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# Community Legal Information Association of Prince Edward Island, Inc.

## Mediation in PEI

The information in this pamphlet answers a number of frequently asked questions concerning mediation in Prince Edward Island. If you have questions that are not answered here, please contact CLIA at (902) 892-0853 or [clia@cliapei.ca](mailto:clia@cliapei.ca)

### **What is mediation?**

Mediation is a collaborative, voluntary process which can be used to resolve a dispute between two or more parties. A person who is neutral and trained in mediation helps the parties develop a mutually acceptable solution to the issue(s) facing them. In mediation you explore a number of options for solutions. Both parties can make their own decisions and come to their own conclusion. Mediation allows parties to move beyond surface issues in disputes and address underlying issues and problems. Mediators control the process and the parties decide the outcome. Past experience with mediation has demonstrated that if the parties are able to reach an agreement, the terms in the agreement are more likely to be followed.

### **What kinds of issues are dealt with in mediation?**

Mediation can be used to solve family disputes in separation & divorce, such as custody, parenting plans, division of property and support. It can be used to foster shared decision making around health and care giving issues for seniors. It can also be used for workplace, contract, environmental and insurance claim disputes, as well as other disputes.

### **What is the mediation process?**

Usually the mediator will meet with each person individually before the mediation session begins. This is done to get background information and to explain the mediation process. Sessions after that usually involve both parties meeting jointly with the mediator who oversees the process and ensures fairness of the process. With help from a mediator you will set an agenda, identify the issues, create options and make decisions. The amount of time this takes depends on the complexity of the issues you face. The amount of times you meet can range from 1 session up to 5 or 6 and beyond. Once this is complete, a written agreement will be prepared for you and your lawyer to review.

### **Will a mediator pick sides?**

A mediator will not pick sides. You choose a mediator because you want an objective, neutral third person trained to help you reach an agreement in your dispute. It is the mediator's job to help the parties understand the problem they are facing and then, to assist the parties in generating possible solutions which would be acceptable to both.

### **Why a mediator and not a lawyer?**

There are a number of advantages to hiring a mediator instead of a lawyer. The mediation process ensures that the problem in question is discussed and dealt with privately, but in an open and honest manner. The results of this can often be more cooperative and successful than if the problem was dealt with solely by a lawyer and the courts. The agreement that is reached is the result of the parties agreeing to it rather than a court deciding what is going to happen. The parties can specifically tailor an agreement to their own particular circumstances. Also, the process can take less time and be less costly than the court process.

### **Will I still need a lawyer?**

You may need a lawyer to finalize your mediated agreement. During the mediation process, the mediator may take notes of the sessions and progress made. If so, you will receive a written record of your agreement. This initial draft is not legally binding. Your lawyer can review the agreement to ensure that your rights are protected, that you understand what you are agreeing to, and that the laws of the province are being followed. Each party needs to seek independent legal advice from a different lawyer. Often these agreements will be re-written by one lawyer in “legal” terms, signed by the parties and witnessed. At this point the agreement is legally binding. Written agreements are more common in family mediation.

### **Who can use mediation?**

Mediation can be used by anyone wishing to resolve a dispute. However, mediation is not necessarily the best choice for everyone. Before deciding if mediation is for you, you can ask yourself a number of questions. For example: -Am I willing to meet face to face with the other party (ies)? -Do I see this process as win win rather than winning or losing? -Are the issues negotiable? Am I willing to cooperate and shift my position? -If we come to an agreement, can I commit to living up to it? If you answer “yes” to most of these questions, mediation could work for you. If family violence is an issue, mediators decide if mediation is a possibility after assessing the situation. Mediation does not work for everyone. Mediation is based on your willingness to participate in a process that is about coming up with solutions. Provided you are willing to work on it, mediation could work for you.

### **How much does it cost? What if I can't afford it?**

The cost for mediation depends on the issue and how long it takes. If the issue requiring mediation concerns a parenting plan, mediation is offered free of charge through the Family Court System. A private mediator will have an hourly rate. Call different mediators to find one that best meets your needs and budget. The cost is usually shared by both parties and is less costly than a lawyer or going to court. Some mediators may operate on a sliding scale depending on your income. If you are concerned about not being able to afford mediation, you should inquire about reduced rates.

### **How long does it take?**

The length of time it takes for the mediation process to be complete depends on the complexity of the issue. An average length for a mediation process is 5-6 sessions. Mediation is not counselling. If the mediator decides a counsellor is required, you will be referred to one.

### **What is the result of mediation?**

The result of mediation varies from case to case. The aim of mediation is to come to an agreement. If and when this agreement is reached, all parties should feel they have achieved a workable solution to the problem. Both sides should feel that both perspectives have been understood and they are making agreements voluntarily. In successful mediation, the original

dispute, or some of it, is resolved. Often communication is improved and both sides have a better understanding of one another's concerns.

### **What does the written report mean?**

Written reports are most often used in family mediation. This report will be the result of notes the mediator has taken over the course of your mediation process. The written report will outline what both parties have agreed to in order to resolve the dispute. It should include issues you agreed on from the beginning as well as the issues you worked on over the mediation sessions. This draft is not legally binding. In order for it to be legally binding it must be reviewed by a separate lawyer for each side. After it is reviewed and the final draft is approved by both sides, you will sign the agreement. The agreement is now legally binding.

### **Is mediation final?**

Mediation is not final. Life circumstances often change and agreements may need to be re-negotiated to fit new circumstances. You always have the option of using mediation again to reach a new agreement. Many mediation agreements include a clause indicating that if future disputes cannot be resolved, either of you may call for a resumption of mediation and the other agrees to attend.

### **Is a mediated agreement legally binding?**

Initially this agreement is not legally binding. However, there are steps that can be taken to make it binding. The first draft of the mediated agreement is a report from the mediator. Outlined in it will be the issues to which you have agreed and how you plan to uphold the agreement. You each have your lawyers review this agreement. If there are no legal inaccuracies and you understand the agreement, it can be made binding. Once the agreement is written, signed and witnessed, it becomes a legally binding contract.

### **Where can I find a mediator?**

It is important that you choose an individual who is properly trained in mediation and that this professional is someone with whom you feel comfortable. Mediation PEI (<http://www.mediationpei.com>) and Family Mediation Canada ([www.fmc.ca](http://www.fmc.ca)) provide accreditation to qualified mediators. You can get a list of mediators from CLIA (902) 892-0853 or 1-800-240-9798 or check the yellow pages under mediation services.

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