

Getting the Most  
out of

# FAMILY MEDIATION

a guide for clients



by Sharon B. Silbert

# What is family mediation?

Mediation is a voluntary process where a dispute resolution professional called a mediator helps participants to negotiate a mutually acceptable agreement.

Family mediation is a very effective process for resolving issues that arise during a separation or divorce, including parenting arrangements, division of property, child support, and spousal support.



**PARENTING**



**PROPERTY**



**SUPPORT**

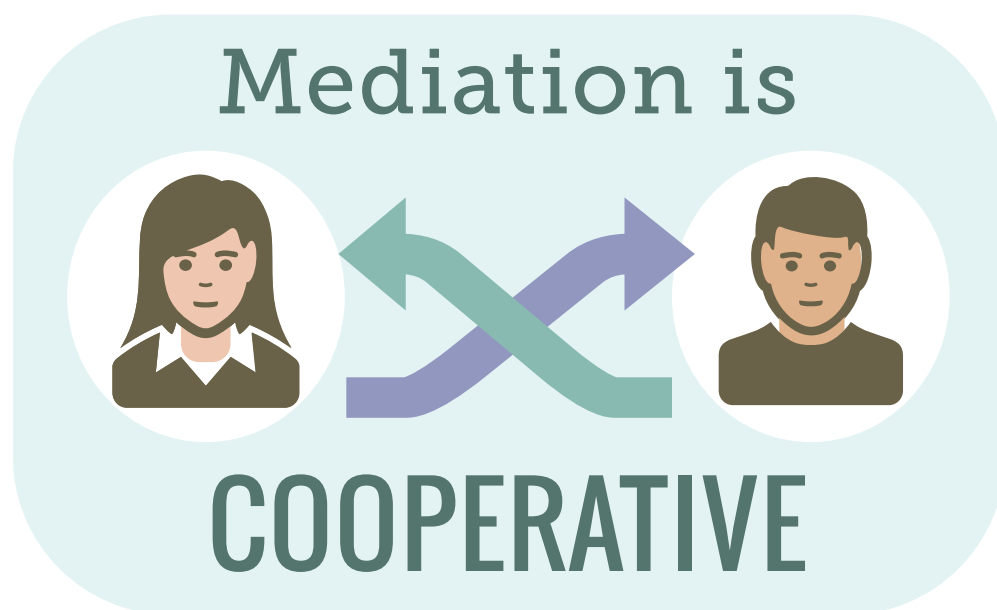
Your mediator will help you and your former partner to negotiate in a constructive way. He or she will encourage and assist you both to communicate respectfully and act in good faith as you work towards a solution that each of you feels you can live with.

A mediator is not like a judge who can make decisions about what will happen with your family. Instead, he or she will act as a facilitator to help you make those decisions for yourselves. You and your former partner always maintain control over the outcome of the negotiations.

The negotiations that take place in mediation can focus on legal rights, but they can also address broader interests, including the specific needs, desires, fears and concerns relevant to your family situation.

# What makes mediation different?

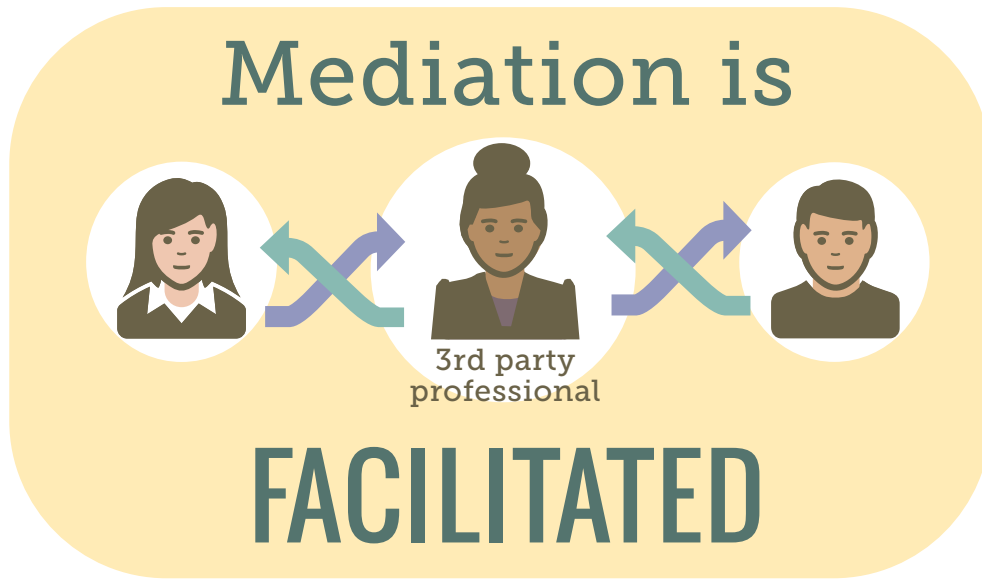
In mediation, you and your former partner will negotiate directly with each other, with the support, encouragement and guidance of a trained professional. This results in a less costly, more personalized agreement that you and your former partner will craft yourselves.



Mediation differs from adversarial forms of family law, such as litigation (court proceedings), arbitration, or even traditional lawyer-led negotiations, because it is a co-operative process. This means that you and your former partner will work together, and not against each other.

Because the amount of time and money it takes to resolve family law issues is usually related to the level of conflict between the parties, taking a co-operative approach can save you both.

Mediation is also different from other co-operative family law processes, because the negotiations that take place in mediation are always facilitated by a professional who is not aligned with one partner or the other, but instead will work to make sure each person’s voice is heard, and their concerns addressed.



## How Does Mediation Compare to Other Family Law Processes?

		CLIENTS CONTROL THE OUTCOME	CLIENTS CHOOSE THE DECISION-MAKER	CLIENTS ARE ACTIVELY INVOLVED	LEGAL ADVICE MUST BE OBTAINED SEPARATELY	A NEUTRAL THIRD PARTY IS INVOLVED	COSTS	
LESS OUTSIDE INTERVENTION	CO-OPERATIVE PROCESS	DIY (DIRECT NEGOTIATIONS)	✓	—	✓	✗	\$	
		MEDIATION	✓	—	✓	✓	\$\$	
		COLLABORATIVE FAMILY LAW	✓	—	✓	✗	○	\$\$
MORE OUTSIDE INTERVENTION	ADVERSARIAL PROCESS	TRADITIONAL LAWYER-LED NEGOTIATIONS	✓	—	✗	✗	\$\$\$	
		ARBITRATION	✗	✓	✗	✗	✓	\$\$\$\$
		LITIGATION (COURT PROCEEDINGS)	✗	✗	✗	✗	✓	\$\$\$\$

✓ YES    ○ MAYBE    ✗ NO    — NOT APPLICABLE

# How does family mediation work?

1

## Initial Contact

### Initial Contact

When you first contact a family mediator, he or she will provide you with information about the mediation process, and make sure that you and your partner both wish to participate.

2

## Screening & Preparation

### Individual Screening & Preparation Meetings

The mediator will meet with you and your former partner separately before negotiations begin, to make sure that mediation is an appropriate process for your situation.

The mediator will work with you privately to identify any issues that might complicate the mediation or prevent it from being effective, such as domestic violence, power imbalances, or mental health or addiction issues that might make effective communication and decision-making difficult or impossible. He or she will also consider whether there is any need to employ specific strategies to ensure that mediation is safe and comfortable for all participants.

Meeting with you and your former partner separately before negotiations begin also provides the mediator with an opportunity to gather background information from each of you in a confidential setting about your goals for the process, and any concerns you may have.



### 3

## Settlement Meetings

### Settlement Meetings

The mediator will facilitate a series of discussions between you and your former partner to help you understand each other's interests and concerns. He or she will employ various strategies to help you communicate effectively and productively, asking questions to help you to identify the issues in need of resolution.

The mediator might meet with you and your former partner separately at times. In some cases, your mediator may also co-ordinate with other neutral professionals with expertise in child development, parenting, financial planning, etc., if you and your former partner agree that their involvement would be helpful.

Throughout the mediation process, your mediator will help you to understand the issues, brainstorm solutions, and evaluate options. The mediator will not make judgments about who is "right" or "wrong," but instead will help you focus your discussions on what is required to reach a mutually acceptable resolution.

The number of mediation sessions that are required in any particular case will depend on the complexity and number of issues to address, and the level of conflict between the participants.

4

#### Preparation of Memorandum

### Documenting the Agreement

If you and your former partner reach an agreement related to some or all of the issues, your mediator will document the terms of your agreement in a Memorandum of Understanding (“M.O.U.”).

The M.O.U. is simply a record of the points of agreement reached during the mediation sessions. On its own, the M.O.U. is not a legally binding document. There is one more step you need to take in order to turn your agreement into an enforceable contract.

5

#### Make Agreement Binding

### Making your Agreement Binding

After you have received the M.O.U. from your mediator, your lawyers will review it with you separately to make sure you truly understand and agree to the settlement terms.

Once each participant has received independent legal advice, the lawyers will use the M.O.U. to prepare a legally binding document for you to sign, such as a Separation Agreement or Minutes of Settlement.



# How do lawyers fit in?

Even if your mediator has legal training, he or she cannot offer legal advice to you or your partner, because your mediator works for both of you, so giving advice to a participant would lead to a conflict of interest. As a result, it is essential that you and your former partner each have your own lawyer to advise you through the mediation process.

## YOUR LAWYER WILL HELP YOU TO



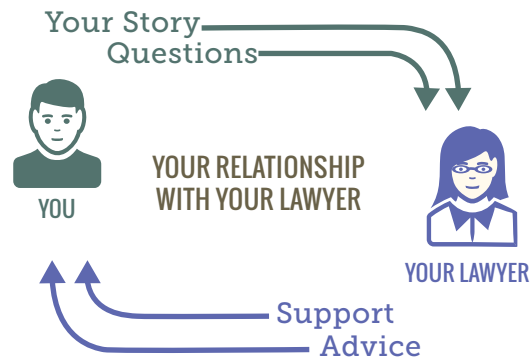
You and your former partner may choose to have your lawyers attend mediation sessions with you and participate in the negotiations, or you may choose to consult with them between meetings, as needed.

At the conclusion of the mediation process, your lawyer will review the Memorandum of Understanding that the mediator prepares, and work cooperatively with your former partner's lawyer to turn it into a legally binding contract such as a Separation Agreement.



# What should I look for in a lawyer?

When choosing a lawyer to support you through the mediation process, look for someone who is familiar with the mediation process, and who is comfortable supporting you in making your own decisions.



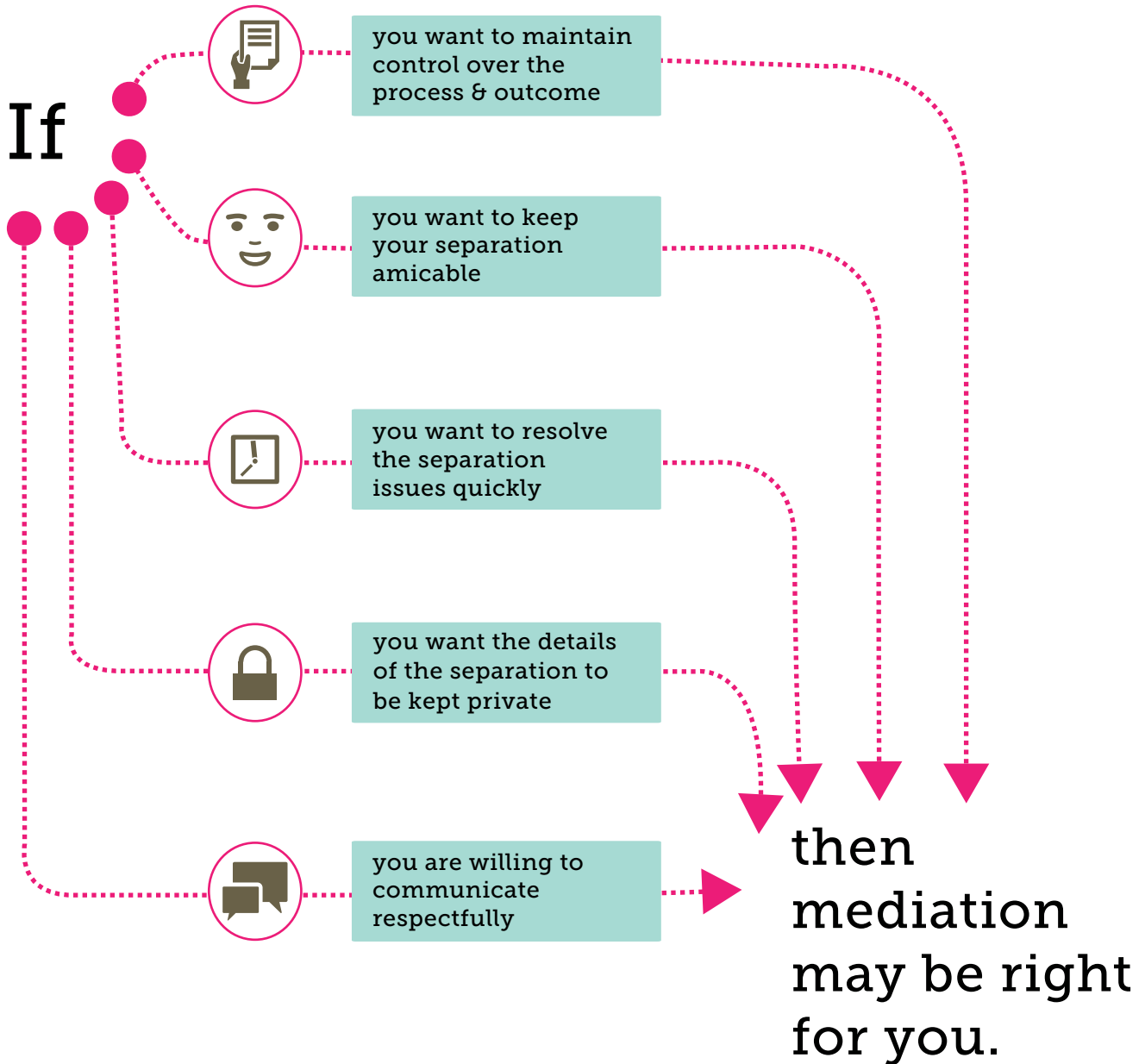
Choose a lawyer that you feel comfortable talking openly with, because he or she will not be able to give you good advice unless you give them all of the relevant information they need to understand your circumstances. If your lawyer is not going to be attending mediation sessions with you, make sure you keep him or her “in the loop” about what’s going on, and contact him or her throughout the process to ask questions as they arise.

Sometimes people think that they will be able to save money if they wait until the mediation process is finished to hire a lawyer, but this approach can backfire. For most people, reaching an agreement with their former partner takes a lot of hard work, and it can be devastating to have a settlement fall apart at the last minute when a participant who didn’t have legal advice throughout the process discovers that they didn’t fully understand their rights and obligations during the negotiations.

Getting legal advice early and often during mediation is the best way of ensuring that the agreement you reach is going to last.

[Legal Aid Ontario](#) (“LAO”) can help you pay for legal services to assist you through the mediation process if you are financially eligible. To find out if you qualify for an Independent Legal Advice Certificate for your family mediation case, call LAO’s toll-free line at **1-800-668-8258**.

# Is mediation right for me?



## **Do you have an interest in keeping your separation amicable?**

Couples who use mediation to resolve the legal issues arising from their separation are often able to establish a model for civil communication and problem-solving that can aid in future interactions as co-parents.

## **How much conflict exists between you and your former partner? Are you willing to listen and communicate maturely?**

In order for mediation to be effective, you and your former partner must each be emotionally ready and willing to listen to what the other has to say, and co-operate to find mutually acceptable solutions. It is valuable to realize that listening to your former partner's feelings and requests is not the same as agreeing with them.

## **How much control do you want to maintain over the separation process?**

Mediation allows you and your former partner to determine your own future by working out an agreement for yourselves, without giving up decision-making power to a judge or arbitrator who could make decisions that neither of you want.

## **How quickly do you want to resolve the separation issues?**

Going through mediation is usually much faster than waiting to take a case through the crowded courts to a trial.

## How much money do you have (or want) to spend on the separation process?

In most cases, mediation is considerably less expensive than more traditional lawyer-led negotiations or court proceedings. The mediator's fees are usually shared by both participants, and legal fees are kept to a minimum because the scope of the lawyer's role is limited to providing legal advice and drafting legal documents. You and your former partner take care of the negotiations yourselves.

## How important is it to you that your separation be handled privately?

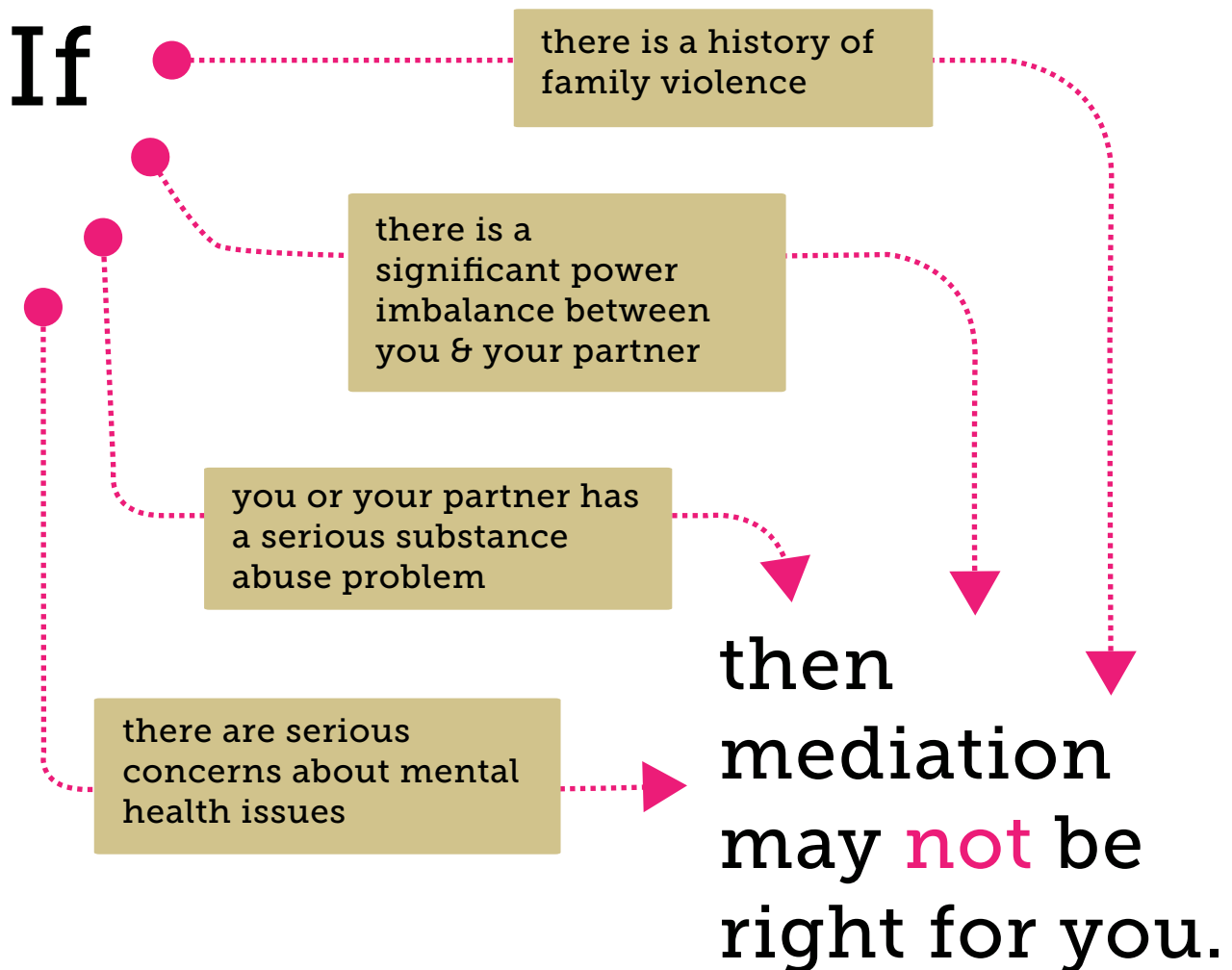
Mediation is a confidential process, and the extent to which information shared in mediation may be disclosed with other people is determined by you, your former partner, and the mediator. In contrast, most documents that are filed with the court, and most decisions made by judges, are all a matter of public record, including highly personal details about relationships and finances.

## Is there a history of family violence that would make it unsafe to participate in mediation, or a significant power imbalance that might lead you to agree to something you don't think is fair?

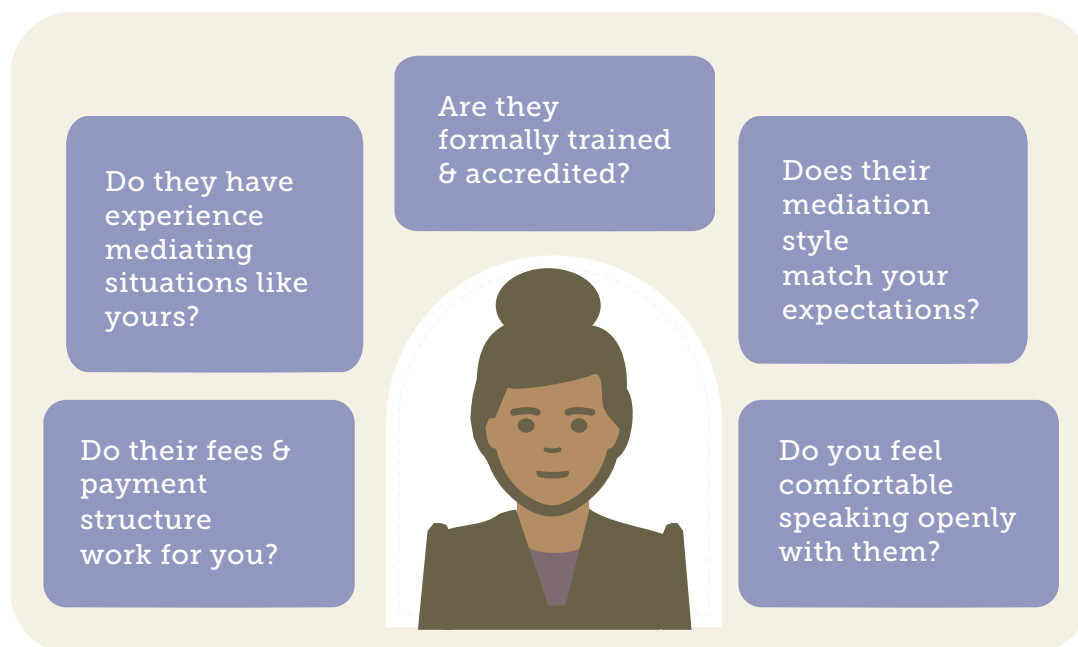
Mediation will not be effective if one partner feels unsafe, unable to communicate freely, or unable to act in his or her own best interests. If such a situation exists, mediation may not be an appropriate process for addressing the separation issues.

## Are you or is your partner struggling with a mental health or substance abuse problem that would impact your ability to participate effectively in negotiations?

In order for mediation to work, you and your former partner must both be able to engage fully in difficult conversations, and must have the capacity to make major decisions about your family's relationships and finances.



# What should I look for in a mediator?



## Mediation Style

It is very important to choose a mediator whose style fits well with your needs and circumstances, so don't be shy about asking prospective mediators about their philosophy and methods.

Some mediators adopt an “evaluative” approach, working with clients to identify the strengths and weaknesses of each person’s position, and guiding them to an agreement based on what might be expected if the matter was decided by a judge. Other mediators are more “facilitative,” and focus on empowering clients to craft solutions that are based on their own unique needs, goals, and concerns.

Above all else, choose a mediator with whom you and your former partner feel comfortable. You must trust the mediator to remain impartial and non-judgmental, and to be supportive and encouraging as he or she helps you manage conflict and work toward agreement.

## **Accreditation**

There are a number of different organizations that train and accredit mediators in Ontario, including the [Ontario Association for Family Mediation](#), [Family Mediation Canada](#), and the [ADR Institute of Ontario](#).

Be sure to ask about formal qualifications, educational background and mediation experience. You may also wish to inquire about the mediator's skills in dealing with the specific issues that are of concern to you, such as parenting, support, property division, etc.

## **Other considerations**

Don't forget to inquire about the mediator's fees and payment structure, and the process for scheduling mediation sessions. Low-income families should inquire about the subsidized mediation services that are available at family courts across the province of Ontario.



## About the Author

Sharon B. Silbert, J.D., Acc.FM. (OAFM) is a lawyer and mediator who is committed to helping her clients handle family law issues respectfully and constructively, with minimal court involvement. She adopts a problem-solving approach, listening closely, responding mindfully, and guiding clients with care.

To learn more, visit [silbertfamilylaw.com](http://silbertfamilylaw.com)



This work is licensed under the Creative Commons Attribution-NonCommercial-NoDerivatives 4.0 International License.

To view a copy of this license, visit:

<http://creativecommons.org/licenses/by-nc-nd/4.0/>