

FAMILY MEDIATION

Consumers' Guide



This booklet is prepared by Family Mediation Canada, a non-profit, national association organized to promote the use of mediation to settle the family disputes that may come with separation and divorce. While Family Mediation Canada itself is made up of professional mediators, lawyers, judges, teachers, social workers, psychologists and others who deal with family concerns, those members who are mediators all follow a Code of Professional Conduct, a copy of which can be obtained by writing to Family Mediation Canada.

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Each separation or divorce is one-of-a-kind, just like each marriage. During the marriage a couple works together on ways to solve family issues. When the marriage ends, by separation or divorce, that 'working together' is harder, and there are new issues to deal with.



In the past solving family issues often meant going to 'outsiders' for help. Each marriage partner (spouse) would hire a lawyer, and the lawyers would write letters and legal documents listing what each spouse wanted until, maybe, the spouses could agree. Or problems would be taken to a judge for a decision.

Sometimes a family member, a friend, or clergy would help the spouses. And sometimes none of these things happened, because the spouses couldn't afford a lawyer, or didn't have a trusted third person willing to help them, or because they just couldn't talk to each other anymore.

Today there is a different way of dealing with the issues and problems that come with separation and divorce. It's called **MEDIATION**.

Mediation isn't marriage counselling - that is for couples who want to get back together again. Mediation is a way for you and your spouse to continue working together, to solve the new issues that come with separation.

How Does Mediation Work? It works in the way that's best for your family. Usually the mediator meets with you both, at the same time. Sometimes there are separate meetings too - whatever works best in your one-of-a-kind family situation. You each have an idea of what problems or issues need to be solved, but your ideas may be different. The mediator helps you find the issues on which you already agree, then works with you and your spouse for the best solution to the others.

What Kinds of Issues? Some of them are big, others aren't. For many couples, some or all of the following may be questions in the mediation:

- *How will we divide the things we own?*
- *Who will the children live with?*
- *What happens to our debts?*
- *We both want to live in the house. Who will?*
- *If the kids live with my spouse, how can I keep in touch with them?*
- *How can I live on a reduced income?*

Each of you will have different questions, but all of the questions are about the future. Did you notice that? That fact, too, is an important part of mediation.

That Was Then. This is Now. There are as many reasons for separation as there are couples who separate. Most separations, no matter how friendly, come along with some sadness or anger, blame, or even a sense of failure. These feelings are natural and important, but they won't help the mediation

process. Now, and in the future, the decisions you make are going to touch you, your spouse, your children, and others close to you.

Let's look at an example:

Frank and Sally were married for 11 years. They had a house (half paid for), a dog and two great kids, a boy of 10, a girl aged 7. Frank had a good government job and Sally worked as a part-time bookkeeper. Neither of them could really put a finger on it, but something was wrong in their marriage.



One night after dinner, Frank told Sally he'd fallen in love with a woman at work and he wanted to leave. They both cried a lot and that night, Frank moved his things into a motel.

Sally's parents were shocked, angry and very sad. They told Sally to go to a lawyer. From the very first conversation, Sally's lawyer knew one thing - Frank and Sally agreed on an important issue: they both loved the children very much and wanted to do what was best for them. The lawyer suggested mediation and gave Sally the name of a mediator whose work he knew.

Sally met with the mediator first, by herself. She found out how much it would cost, how long it would take, and what to expect. The mediator gave her a booklet about mediation and some financial information forms - one set for Sally, one for Frank. Then Sally called Frank.

They met for lunch. They talked about the children and the house and how work was going. When they 'got down to business' it turned out that Frank had seen a lawyer too, and knew something about his legal rights and duties. He was willing to give mediation a try.

What Happens in Mediation? Each mediator will do things a little differently, but each is there to help you and your family. This doesn't mean 'agreement or else'! And it doesn't mean that the mediator will try to talk you into something.

Starting to Mediate. In Sally and Frank's case, both had already seen lawyers, and Sally had seen the mediator. When they did meet, together with the mediator, she went over some of the same information with them both. She told them **how** mediation works, how the issues would be dealt with, how long it might take, and what it would cost.

Frank and Sally also learned that the mediator wasn't going to be for or **against** either of them. She would be impartial, she wouldn't take sides, or pass judgement on them, their problems, or the solutions they came to. At the end of the meeting the mediator asked each of them to read and sign an agreement. The agreement was about some of the basic rules they would follow in mediation. Finally, the mediator encouraged Frank and Sally to keep in touch with their lawyers, and reminded them that mediation didn't **replace** a legal solution to their problems.



Do I Go To A Mediator Instead of a Lawyer? No. Even though some mediators are lawyers, the work a mediator does is quite different from the work your lawyer does for you. The mediator helps you and your spouse work out the issues and problems which come with separation and divorce. The mediator will know the federal and provincial laws, but your own lawyer is still needed to tell you what your rights and duties are, and to advise you on any written agreement you come to.

The Next Steps. Once you and your spouse have decided to use mediation, the mediator will help you through the steps. Again, your own situation is one-of-a-kind, but the way in which problems are solved often goes like this:



1. What are the issues?

This one seems obvious. You have to know what the questions are before you can find answers. Your questions may include: debts, residence of children, dividing property, visiting schedule, and many others. You may find at this point that you and your spouse already agree on how some of the questions can be answered.

2. What choices do I have?

Once you know what the issues are, you can start working on solutions. Let's say you disagree on the amount of child support payments. A mediator who works with money matters will help you get all the information you need on the costs of raising the children in your own special family situation.

3. Working together.

During the mediation, you and your spouse will identify the issues and look at the choices you each have to solve them. Then, with all the information, you can work together to find an answer that's right for both of you. That 'right' doesn't mean one of you wins and the other loses. The 'right' choice might be a compromise after some give-and-take, but it will be one you come to together, can both live with, and is best for your children.

4. Getting It In Writing.

As you and your spouse work together to find answers to each of the questions, the mediator will make notes of your agreement. When you're finished, either the mediator or the lawyers will write a draft of an Agreement listing all the issues and how each will be dealt with. This draft Agreement will include issues on which you agreed from the beginning, as well as those issues that were solved during mediation.

5. Keeping Your Lawyer Involved.

Remember, the mediator doesn't take the place of your own lawyer. Before you sign any Agreement, your lawyer should check it. Your lawyer will want to be sure the Agreement follows the federal and provincial laws, that your rights are protected, and that you understand and agree to what is written down. If your lawyer sees a problem, if something is missing or isn't clear, you can go back to mediation, or the lawyers can add to or re-write that part of the Agreement.

6. Making It Legal.

Once your agreement is signed, it is a binding, formal, legal contract. Like any other contract, it can be changed only if you both agree to the change, or a court orders it. That's why it is so important to have legal advice.

What Happens to the Agreement? That depends on what you and your spouse do in the future. If you continue as separated spouses, the Agreement stays 'in force' and remains a binding contract. If you divorce, the wishes of one or both of you, and the legal advice you receive, can affect your Agreement. How? In a divorce, your lawyer may want the terms, or contents, of the Agreement to be part of the Divorce Order. In some provinces the judge in a divorce case must look at and approve the Agreement. In other provinces, this is not required as long as the judge knows and is satisfied with the arrangements you've made for the children. Your lawyer will be able to advise you of the rules in your province or territory.

Does Mediation Always Work? No, it doesn't. In fact, for some couples, mediation may not be possible:

- If there has been family violence and one spouse is afraid, that fear might make it difficult or impossible to talk about all the issues.
- If there has been child abuse. The law says that child abuse must be reported and, because all the problems and family background are discussed in mediation, the mediator would find out about any abuse and would have to tell the authorities.
- If one spouse won't agree to mediation, won't continue mediation or won't 'play fair'. Remember, it takes both of you, and you both have to want it to work.

In some cases **most** of the issues can be solved in mediation, but not all. That doesn't mean that mediation has failed. Let's go back to Sally and Frank for an example:

During mediation, all the questions and issues came out, and Frank and Sally worked and compromised to find answers and solutions that worked for their family. But even though they tried and looked at all the options, they just couldn't agree on one very important issue, a visiting schedule for the children. Access (as their lawyers called it) was a real problem for both of them. They did agree that both should see the children as often as possible. But Sally didn't like the fact that Frank was living with his new girlfriend, and



Frank wanted the kids to be part of his new 'family'. In the end they left the question of access out of their Agreement, and asked a judge to make the decision for them. Then, a year later when things had calmed down and settled into a new routine, they went back to the mediator and were able to come to their own agreement on an access schedule.

Mediation Doesn't Have To Be Final. Remember that Agreements can always be changed. Either by a Court Order or if both spouses agree. That's what Frank and Sally did. And that's what other couples also do. Even after a divorce the Agreement, and even the Divorce Order itself, can change to meet new needs or a change in circumstances. Perhaps a spouse receiving maintenance now has a full-time job, or a child now lives with the other parent. A mediator can help you negotiate a change in your Agreement or Order even if a mediator wasn't involved when the Agreement or Order was made.

Now you know what mediation can, and can't do for you. You know how it works, and when it might not work. You know that it's one way for you and your spouse to deal with the special problems of your 'one-of-a-kind' family. Children are a major part of your family, and mediators will make extra efforts to be sure the needs of children are met in any mediation and in the Agreement reached.

The Special Needs of Children.

Children are touched by any change in a family, but may not understand the change or the reason for it. A child probably has classmates or friends whose parents are divorced or separated. That's a fact of modern life. The child will likely handle the idea of mom and dad separating quite well, perhaps better than you imagine. Still, you and your spouse are the adults, and you know all the reasons for the separation, and the child might not. As a parent, there are some important steps you can take to help your child understand the separation and deal with the new family situation.



What To Tell The Kids? If possible, children should learn of the separation or divorce from both parents. What is said depends on both of you (and the mediator can help you plan this), but the children need to know three basic facts:

They still have a mother and a father. Young children may have trouble with this. After all, one parent is leaving. The children may be moved to a new house, apartment or a new school. They need to know that even with all the changes, dad and mom are still there. It's all right that the children know that the separation has made you sad, but that you are both trying to make things right for your children.

It's not their fault. Again, kids don't have the same knowledge about the marriage and why it's breaking up. A child may wonder what he or she could have done to stop the separation, or may try to take the blame for it. The children need to understand that **they** are not the cause of the separation, that they don't have to 'take sides', that both parents love them and will still be part of their lives.

They'll still see both parents. The family they knew will be different. There may be new people and places, and one parent probably won't live with them any more. Those are big changes for children. The everyday things, the routine, becomes more important. If dad always took a child to baseball, let the child know if the routine will be the same. Let the child know that both parents will remain part of their lives and if they will be seen often and regularly. Keep communication going after separation - let the child know that it's o.k. to phone, even for no special reason.

Both parents have a duty to the children which goes far beyond just putting food on the table and a roof over their heads. The children didn't ask for a separation, and it's up to the parents to make it as painless as possible for them. This is easier said than done, especially when you're dealing with your own loss and sadness. These steps may help:

1. *Be prepared to listen and reassure.* A child may need to be told and convinced that there's nothing he or she could have done to prevent the separation. Children may need to talk about it, and go over the same subject again and again. Be patient and try to help.
2. *Give your children special time.* This is something you can both do. 'Special' doesn't have to mean treats, or staying up late, but it does mean watching and being aware of your child's needs. Letting the child talk, providing comfort, and just being around in a familiar routine all help.
3. *Encourage love and respect for the other parent.* This can be hard if your spouse has hurt you, or if all you seem to do is fight. But the children are still children of both of you, and whatever ended your marriage is not their fault. Because you are both parents, you will continue to be 'family' to your children. Even though you may be angry or hurt, your spouse is still the other parent and the children shouldn't feel guilty about loving him or her.

4. *Don't let the children become part of your quarrels.* A child will know that there's something wrong in the family. Don't let arguments or shouting be part of the child's memories. A child can't help in the quarrel, but might try. Leave the children out of the family fights and don't put them in the position of having to choose sides.
5. *Let them be part of plans for the future.* For a young child, this can be as simple as letting the child decide what colour to paint his or her bedroom, or what to have for lunch. Older children might enjoy helping choose which apartment to take, and knowing why decisions are being made which will touch their lives. But it is important that the child not be given choices like "Do you really want to see Dad this weekend?" That's not fair to the child or the other parent, and can make the child feel guilty about wanting to do something natural.
6. *Don't ask questions about the other parent.* Your children are loyal to both of you and don't want to hurt either parent. They shouldn't be asked questions about the life your spouse is leading. If a child volunteers information, just accept it, or ask general questions. A child may just 'clam up' if cross-examined about the life of the other parent.
7. *Keep change to a minimum.* A new boyfriend for mom or girlfriend for dad can be a shock to your children. They're used to seeing dad and mom together and may have trouble understanding or accepting a new partner for one of their parents. Don't try to make your new partner part of the family right away.

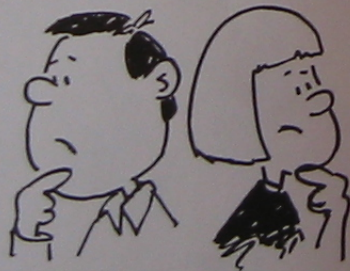


In mediation the needs of children will have a special place. Sometimes the mediator will ask to speak to the children, especially if their residence or a visiting schedule are issues. No contact will be made, though, without your approval and agreement about why the children are to be seen. Children are part of the family too, and they may have their own questions and concerns about the future, and have needs quite different from yours.

Advantages of Mediation. Before dealing with the question of how to find and choose a mediator, let's review some of the advantages of using mediation to come to an agreement:

- in mediation all of the issues and problems of your one-of-a-kind marriage are brought out in the open, discussed and, where possible, solved;
- the agreement you reach is your agreement, reached by both of you together;
- mediation can save you time and money. The issues you can solve together don't have to be negotiated by two lawyers or decided by a judge in court;
- you and your spouse make the decisions, they aren't made for you by a Judge. In Court you're on opposite sides. In mediation you're on the same side - the side of your family;
- your agreement can be temporary, to meet the needs of your family for the short-term, or to 'try out' a new arrangement. It can also be long-term, or can change as your circumstances and needs change;
- mediation can help you and your spouse learn to talk about problems and come to solutions in a new way. This can help you later, even after a divorce.

Finding a Mediator.
Mediators who belong to Family Mediation Canada all follow a Code of Professional Conduct which sets out the rules of professional mediation in detail.



Mediators also work through the Courts in many provinces, and through social service agencies and community organizations. Your lawyer may be able to recommend mediators, as can friends, family or co-workers who have used mediation. Once you know who in your community handles mediation, be prepared to ask questions:

1. Does the mediator belong to any professional organizations for mediators?
2. What kind of training has the person had in mediation? How long has the person been a mediator?
3. What kinds of mediation are handled? Some handle custody and access, some handle financial issues, some handle both. If you want mediation of financial problems, you'll need someone who does that too, **and** has training in that area. The mediator will also suggest additional professional advice if appropriate in your situation.
4. How much will it cost? Don't be afraid to ask this question. You'll probably be quoted an hourly rate for the mediator's time, and when payment is expected. You have a right to know this information before you start.
5. How long will it take? The mediator can give you a rough idea, based on the kinds of issues to be mediated. It is flexible though, and depends on your needs.

Family Mediation Canada promotes mediation as a way to solve family problems, and believes that mediators must have professional training. There are, however, no laws saying who can become a mediator. Anyone can advertise as a mediator, and commercial listings may include some persons with no training at all, or with little or outdated training. Your decision to use mediation is important. It's up to you to choose the best mediator for your family.

For more information on mediation or Family Mediation Canada contact the provincial association nearest you.

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