



FAMILY LAW LLP

## **MEDIATION AT BELL AND STOCK LLP**

### ***WHAT YOU CAN EXPECT AND WHAT IS EXPECTED BY THE MEDIATOR YOU HAVE SELECTED:***

1. Once you and the other party have agreed on your available dates, then one of you should be communicating with our office to schedule mediation and communicate back the results of that scheduling to the other party. You must copy the other party.
2. While every case and every family is different, our experience is that most mediations will last one to four sessions. Generally speaking, we will schedule the first mediation to last for two hours, but leave open the possibility of continuing to a third or fourth hour in the first session if everyone feels we are making progress and everyone's time and energy allows.
3. 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. Only then is the stage set for the real work to begin.
4. The mediator expects that either the parties have agreed to share the cost of mediation on a 50/50 basis or that they have, before mediation, come to a different agreement as to how they are going to finance and pay for the mediation.

Options on how to pay for mediation 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 mediation and the other party's share is taken out of the ultimate settlement; or
- e) One party pays the whole cost of the mediation or a substantially greater percentage of the cost of the mediation.

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**NOTE:** Despite how the parties ultimately 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 current mediator's fees are \$275 an hour, plus GST, for the time spent in preparing for, conducting and providing the follow-up to the mediation. Fee discounts are set out in the retainer agreement (i.e. parties will receive a reduced rate after three hours scheduled in one day).

5. The mediator cannot provide legal advice to either party. Sometimes, however, the mediator will provide 'general legal information' in a neutral way to facilitate ongoing discussions.

**NOTE:** Both parties are recommended to 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 mediation.

6. Anything said or done or disclosed in the mediation remains confidential, and neither party can use that information as evidence in any further Court proceedings. The mediator will not be a witness in any further proceedings.
7. What makes mediation work or not work, are 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 sharing of financial information.
  - e) Mediation can still be successful despite the lack of any of the above, however, it makes the mediation harder.
8. If the parties reach an understanding at mediation, that understanding can be recorded in different ways, including:
  - a) Photocopying handwritten notes, or providing a PDF of typed notes, of the mediator that reflect the understandings reached;
  - b) A formal written mediation report outlining the understandings reached between the parties;
  - c) A draft Settlement Agreement or Court Order reflecting the understanding reached.
9. 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 how else the matter will be resolved if it is not resolved in mediation.

### ***PREPARATION FOR MEDIATION***

10. Parties come with various levels of preparation. At one end of the spectrum, parties come without the benefit of any legal advice or information and at the other end of the spectrum, parties come having been "briefed" by their lawyers in preparation for mediation. Each case and family and their needs and requirements are different depending on the issues in dispute, the complexity of the case, and personalities involved.

11. It often saves some time and expense for one or both of the parties to come to mediation 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 and any other information in relation to the issues in dispute.
12. 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?***

13. You should speak to your lawyer about any further information which may be required. 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 beginning the mediation process.
14. An Agreement to Mediate will be provided for your review and for signing prior to the mediation.