

# Workshop on Applicability of ADR techniques to Reduce Pendency in Courts

26<sup>th</sup> & 27<sup>th</sup> November, 2016

National Judicial Academy, Bhopal

Presentation by :

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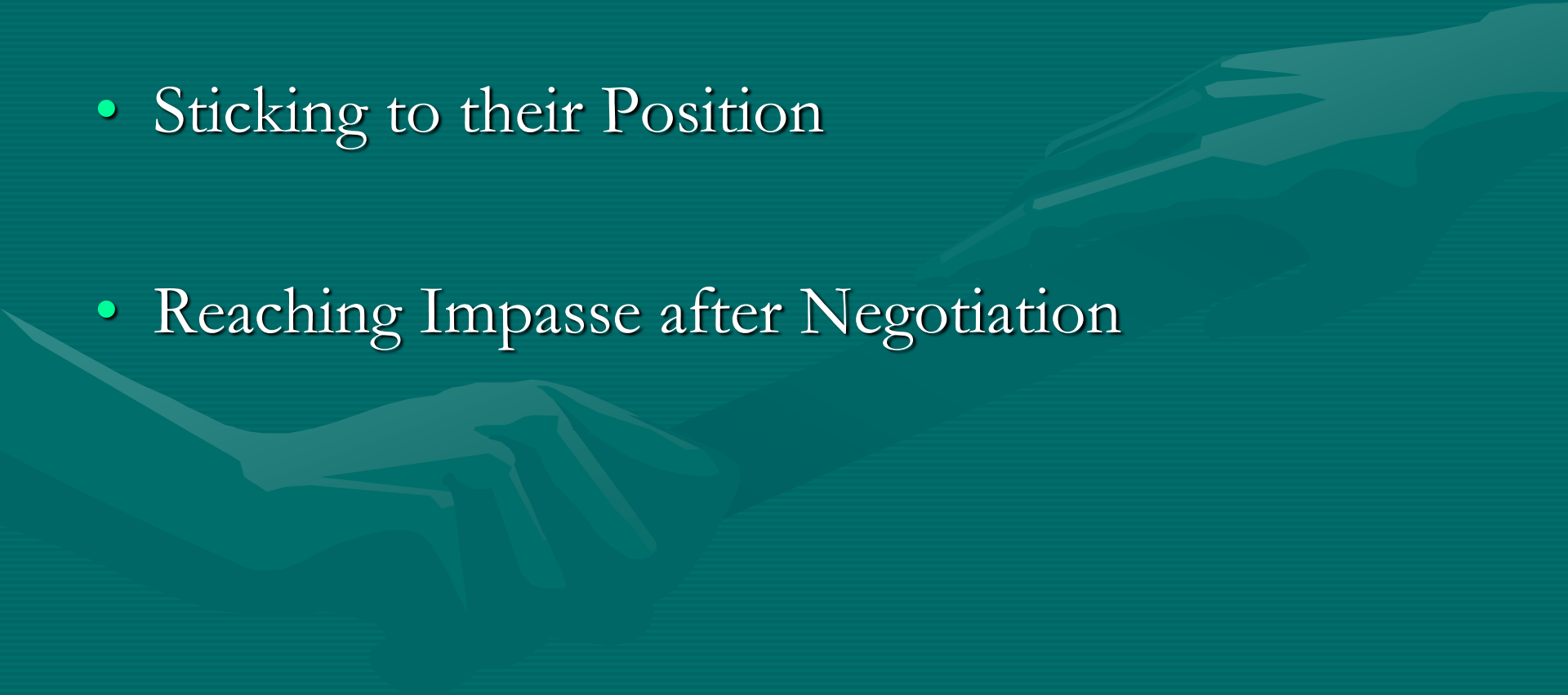
# Session - 4

REDUCING DIFFERENCES  
BETWEEN PARTIES : ROLE OF  
DIFFERENT STAKEHOLDERS



# Differences

- Unwilling for Negotiation
- Sticking to their Position
- Reaching Impasse after Negotiation



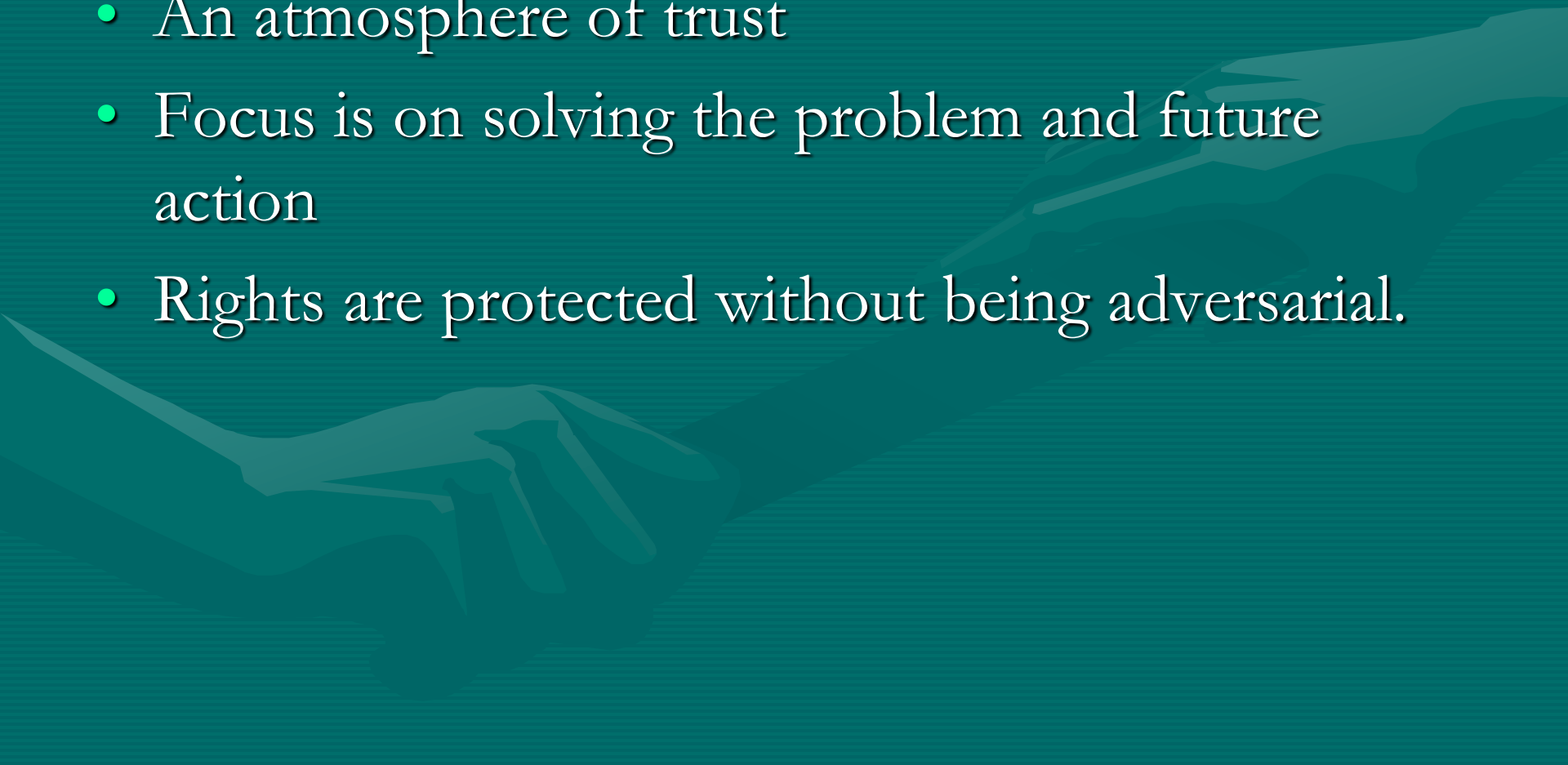
# THE STAKEHOLDERS

- Parties
- Referral Judges
- Mediators
- Advocates
- Registry




# All Stakeholders

- Informal and polite
- An atmosphere of trust
- Focus is on solving the problem and future action
- Rights are protected without being adversarial.



# Communication

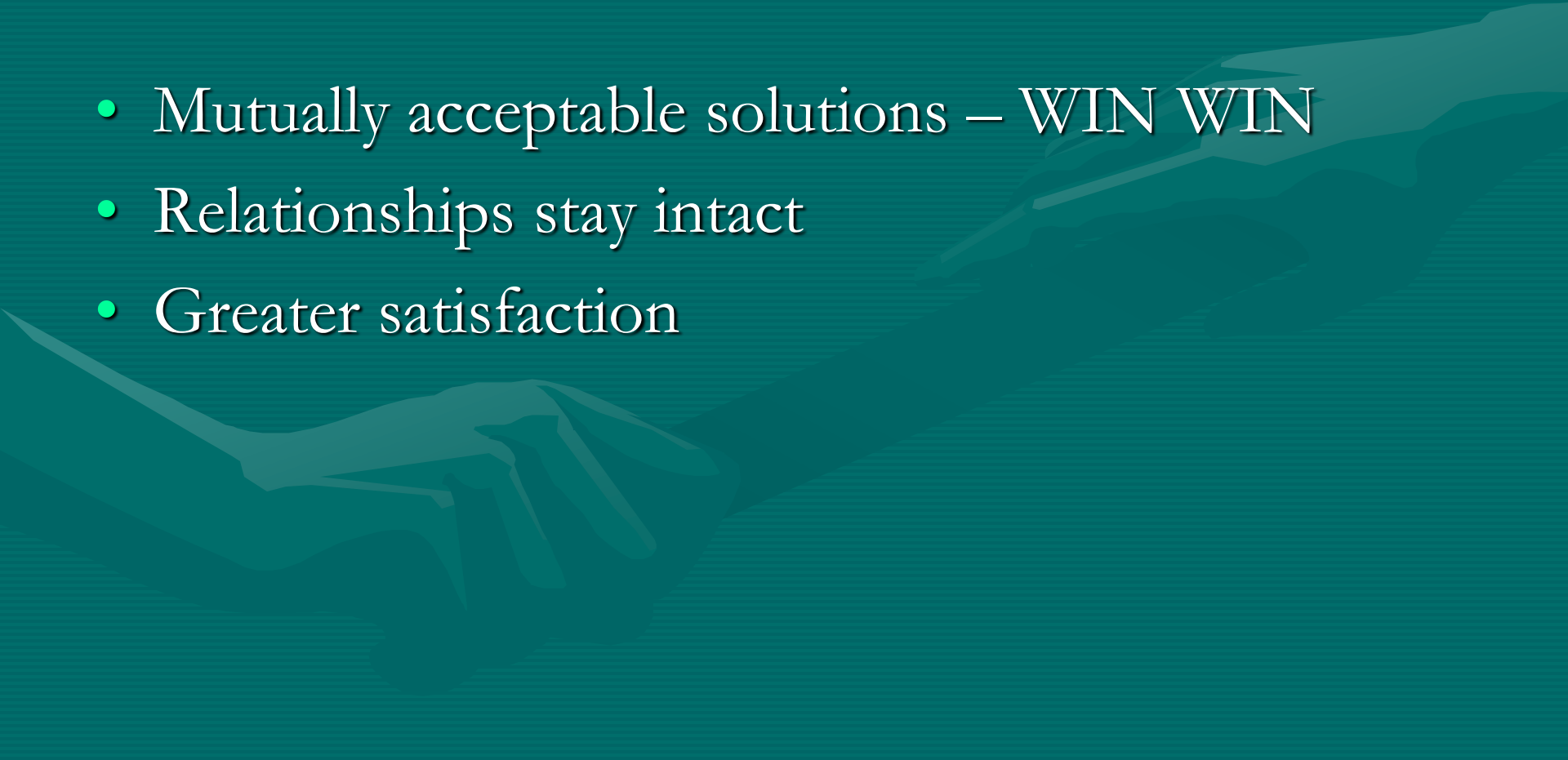
- Flow of information becomes more open, accurate and honest
  - Two way exchange of communication and parties communicate directly to each other
  - Helps to identify the needs of the parties and find mutually acceptable solutions
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- A faint, stylized background image of two hands shaking, symbolizing agreement or communication, is visible behind the text.

# Techniques

- Parties try to identify their interest and possible solutions
- Discussions to identify satisfactory options
- Negotiation to identify mutually agreeable options
- Consensus-building to reach an agreement

# Consequence

- Mutually acceptable solutions – WIN WIN
- Relationships stay intact
- Greater satisfaction



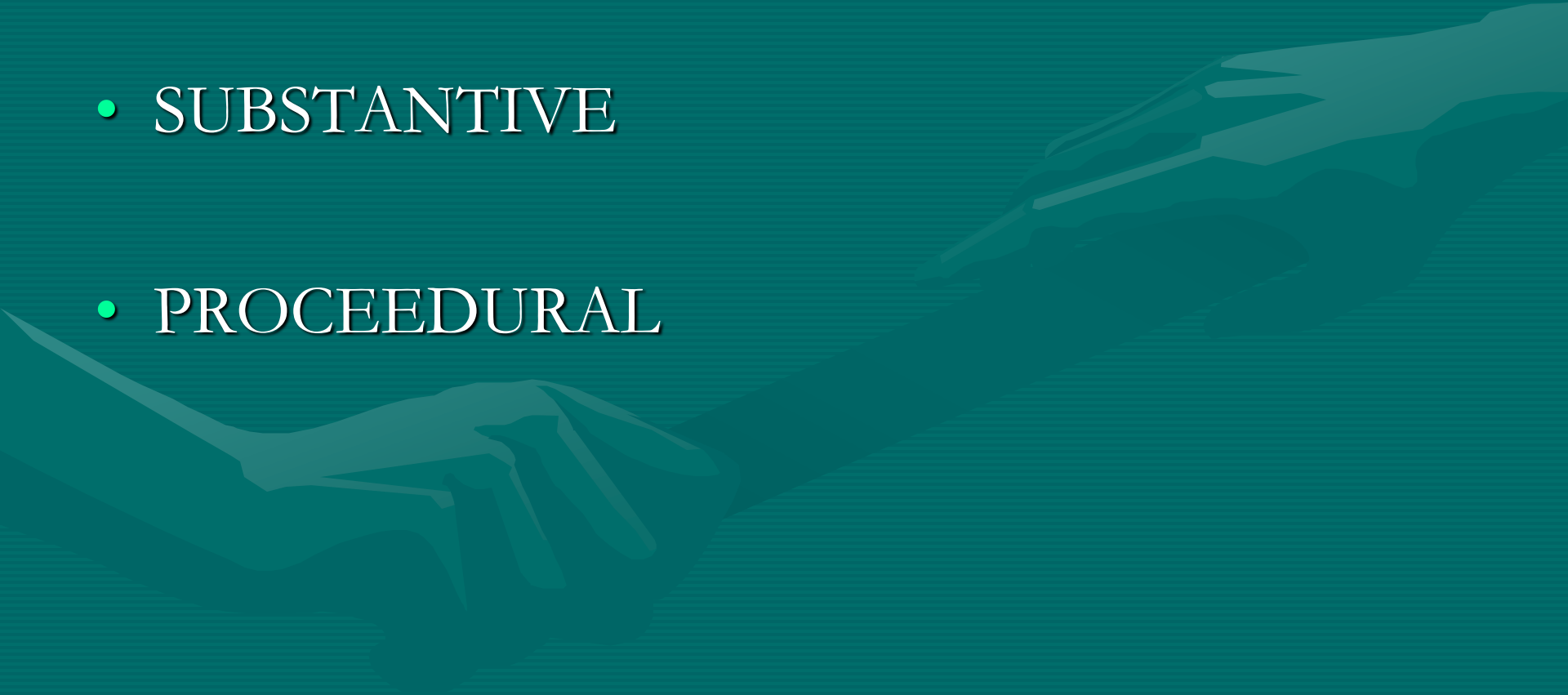


# BARRIERS OF NEGOTIATION

- Strategic Barriers
- Principal-Agent Barriers
- Cognitive Barriers
- Psychological Barriers

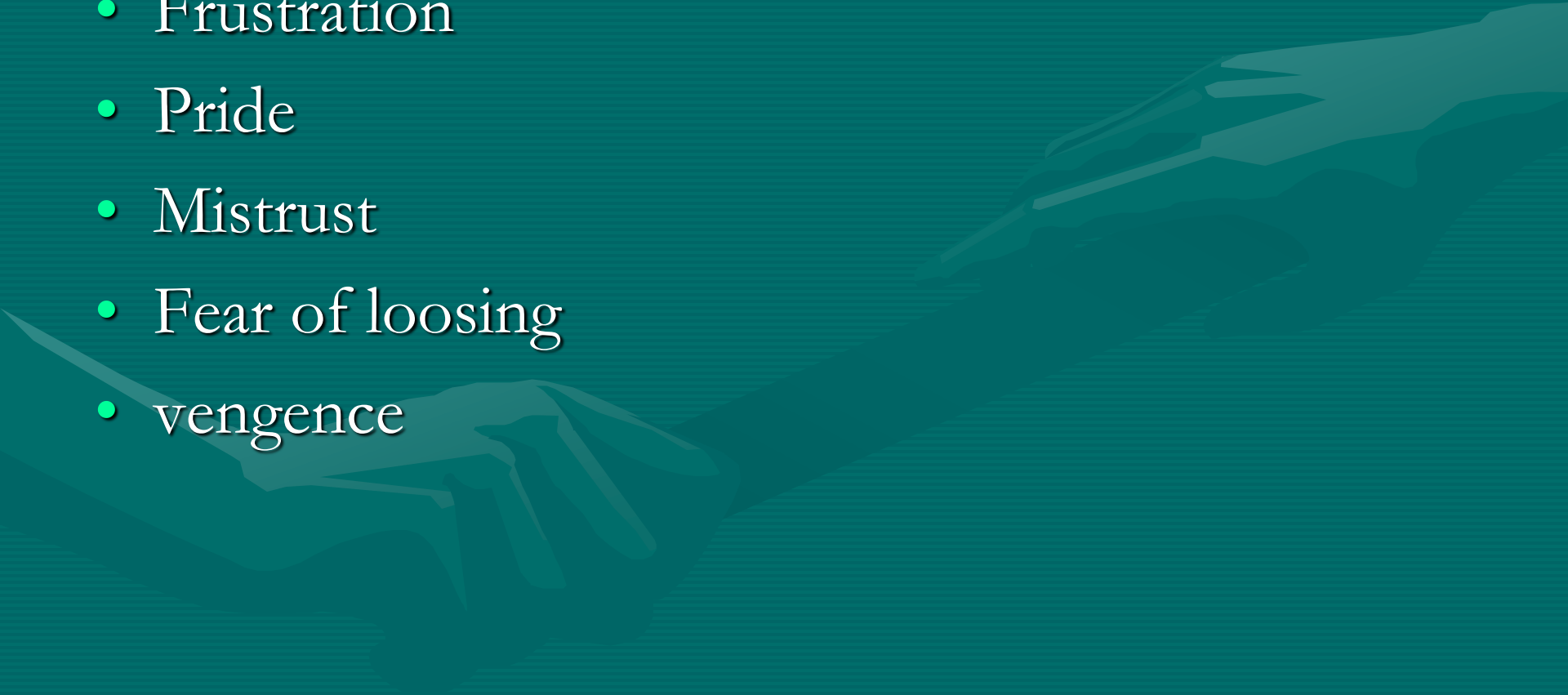
# IMPASSE & TYPES

- EMOTIONAL
- SUBSTANTIVE
- PROCEEDURAL



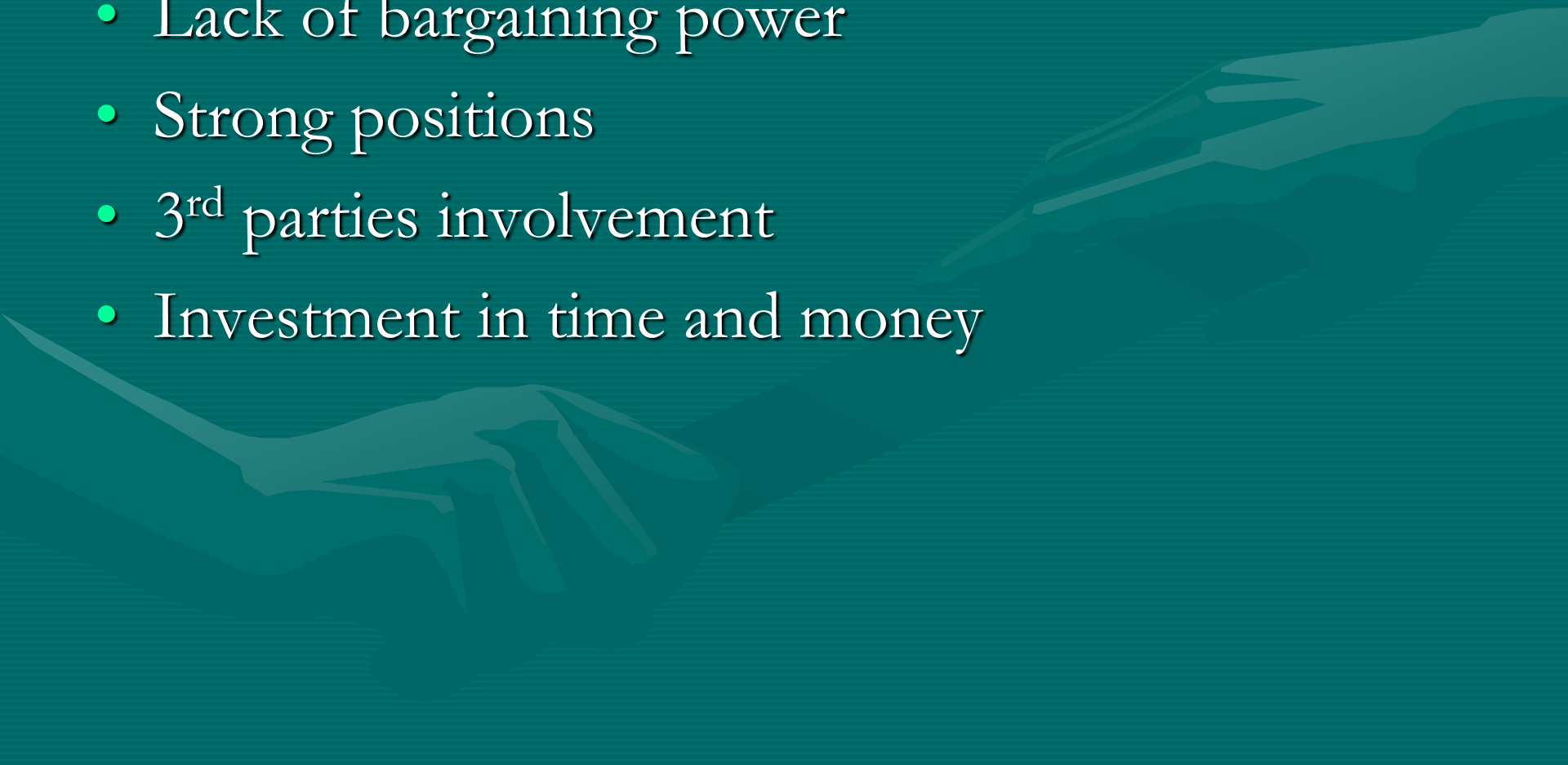
# EMOTIONAL

- Personal animosity
- Frustration
- Pride
- Mistrust
- Fear of loosing
- vengence



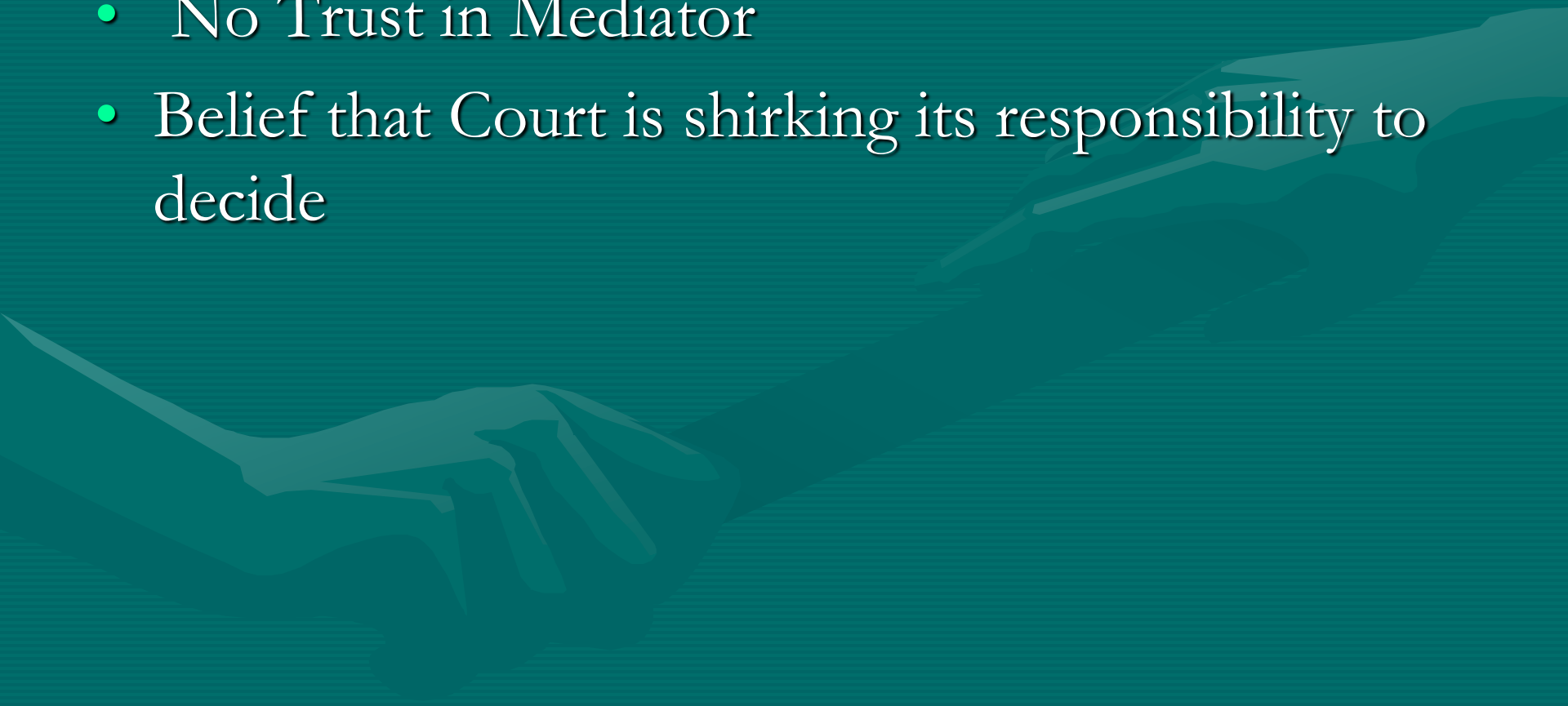
# SUBSTANTIVE

- Lack of knowledge
- Lack of bargaining power
- Strong positions
- 3<sup>rd</sup> parties involvement
- Investment in time and money



# PROCEEDURAL

- No trust in Process
- No Trust in Mediator
- Belief that Court is shirking its responsibility to decide



# STRATEGIES

- Start all over again
- Caucus
- Take a break
- Postpone the issue for later
- Review progress made
- Refer to similar situations
- Approach from new angle
- Propose option for new framework
- Expert opinion
- Explore hypothetical's
- Draw on flip chart
- Go back to WATNA, BATNA AND MLATNA

# MEDIATORS ROLE

- Right Based to Interest Based Negotiation
- Distributive to Integrated Bargaining
- Separate people from the problem
- Focus on interests
- Create Variety of options
- Rely on objective criteria

# ADVOCATE'S ROLE

- Understanding the Difference between Mediation Advocacy and Arguments before Court
- Allowing parties to take primacy
- Preparing their parties to negotiate better
- Drafting Agreements with clarity and without being adjudicatory



# REFERRAL JUDGE'S ROLE

- An Ideal Referral
  - \* Summoning of Parties
  - \* Explaining in brief about mediation
  - \* Passing appropriate Referral Order
- Monitoring

Monitoring –Vs- Confidentiality
- Recording Agreements

# Parties' Role

- Wants –vs- Needs
- Viewing from the Opponent's view point
- Communicating honestly and politely
- Understanding the Benefits of Mediation & Ending Litigation
- Moving from the past to future

# Registry's Role

- Providing Comfortable atmosphere
- Receiving and guiding parties
- Maintaining Records and Prompt Service



# Questions

....Thank you

