

COMING TO MEDIATION?

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What you can expect and what is expected by the mediator you have selected:

- A. One or both of the parties should take the lead in scheduling the mediation. While it is open to the parties to have their lawyers deal with scheduling of the mediation, it is usually not wise to add more people into the scheduling process than is necessary. The easiest is if one of the parties takes the lead in communicating with our office and the other party in order to schedule the mediation. Some families find that scheduling takes a great deal of back and forth communication, and accordingly, we find that it works best if our office is **not** in the middle of that communication. Once the parties have agreed on their available dates, then one person should be communicating with our office to schedule mediation and communicate back the results of that scheduling to the other party.
- B. While every case and every family is different, our experience is that most mediations will last somewhere between four and 16 hours, and average six to 10 hours, spread out over one to four sessions. Generally speaking, we will schedule the first mediation to last for two hours, but leave ourselves open for the possibility of continuing on to the third or fourth hour in the first session if we feel we are making progress and people's time and energy allows.

While there is the possibility for your mediation to take longer, generally speaking, we will be able to determine whether or not it makes sense to continue the mediation somewhere around the second, third or fourth hour, and usually by the time we have spent two hours.

- C. Depending on the complexity of the issues and the personalities involved, the parties can expect that the first hour or two of the mediation process may only deal with introducing the mediation process, confirming the commitment to mediate, signing the mediation contract, and providing the mediator with necessary background information so that the stage is set for the real work to begin.

- D. The mediator expects that either the parties have agreed to share the cost of mediation on a 50-50 basis or that they have, in advance of the mediation, come to a different agreement as to how they are going to finance and pay for the mediation.

Options include:

- (a) Each party being responsible for 50% of the mediation fees;
- (b) The parties share the cost of mediation *pro rata* in relation to their total incomes;
- (c) The parties decide to reimburse themselves the costs of the mediation out of a joint asset;
- (d) One of the parties fronts the total cost of the mediation and the other party's share is taken out of the ultimate settlement;
- (e) One party pays the whole cost of the mediation or a substantially greater percentage of the cost of the mediation.

If the parties are expecting to 'mediate' how they are going to share the cost of the mediation there will have to be a commitment to pay for the time spent mediating that issue before it can proceed.

- E. **NOTE:** Notwithstanding how the parties agree to share the cost of mediation, the parties will be expected to pay for each session in advance or immediately following the completion of each session. The mediator's fees are based upon the mediator's hourly rate, plus GST, for the time spent in preparing for, conducting and providing follow up to the mediation. The fees can be paid by Visa, MasterCard, Direct Debit, cash or cheque.
- F. The mediator can not provide legal advice to either party. Sometimes, however, the mediator will provide 'general legal information' in a neutral way to facilitate ongoing discussions.

NOTE: It is recommended that both parties obtain independent legal advice before beginning the mediation with respect to their legal rights and obligations in relation to the matters in dispute and in relation to the merits of proceeding with the mediation.

- G. Anything said or done or disclosed in the mediation remains confidential, and neither party can use that information as evidence in any Court proceedings. The mediator will not be a witness in any Court proceedings.
- H. What makes mediation work or not work, as the case may be, are, in order of priority, the following:
- (a) The parties' commitment to mediate;
 - (b) The parties' mental health;
 - (c) The skill and ability of the mediator;
 - (d) The availability of the information that parties need to make the decisions required during the mediation. This is primarily disclosure and financial information.

Mediation can still be successful even in the absence of any of the above; however, it makes the mediation harder.

- I. If the parties reach an understanding at mediation, that understanding can be documented in different ways including:
- (a) Photocopying handwritten notes of the mediator that reflect the understandings reached;
 - (b) A formal written mediation report outlining the understandings reached between the parties;
 - (c) Having the mediator prepare the draft Settlement Agreement or Court Order reflecting the understanding reached.
- J. Any one of the parties or the mediator can terminate the mediation at any time for any reason. A party terminating the mediation should give due consideration to the pros and cons of other options which may be pursued if the matters are not resolved in mediation.

PREPARATION FOR MEDIATION

- K. Parties come with various levels of preparation. At one end of the spectrum parties come without the benefit of any legal advice or information. At the other end of the spectrum parties come having been briefed for hours by their lawyers in preparation for mediation. Each family and their needs and requirements is different depending on the issues in dispute, the complexity of the case, and the personalities involved.
- L. It often saves time and expense involved in a mediation for one or both of the parties to come prepared with a detailed list of assets and liabilities of both parties; financial information relating to incomes and income producing ability; any necessary disclosure or backup documentation with respect to assets and liabilities; and any other information or backup documentation in relation to the issues in dispute.
- If there are any Court documents or agreements in place it is helpful to bring a copy of those to the mediation.
- M. In short, bring everything. It may not be necessary, but if it is required, the mediation will not be delayed as a result of the information not being available.

MORE INFORMATION?

Parking

- N. Please see our website in relation to appropriate parking lost. Please note that it is wise to not park at a meter where you will be distracted from the mediation by worrying about the expiration of your meter.
- O. You should speak to your lawyer about any further information you require. If either of you require further information from the mediator, it will be provided in a neutral way at the beginning of the mediation or, if the parties wish, a pre-mediation meeting can be set up so the parties can jointly review the questions and concerns they have about mediation with the mediator and then seek further legal advice before coming into the mediation process. The parties will be expected to compensate the mediator in the same manner as set out above.
- P. An Agreement to Mediate is attached to this information handout.