

# Conciliation



Resolution Institute

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## There is nothing more risky...

- than a process...
- if it is the only one you have!

## That's why...

- interview + design...
- are essential elements (or at least should be considered).

Process can be informed through many disciplines and from many sectors.

# Fitting the forum to the fuss

- Characteristics of rural people? Culture?
- The context of the dispute
- RIGHTS; POWER; INTEREST



# What is this thing called "conciliation"?

- Is it simply "mediation with a sting in its tail"?
- Or something else?

# Where did it come from?

- Industrial Conciliation Act 1894
  - World ground-breaking and New Zealand's longest standing industrial relations legislation (nearly 100 years)

## Where did it come from? (cont'd)

- S44

- *In the course of any such inquiry and investigation the Board shall make all such suggestions and do all such things as shall appear to them as right and proper to be made or done for securing a fair and amicable settlement of the industrial dispute between the parties.*

# Is it still used?

- Sharemilking Agreements Act 1937
- Sharemilking Agreements Order 2011
- 50/50 Sharemilking Agreements
- ACC

## Is it still used? (cont'd)

- AMINZ Dairy Industry Protocol definition
  - *Unlike mediation, a conciliator may have an advisory role in the content of the dispute or outcome. However the parties may agree that the conciliator have a recommending role which may be binding on the parties if this is what is agreed by them.*



## Is it still used? (cont'd)

### United Nations Commission on International Trade Law (UNCITRAL) Model Conciliation Rules

- Article 7(4)

- *The conciliator may, at any stage of the conciliation proceeding, make proposals for a settlement of the dispute. Such proposals need not be in writing and need not be accompanied by a statement of the reasons therefor.*

# Agreement to Conciliate

We agree that the conciliator may...

- [Use] expertise and experience to assist *us in reaching a settlement*
- At any time during the conciliation, and if requested *or* agreed to by the parties the mediator may make suggestions for settlement, any such suggestions are only binding on the parties if.....?
- Will not... give legal advice to either party

