements to each other;
  - issues that need to be addressed to achieve resolution.
- **Separate meetings between the CODA and each party in different rooms**
  - examine the important issues and needs of each party;
  - encourage openness about weaknesses as well as strengths;
  - manage expectations;
  - challenge acceptability of terms proposed by the party;
  - discuss options for settlement.
- **Shuttle between the parties**
  - discuss differences, particularly in understanding of fact or likely legal outcome;
  - provide fuller explanations or information;
  - set an agenda and agree next steps;
  - generate ideas and options;
  - allow the parties to negotiate directly where feasible;
  - set the agreement in writing or agree further action.

**Cornerstones of IDR (“Golden Rules”)**

The CODA Must:

- check (and re-check) confidentiality; when speaking to any party explain *“everything is confidential unless you tell me otherwise”*
- let the parties own the problem and the solution;
- be neutral - resist offering an opinion;
- be impartial - give equal value to everyone;
- avoid stereotyping;
- check your own assumptions;
- demonstrate respect;
- develop and show understanding;
- be open and honest (with others and with yourself); and
- be flexible.

**OVERCOMING DEADLOCK**

The following chart highlights some of the common reasons why negotiations fail, and outlines some of the techniques a skilled CODA might use to overcome them.

<b>Reason for negotiation failure or breakdown</b>	<b>What the CODA can add – Techniques and approaches</b>
Poor negotiation skills in one or more of the parties	negotiation coaching; helping parties, for example, with packaging or framing offers
Unrealistic expectations / assessment of other party's case	reality testing; working “in principle”
Issues of principle	focusing parties on practical considerations
Emotions, ego, pride	acknowledging and allowing space for the expression of emotions; saving face
Desire for revenge	Reality testing the practicality or ultimate worth of revenge
Breakdown of trust	<ul style="list-style-type: none"> <li>• Normalizing</li> <li>• Helping parties find insurance and safeguards</li> </ul>
Failure of communication	<ul style="list-style-type: none"> <li>• Acting as a conduit for clear, safe communication</li> <li>• Coaching parties to communicate effectively</li> </ul>
Lack of information	<ul style="list-style-type: none"> <li>• Persuading parties of the benefits of exchanging at least some information</li> <li>• Providing opportunities for information exchange</li> </ul>
Poor decision making	<ul style="list-style-type: none"> <li>• Shaping the agreement with the parties before detailed negotiations begin</li> <li>• Discussing options hypothetically</li> </ul>
Wrong people at the table and lack of authority	<ul style="list-style-type: none"> <li>• Ensuring representatives attending have authority</li> <li>• Identifying who should attend from each side</li> </ul>
Cultural differences	<ul style="list-style-type: none"> <li>• Interpreting for the parties; bridging</li> <li>• Helping parties find common values</li> </ul>
Failure to identify the real issue	<ul style="list-style-type: none"> <li>• Listing and clarifying issues to be discussed in order to reach a resolution</li> <li>• Picking up on cues and clues, verbal and non verbal, about what really matters</li> </ul>
Settlement panic	<ul style="list-style-type: none"> <li>• Helping parties to visualise a future beyond the dispute</li> <li>• Helping the parties to look over the precipice of not reaching agreement</li> </ul>

**More tips to break Deadlock**

One or more of the following strategies may help:

1. bringing the parties together to acknowledge the situation and talk it through openly;
2. shifting the parties from positional to principled negotiation, e.g. “...so *in principle* you don't have any objection to that method of coaching...”;
3. allowing emotion to emerge, and acknowledging its significance, where strong feelings seem to be blocking progress;
4. reviewing common ground and highlighting progress so far, as a basis for encouraging more progress on difficult points;
5. finding an easy concession that is cheap to make but valuable to receive;
6. taking a break, so as to allow emotions to cool and give time for reassessment;
7. using humour can break tension and relax the atmosphere;
8. breaking the problem down, dealing with smaller issues one by one can create a useful momentum;
9. parking some issues for later discussion;
10. introducing new information or reframing issues to test out a different perspective;
11. changing up the process, by changing surroundings or the seating positions, taking the parties for a walk, holding a joint meeting;
12. reviewing the process and asking parties what they want to do next;
13. introducing a time deadline, or setting another date to pick up where the parties left off.
14. changing the balance of risk; if a hearings committee are likely /unlikely to decide in favour of one of the parties.

## **QUESTIONING**

Appropriate use of questions is essential in IDR.

**Open questions** are particularly useful in the exploration phase,

- How do you react to what they say?
- What do you think are the likely consequences?
- What suggestions do you have?
- Why is that important?

**Closed questions** are more appropriate when summarising and in the later stages.

Closed questions seek very specific and precise information or facts. The response will be either Yes or No or a very short response - some identification of fact such as time, place, number, person.

Closed questions are useful for checking and clarifying:

- What date did you agree with the coach?
- How long was it before they told you about that?
- Where did you meet last time?
- How long were you left outside the group?

**Hypothetical questions** are used throughout for trying out ideas. Hypothetical questions allow parties to explore ideas and options without having to commit themselves:

- What if the other party said they were unhappy about that?
- Just supposing they offered that?
- What would happen if ...?
- What would it look like if you could ...?

Careful framing of a question is important, for questions can:

- encourage a party to talk;
- show empathy and support

But questions can also:

- indicate partiality, judgment;
- criticism, seem prying or irrelevant;
- become an interrogation.

**DO'S**

1. Believe in the process and believe in the people, and convey this to all those with whom you are working.
2. Contact the parties before the IDR date to establish rapport.
3. Be familiar with the facts and the issues. Show that you have read the documents and are well prepared.
4. Develop a suitable opening that covers the role of the CODA, the principles of IDR, and how the IDR process works.
5. Be brief, confident, positive and flexible.
6. Show empathy, build rapport, reinforce neutrality, and do so equally with the parties.
7. Encourage parties to make an effective opening statement. This is a chance to enhance the other party's understanding and to begin to persuade them to change their perceptions.
8. Spend time clarifying the issues in dispute. This focuses parties' minds and cuts through unnecessary detail.
9. Acknowledge emotions and allow feelings to be vented, even in joint sessions; if it becomes destructive or abusive then break into private meetings.
10. Have patience; let the parties own the problem and the solution.
11. Be flexible, vary the format, take time, follow up cues and clues, and examine apparent inconsistencies.
12. Listen a lot.
13. Keep up the pressure and build momentum. Try to keep meetings short and purposeful, leave some matters for the next meeting and, if possible, task the parties to work on solutions in your absence.
14. Encourage the parties to talk to each other direct. You do not have to be a go-between or a messenger.
15. Challenge, particularly any apparently unreasonable positions or proposals. Hiding behind the CODA may allow a party to adopt an aggressive stance or make unreasonable demands or offers. Try asking '*Would you be prepared to ask the other party that question?*' (and if not, why not?).
16. Recognise that most IDR sessions have a point of despair. It is often then that the settlement begins to emerge.
17. Devote time and patience to getting the agreement on paper. There are usually issues when agreement is reduced to writing.



**DON'TS**

1. Don't be fazed, and if you are don't let it show.
2. Don't get swamped by detail. The parties know the detail and will tell you if something is important.
3. Don't appear to be a judge or arbitrator or let the parties treat you as such. Do not cross-examine parties or advisers.
4. Don't suggest that you will give an opinion or evaluation.
5. Don't take lots of notes; you lose eye contact and can miss important communication.
6. Don't make assumptions about parties, causes, merits or fairness.
7. Don't criticise poor preparation, presentation or negotiation by parties.
8. Don't interrupt.
9. Don't ask questions that indicate favour to one party's argument or position.
10. Don't play devil's advocate. It is almost always misinterpreted as being your point of view. Be direct when challenging and reality testing.
11. Don't impose your solution, even if you see it early and believe it will work.
12. Don't ask for a bottom line - and don't be naïve in believing a stated bottom line.
13. Don't give up. Persistence pays off, sometimes in the most unlikely circumstances.
14. Don't be too hard on yourself if the IDR session does not resolve the Complaint.