

LET'S

Mediate

JUNE 2025 ISSUE # 17

**EVERYTHING YOU NEED TO KNOW ABOUT
MIMM'S CERTIFICATES OF COMPETENCE
FOR THE GAUTENG HIGH COURT PROJECT**

UPCOMING DATE
ASK THE EXPERT

02 July 2025

**COURT ANNEXED MEDIATION : IS IT
ASSISTED NEGOTIATION?**

AGM - 9 July
6pm

**ROAD ACCIDENT FUND MEDIATIONS
– SOME POINTS TO PONDER...**



FROM THE EDITOR



As we bring you this edition of our newsletter, we do so at what might just be the most exciting time for mediation in South Africa...

The mediation landscape is shifting — gaining traction, legitimacy, and purpose in ways we have long hoped for. We are witnessing real strides being made in empowering mediators across the spectrum, equipping them with the tools, knowledge, and opportunities to position themselves to mediate Gauteng High Court (GHC) matters under the GHC Mediation Directive.

MiMM, as a Recognised Mediation Organisation (RMO), is very well positioned to support this momentum. We are proud to offer our members meaningful opportunities to gain experience, not only in GHC mediations, but also through a range of other mediation projects.

MiMM creates pathways for growth by enabling members to observe and co-mediate alongside experienced mediators. Many of MiMM's senior mediators generously invite newer members to attend GHC mediations as observers or co-mediators, which creates invaluable learning experiences and strengthens the mediation profession from within.

We are especially proud that MiMM is considered a role-player at the forefront of driving the GHC Project and that continues to foster a spirit of mentorship and shared knowledge. This spirit is what makes our community thrive.

In this issue of Let's Mediate — a title that now holds more meaning than ever — you'll find valuable insights, updates, and opportunities to engage more deeply with this rapidly evolving field.

There has never been a more exciting time for mediation.

So... Let's Mediate!



Susan Verhoef



FROM THE CHAIRMAN

I write to you at a pivotal moment in South Africa's mediation journey, one marked by a historic shift in judicial policy and the strengthening of our profession's relevance within the justice system.

In April 2025, the Gauteng Division of the High Court issued a revised Mediation Directive, making court-annexed mediation not only central to dispute resolution but, in many cases, obligatory. This monumental shift begins with all Road Accident Fund (RAF) matters, with the clear intention to expand across the broader spectrum of civil litigation. The Gauteng Mediation Protocol sets a rigorous and structured standard for the implementation of this initiative, anchored in Rule 41A and deeply aligned with constitutional imperatives of access to justice, transformation, and case efficiency.

This development is not merely administrative; it is a profound endorsement of our discipline. It affirms the judiciary's trust in qualified mediators to relieve the burden on our courts and assist citizens in resolving disputes more efficiently, cost-effectively, and humanely.

Against this backdrop, I am proud to affirm that Mediation in Motion Mediators (MiMM) has stood at the forefront of these changes. Our Executive Committee (EXCO) has worked tirelessly, both behind the scenes and in leadership forums, to position MiMM as a trusted and professional voice in this evolving mediation landscape.

Since the revised mediation directive and protocol, our EXCO has:

- Championed mediator competence and quality assurance, crafting a fair, tiered, and ethically grounded certification framework aligned with the expectations of the High Court Directive.
- Developed a transparent process for issuing Certificates of Competence, ensuring that our mediators meet the minimum legal and experiential requirements set out in the Protocol, while still remaining inclusive and member-focused.
- Engaged strategically with the ADR Technology Group (ADR-TG) and other RMOs to ensure our mediators are duly represented and prioritised in court-annexed mediation appointments.

As many of you are aware, the Gauteng High Court Protocol requires mediators to be issued a Certificate of Competence by a Recognised Mediation Organisation. This requirement is not merely procedural, it is a safeguard to uphold the integrity and quality of mediation services delivered under the auspices of the judiciary. In response, MiMM has formalised a certification process that is both principled and accessible. This process, developed through thoughtful engagement and consensus by the EXCO, ensures that all MiMM-certified mediators:

- Have received university-certified training,
- Are committed to continued professional development,
- Meet the standards set out in the Gauteng Mediation Protocol, and
- Demonstrate professional integrity and ethical conduct.

“ Let us meet this moment with unity, purpose, and pride.”

The internal process guiding the issuance of these certificates is detailed in this newsletter and across our various communication platforms. This process underscores MiMM's dedication to fairness, transparency, and excellence.

This is a landmark era for mediation in South Africa, and MiMM stands ready to lead with integrity, rigour, and compassion. As we prepare for the next phase of growth, we remind all members of the following:

- MiMM has also accepted the invitation to take over the Gauteng Department of Health Mediation Project, a significant endorsement of our track record and reliability. Final arrangements are currently underway, and we will update members as this important initiative progresses.
- The MiMM Annual General Meeting (AGM) is scheduled for 9 July 2025. Your participation is critical. This will be a pivotal meeting as we discuss strategy, constitutional updates, member support, and our role in the crucial mediation project.
- Members interested in participating in court-annexed mediations, particularly RAF or personal injury-related matters, should ensure that their membership is up to date and that they request a Certificate of Competence through the MiMM Secretariat.
- We continue to welcome new mediators and mentor pathways for those seeking to gain experience via co-mediation and observation opportunities, especially in the Gauteng region.

We are deeply grateful to our EXCO members for their exceptional dedication. In particular, I would like to thank Mr. Michiel Bouwer, Dr. Trevor Frankish, Ms. Anri le Roux, and Adv. Ettian Raubenheimer for their resolute leadership in steering the Gauteng High Court Mediation Project. Their expertise, legal insight, and unwavering commitment have fortified MiMM's stature during this critical transition. Mediation in Motion Mediators is not merely an administrative entity, we are a community of professionals grounded in empathy, guided by justice, and committed to transformation. The Gauteng Directive is more than a procedural development; it is a call to service, to rise as professionals and bring dignity, efficiency, and resolution to the lives of South Africans burdened by litigation.

Let us meet this moment with unity, purpose, and pride.

Best wishes,



Dr. Shamal Ramesar
Chairman,
Mediation in Motion Mediators (NPO)

ROAD ACCIDENT FUND MEDIATIONS – SOME POINTS TO PONDER...

There have been a few questions and comments on the MiMM WhatsApp group from members, that gave me an idea for this ponder. Before I go any further, I want to make it clear that this column reflects my thoughts, or ponderings, as I prefer to call them. These are my views and reflect my philosophy and style of meditation.

Meditation is about to (hopefully) become the preferred method of resolving Road Accident Fund (RAF) cases. How will these matters be approached by mediators and what can we do to ensure that we are able to cater for them in the most pragmatic and functional manner?

Let me start with the involvement of lawyers. The question has been asked as to what the position will be if the attendees at these mediations are lawyers, without the presence of their clients. How will this enable the mediator to explore the underlying interests and needs of the parties? How will this bring closure for accident victims? What role will apology play?, if any?

My view is that this type of mediation will require us, as mediators, to adopt an approach different to the one that we usually adopt. We are not dealing here with relationships, nor are we trying to bring parties together to discuss a traumatic experience and find closure, with an apology easing the pain and suffering, and trauma that the accident victim has experienced. We are also not going to be addressing dignity violations and assisting parties in restoring dignity. That may have been the situation if we were mediating a matter between the victim and the driver of the other vehicle. But we are not. We have the RAF as the other party. A compensation fund, there to provide compensation – nothing more, nothing less. There are no apologies forthcoming, no explanation as to what happened and no attempt to find closure for the victim. Just the payment of compensation and the provision of an undertaking for future medical expenses. These mediations are more about distributive bargaining than principled negotiation. Does that mean that mediation is not appropriate? Absolutely not! It just means that we may need to adapt our approach.

Now to get back to the role of lawyers and how we, as mediators, can make the most of this to try and assist the parties in getting a resolution. I am talking here about lawyers without the presence of their clients. The RAF will probably have an in-house lawyer, very likely without the presence of the insured driver. The absence of the victim and the insured driver removes emotion and compassion from the discussion. In these types of matters that is perhaps not a bad thing.



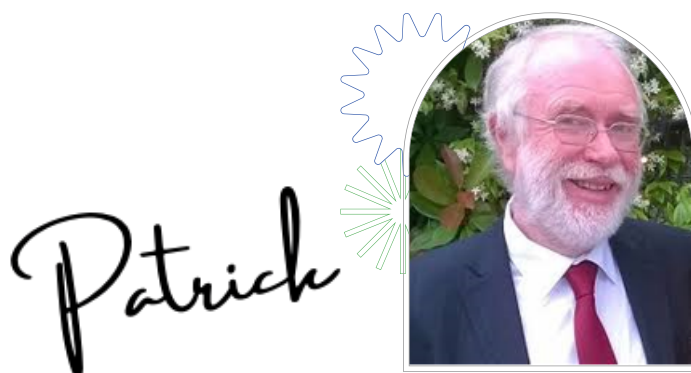
If the plaintiff were present, he or she was not going to have the opportunity of hearing from the insured driver anyway. They were not going to be getting any explanation for the accident or any apology. The lawyers will be there trying to negotiate a settlement. Does this mean that this mediation is no different to two counsel trying to settle the matter at court on the day of the trial? Not at all. This is not just a negotiation between the two lawyers. It is a negotiation facilitated by a third party, the mediator.

What role can the mediator play in these circumstances? Like in all mediations, pre-mediation meetings with the parties (or in this case the lawyers) will enable the mediator to establish what issues will need to be mediated. This is where it can be established how the parties want to approach the issues of merits and quantum. For the information of non-lawyers, "merits" relates to the issue of liability (in RAF matters, usually whether or not the insured driver was negligent and whether there was any contributory negligence on the part of the plaintiff) and "quantum" relates to the amount of the compensation once liability has been established. In litigation, these two issues are usually separated, with the issue of merits proceeding to trial first and, if liability is established, quantum is either settled or proceeds to be determined at a second hearing. In mediation, there are several options. One option, and perhaps the least attractive, is to follow the same procedure as in litigation and mediate the merits only, with quantum, if liability is settled, to be dealt with at a second mediation. The second option is to agree to first mediate the merits, and immediately thereafter the quantum. And the third, is to mediate the two simultaneously. This may appeal to parties where they are not likely to agree on an apportionment of liability, but the compensation that the plaintiff is seeking may be something that the RAF would contemplate in any event.



The other role of the mediator is to do some robust reality testing with the parties in private sessions. Raising with the lawyers the potential delay in the event of the matter not being resolved. The high cost of litigation. And, although this shouldn't be a factor in an ideal world, it is a reality that many attorneys act for plaintiffs on a contingency basis, with some risk attached to this. A settlement assures such solicitors of payment. All of these issues can be used for reality testing.

A skilled mediator should be able to help the parties move through the issues, applying common sense and pragmatism to their discussions. This is more than just the two lawyers trying to settle the matter, each one vying for the upper hand. The mediator is the third party, the facilitator, the person there to focus the minds of the negotiators. There to help the parties explore options, weigh up their BATNAs and WATNAs and achieve a fair result. That is, after all, what we should always strive to achieve – fairness for the parties!



Patrick Scott has a Master's degree in Mediation and Conflict Resolution from the University of Strathclyde in Glasgow, serves on the Board of Mediation in Motion Mediators and practises as a mediator in Scotland and South Africa (remotely).

Save the date

COURT ANNEXED MEDIATION: IS IT ASSISTED NEGOTIATION?



ALAN NELSON
EXPERT


02 JULY 2025



18:00



**ZOOM LINK
WILL BE
PROVIDED**



R300 FOR NON-MEMBERS



FREE TO MEMBERS



REGISTER NOW

MEDIATION

EMPOWERING MEDIATORS

DIGNITY VIOLATIONS: THE UNSEEN CULPRIT IN COMMERCIAL MEDIATIONS

In the world of commercial disputes, the instinct is often to focus on the concrete: the contracts, the numbers, and the bottom lines. These are, after all, the issues that parties bring to the table and that are easily identifiable. Luckily, we as mediators have seen that beneath these tangible disputes lies a far more delicate and potent dynamic: **dignity violations**.

Dignity violations, and what we call “cross-dignity violations” (where both parties feel that their dignity has been undermined by the other) are a known feature of family-, personal injury-, or employment disputes – dispute where personal identity and belonging are overtly at play. In commercial matters, however, dignity violations are not always acknowledged and can then be encountered rather unexpectedly. Although the dignity violations may not have triggered the original commercial conflict, they almost always find their way in. They can arise in the heat of the dispute, or in the fallout and protracted adversarial process that follows.

Earlier this year, the writers hereof were involved in a commercial dispute founded in a complex shareholders' dispute (as legal representative for the one party). The parties had been locked in litigation for years and repeated allegations of fraud and malfeasance were being made. Yet, as the mediation unfolded, it became painfully clear that the real rift was not just about the money. Rather, both parties felt profoundly disrespected: one felt aggrieved by the lack of dividends being declared, believing the other had siphoned off funds; the other felt that its integrity had been attacked in board meetings and in correspondence that was widely circulated. These (perceived) dignity violations had become so severe that the parties could no longer see each other as partners or even as rational businesspeople. There was no way forward for them to continue working together, nor were they willing to let go of the past. The parties had lost sight of the commercial considerations entirely. Regrettably, this mediation failed. Despite our best efforts to shift the focus to the core issues, the parties could not move past the deep personal wounds that had taken root – in a commercial dispute. And a once thriving business is now likely to lay in its wake due to these dignity violations not being identified and addressed earlier.

This experience, and many others like it, reinforce the need for us as mediators to develop the sensitivity and the courage to address dignity violations head-on. Here are some practical strategies and reminders to add to your mediation toolkit:

See next page





1. Acknowledge that dignity matters

Even in purely commercial disputes, be alive to the possibility that dignity violations have occurred and may be driving the parties' intransigence.

2. Name it, gently

Create a safe space for parties to articulate how they felt diminished or disrespected. A question as simple as, "How has this process impacted your sense of respect and value in the relationship?" can open the door to important conversations.

3. Identify cross-dignity dynamics

Often, both parties feel that their dignity has been compromised. Recognising this mutual experience can help parties see that they are not alone in their hurt—and that moving forward will require addressing both sides' sense of self-respect.

4. Encourage acknowledgement and apology

When appropriate, encourage parties to acknowledge the dignity violations they have caused — even if unintentionally. A sincere apology, or even an expression of regret, can be more powerful in unblocking negotiations than any financial concession.

5. Refocus on shared commercial goals

Once dignity concerns are acknowledged, help parties reconnect with the practical reasons they are in mediation: preserving a valuable business relationship, resolving costly disputes, or protecting reputations. Dignity repair paves the way for productive dialogue on these commercial imperatives.

Mediators are often called to be guides in terrains that the parties themselves might not be aware of. Recognising dignity violations as a hidden but powerful driver of conflict — even in the world of commercial disputes — can transform the way we approach our work. While not every case will be as extreme as the one the writers hereof recently encountered, where dignity violations completely overshadowed financial realities, the potential for these dignity violations to derail progress is real and ever-present.



By attending to the parties' dignity early in the mediation and with care, we as mediators can help the parties move beyond the personal to rediscover common ground — even if that common ground is measured in Rands and Cents. Let us, as mediators, continue to honour not only the easily identifiable legal and financial dimensions of a dispute but also the underlying, deep, human need to feel respected and heard.



Written by Michiel Bouwer & Anri le Roux
Bouwer & Olivier Inc.
June 2024

Competence ['kɒmpə'tens]

Everything you need to know about MiMM'S CERTIFICATES OF COMPETENCE for the Gauteng High Court Project

Following the issuing of the Mediation Directive and Protocol on 22 April 2025, as well as its revision issued on 09 June 2025, the MiMM EXCO has worked tirelessly to study, review and understand the requirements placed on Recognised Mediation Organisations (RMO's) and Qualified Mediators to participate in the Gauteng High Court Project (GHC Project). We at MiMM believe it is our duty and privilege to enforce the standards set for RMO's and Qualified Mediators in the Mediation Directive and Protocol, to communicate this to our members and to ensure compliance thereof through our internal processes that follow.

We are proud to confirm that MiMM complies with the standards in Annexure B of the Mediation Protocol to qualify as a RMO for purposes of the GHC Project. The conferring of an RMO status on MiMM not only enables us to provide our member mediators with mediation opportunities in this GHC Project, but also places a burden on MiMM to ensure that our mediators properly and compliantly mediate under our auspices.

Herewith follows a breakdown of some of the prominent provisions of the Mediation Directive and Protocol (as at June 2025) that informed MiMM's internal certification processes for the GHC Project. Please keep in mind that these requirements have been set by the Judge President of the Gauteng High Courts, and are non-negotiable for RMO's or Qualified Mediators to comply with:

ANNEXURE A – REQUIREMENTS FOR APPROVAL AS QUALIFIED MEDIATOR

PARAGRAPH (a) – TRAINING REQUIREMENT

If you are a registered member of MiMM, the EXCO would have reviewed your mediation training and confirmed that you comply with the requirements of paragraph (a). MiMM has full confidence in the mediation training provided by Mediation in Motion Training (Pty) Ltd in association with the University of Cape Town's Law@Work Program. MiMM also ensures that all MiMM's affiliate members' mediation training, which they completed with other mediation training organisations, comply with the requirements of this paragraph (a), and aligns with MiMM's objectives as an organisation to ensure a uniform standard and high quality of formal training for our members.





PARAGRAPH (b) – PRACTISING UNDER THE AUSPICES OF A RECOGNISED MEDIATION ORGANISATION

This paragraph highlights some requirements that must be complied with by MiMM's members before they may participate in the GHC Project, being:

1. You must be a registered member of MiMM;
2. You must subject yourself to MiMM's codes, policies and rules;
3. You must comply with MiMM's codes, policies and rules when you practice as mediator; and
4. You must subject yourself to MiMM's oversight when participating in this GHC Project.

The EXCO implores all MiMM's members to re-familiarise themselves with our codes, policies and rules if you have not done so recently. It is your responsibility to ensure that you understand the content of these documents so that you can practice in compliance therewith, with ease. It is also important to note that MiMM must exercise oversight over its panel of mediators for the GHC Project and for this reason our mediators must keep us informed of their participation in the GHC Project (this also ties in with the reporting onus placed on RMO's in terms of Annexure C of the Mediation Protocol).

PARAGRAPH (c) – ADDITIONAL POST-TRAINING COMPETENCE CERTIFICATION BY RMOs

This paragraph is very important and is the reason for MiMM's issuing of Certificates of Competence. As RMO, it is MiMM's duty to "certify that mediators on their panel have the necessary skills, experience and competence" to participate in the GHC Project. It goes further to emphasise that it is MiMM's responsibility to ensure that properly certified mediators participate under their auspices in this GHC Project. This paragraph confirms that MiMM has the authority to decide what internal processes and assessments their members must undergo in order to be certified – which may include additional training or first observing mediations.

There are five routes [[Click the link to view](#)] that MiMM members may follow in order to apply for their Certificates of Competence to participate in the GHC Project under the auspices and on the panel of MiMM.

After much deliberation, it was decided that MiMM issue two certificates to our members – a Certificate of Competence, which is a final certificate, or a Provisional Certificate of Competence, which is issued on a provisional basis and subject to certain conditions. Both of these certificates are subject to ongoing compliance with MiMM's codes, policies and rules and may be revoked should a mediator act contrary thereto.

The Provisional Certificate of Competence is issued with express stipulations and instructions personalised to each mediator applicant to ensure that he/she gains crucial practical mediation experience before a final Certificate of Competence is issued. This process aligns with the MiMM's obligations as RMO and is implemented because we are alive to the fact that many of our members have little to no



practical experience as a mediator under the auspices of MiMM.

Although MiMM has full confidence in the quality of mediation training our members received, we take this opportunity to identify and set achievable steps for our members to gain necessary and valuable practical mediation experience. The benefit that MiMM members receive is being part of a network with like-minded mediators that create opportunities to act as observers or co-mediators for one another. MiMM is here to assist and guide all of our members in this process, to ensure that when we ultimately issue the final Certificates of Competence, we ensure that the MiMM mediator will practice in such capacity with the necessary knowledge, confidence and integrity.

Thank you for your ongoing commitment to MiMM and for trusting us to guide you in this very exciting, long-anticipated and radical mediation project!



***the full revised Mediation Directive and Protocol is available on our website.**

[CLICK HERE](#)



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REFLECTING ON A MILESTONE SEASON

Shew! What a whirlwind the past three months have been! It's been an exciting and fast-paced time for mediation in South Africa. We kicked things off with our engagement with the South African Law Reform Commission on the proposed Mediation Bill, and before we could catch our breath, we were fully immersed in the Gauteng High Court Mediation Directive.

As an organisation, we had to move quickly – and I'm proud to say we did. From the social desk, my focus was on upgrading our website to reflect all the changes, resolving a few teething issues as we saw a surge in membership registrations, and helping manage the flow of requests around competency.

It's been a full season, but also a fulfilling one. Connecting with our members – whether new or long-standing – has been a real highlight. Your support, encouragement, and positive feedback have meant a lot and kept us going through the busiest of days.

We're especially pleased to now have a dedicated Gauteng Directive page on our site. It includes all the latest updates, key documents, and an easy process for registering on our panel. We've also made our mandatory policies publicly available and created a listing of panel experts to help streamline the search for competent mediators.

Communication has really been a big focus. From explaining membership requirements and competency pathways to sharing new templates, policy changes, updates about the AGM, and rolling out our Ask the Expert sessions – we've been doing our best to keep you in the loop. It's been a busy time, but we continue to rise and strive.

And we know that thoughtful feedback only helps us grow. So please keep those lines of communication open. Your suggestions and ideas are always welcome – just drop us a message at media@mimmediators.co.za. Let's keep the conversation going.

For those on our silver membership tier, we've also uploaded a few extra templates to support your practice – we hope they're helpful!

As the mediation landscape continues to evolve, so will we. Our EXCO team is actively involved in new projects, MOUs, and partnerships designed to create more opportunities for our members to run thriving mediation practices.

Thank you for being part of this season with us. There's more ahead—and we're just getting started.



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NEXT ONLINE

ANNUAL GENERAL MEETING

09 July 2025 | 6:00pm

Join us for the **Mediation in Motion Mediators (MiMM) NPO Annual General Meeting**, where we'll provide key **updates** on the work that has been happening behind the scenes and **share our plans** for the future. We look forward to engaging with you and building our vision together.



As part of the agenda, we will also be **voting on proposed amendments to our Constitution**. These changes are crucial to strengthening our governance and aligning with new mediation initiatives.

The **link to the proposed amendments is provided below**. Please continue to check this link for any updates prior to the meeting.

[Old Constitution](#)



[New Constitution](#)



Any written comments or questions on the proposed constitution must please be sent to **secretariate@mimmediators.co.za**