

Quick Guide to Mediation in Canada

What is Mediation?

- ❖ Mediation is a method of solving disputes between two or more individuals or organizations without involving a court.
- ❖ The disputants are supervised and guided through the issues under discussion by a neutral, trained mediator, which they have appointed.
- ❖ The aim of mediation is for all parties concerned to reach a mutually satisfying agreement without the need for litigation.

The Benefits of Mediation

Compared to going to court to resolve a dispute, mediation has the following benefits:-

- ❖ Informal
- ❖ Less aggressive
- ❖ Personal issues remain confidential and cannot be discussed in court at a later stage
- ❖ There is no complicated paperwork to file.
- ❖ Costs are also much lower because you do not have to have a lawyer present, nor do you have to pay to file your case or pay witnesses to attend your mediation session
- ❖ No imposed solutions
- ❖ Repairs communication between all sides concerned, whereas a legal case may only serve to reinforce the rift

Who Should Attend a Mediation Session?

- ❖ Everyone involved in the dispute must be present at the mediation session.
- ❖ You do not have to use a lawyer to represent you, but if you are using a lawyer, they too must attend. They cannot represent you – you must be present at the mediation.
- ❖ You will also need telephone access to anyone who can help you to settle the dispute once a solution is agreed.
- ❖ If your dispute involves a company a member of staff who has the power to make a decision on behalf of the company must attend.

- ❖ Minors and those with a disability that impairs their decision-making process or anyone suffering mental illness are not allowed to participate in mediation.

What Disputes can be taken to Mediation?

As long as the dispute in question is a civil case (i.e. not a matter for criminal law) there is no limit on the dispute that can be discussed at mediation. Some common examples are:-

- ❖ Family disputes like adoption, divorce, separation, child welfare and disagreements between teenagers and parents
- ❖ Disputes over wills and estates
- ❖ Disputes with neighbours
- ❖ Disputes over employment
- ❖ Disputes regarding insurance and banking
- ❖ Disputes over property and real estate
- ❖ Contractual disputes
- ❖ Disagreements over transportation

How long will Mediation take?

- ❖ Mediation is a much faster solution to solving disputes than taking legal action; disputes may be resolved in a matter of hours.
- ❖ Mediation can be sought immediately rather than relying on the courts to process paperwork and set dates.
- ❖ Solutions are also far faster to reach when all parties sit down and discuss the dispute in depth together.
- ❖ The actual length of a mediation session and the number of sessions required depend on the complexity of the case and how well the parties have prepared for the mediation.

Mandatory Mediation

- ❖ In some Canadian provinces like Ontario, most civil cases are referred to mandatory mediation unless there is a court order exempting them.
- ❖ All parties must compile directions regarding the issues in need of mediation
- ❖ The parties involved can appoint their own mediator but if they cannot agree a mediator will be appointed by the court.
- ❖ The costs of the mediation session may also be apportioned to each side via the courts.

- ❖ A minimum of 7 days before mediation, all disputants must give the mediator and all of the other disputants a Statement of Issues. Any documents involved in the dispute must be included with this document.
- ❖ Failure to attend mandatory mediation will result in additional costs and a ruling against you by the court e.g. if you are the defendant you may have to settle the claim against you in full. If you are the claimant or plaintiff your case will be dismissed.

Choosing a Mediator

- ❖ Mediators are qualified people skilled in techniques aimed at improving discussion between all parties concerned. Their training in mediation techniques must be approved by the Attorney General in each province.
- ❖ The mediator's ultimate goal is to ensure that the disputants reach a mutually acceptable agreement in a constructive and fair manner.
- ❖ Both parties should agree on the choice of mediator unless mediation is mandatory and a mutual choice cannot be reached.
- ❖ It is wise to choose a mediator who specializes in the area of the dispute e.g. many mediators specialize in family mediation and if your dispute is of this nature then a family mediation specialist will be well versed with the issues under dispute.
- ❖ You should also consider the mediator's qualifications, experience and style of mediation – ask for references before you make an appointment.
- ❖ You can get a list of mediators from the Local Mediation Coordinator or from www.legalcommunitycanada.com
- ❖ It is wise for all parties to meet with the mediator prior to the main mediation session.

Mediation Costs

- ❖ Mediator fees are comparable to that of an attorney, but the mediation process takes much less time than going to court.
- ❖ All parties share equally in the cost of the mediation session.
- ❖ Mediators attending mandatory mediation session charge around \$600 – \$825 plus GST.
- ❖ If the mediation session overruns the allotted time the mediation may continue at an agreed rate.
- ❖ A mediator may charge expenses that the parties agree to before the mediation begins.

- ❖ If you are unable to pay the mediator's fee due to economic hardship and you can prove this with a legal aid certificate or by meeting the criteria laid out by the Ministry of the Attorney General.

Mediation Locations

- ❖ Any location that is convenient and acceptable to all parties
- ❖ The mediator's office
- ❖ The office of one of the parties or one of the lawyers
- ❖ At the court facilities

Preparing to Mediate

- ❖ Both parties should be ready to mediate and should do so on an even playing field e.g. if one party is using a lawyer the other should consider doing so too.
- ❖ Timing is important e.g. one or more of the parties involved may not be emotionally ready to be objective if the mediation is set for a date soon after a loss or injury, which forms part of the dispute.
- ❖ If the dispute revolves around an injury, enough time must have passed to evaluate the actual losses experienced.
- ❖ Sometimes an interim mediation session to settle short term issues rather than the whole dispute provides a solution.
- ❖ Parties should consider various solutions to the dispute.
- ❖ Consider what will happen if the case does not settle at mediation?

What happens at the Mediation Session?

- ❖ The mediator explains the mediation process and reviews the terms of the mediation, which may be set out in a written 'agreement to mediate.'
- ❖ Each party takes turns to state their grievances relating to the dispute.
- ❖ Each side may bring in witnesses and present evidence.
- ❖ The mediator structures the discussion.
- ❖ All parties have an opportunity to ask questions.
- ❖ The mediator will help the parties to explore settlement options.
- ❖ The mediator may meet separately with each of the parties either before the session begins or during the session.
- ❖ The mediator compiles a written document of detailing the agreed solution.

Enforcing Mediation Agreements

- ❖ Agreements resolving some or all of the issues in dispute must be in writing and signed by the parties or their lawyers.
- ❖ If the agreement settles the case, the defendant or the defendant's lawyer must file a notice with the court advising of the settlement within **10 days** of the agreement being signed (or, in the case of a conditional agreement, within 10 days of the condition being satisfied).
- ❖ Agreements reached at mediation are legally binding.
- ❖ If a party fails to comply with a signed agreement, any other party to the agreement may make a motion for judgment under the terms of the agreement.
- ❖ The claimant can continue the legal proceedings as if there has been no agreement.