

# Estate Mediation

## Answers to 10 Most Frequently Asked Questions

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## About Edward Olkovich



Ed is recognized as a leading Canadian estate expert. He has practised law in his own firm since 1978 and is a Certified Specialist in Trusts and Estates Law.

Ed is also the author of seven books, including *Choosing Executors*, *Breakthrough Estate Planning*, and *Estate to the Heart: How to Plan Wills and Estates for Your Loved Ones*.

He has spoken to audiences across Canada and is a frequent guest on television and radio. As a lawyer, Ed advises clients on wills, estates, executors, and estate administration and handles legal challenges to wills.

Ed is a member of the Ontario Law Society of Upper Canada, Ontario Bar Association, American Bar Association, Society of Trust and Estate Practitioners (STEP), Canadian Association of Professional Speakers (CAPS), and National Speakers Association (NSA).

He is the founder of [estatetherapy.com](http://estatetherapy.com), an online estate planning publisher, and is the Dean of Executor Academy. Ed can be reached by e-mail at [ed@mrwills.com](mailto:ed@mrwills.com) or by telephone at 416-769-9800 or toll free at 1-877-MrWills.

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# Estate Mediation: 10 Most Frequently Asked Questions

## 1. What is Mediation?

Mediation is a way for people involved in an estate dispute to resolve their issues. You meet with a neutral person, a mediator, to attempt to find a solution to the dispute.

In a trial, you ask a judge to decide for you and it's the winner-take-all approach. Mediation, on the other hand, starts with the idea that you wish some out-of-court settlement. Mediation allows you to make a deal without going through complex steps to trial.

## 2. How does Mediation work?

The courts are clogged with disputes. Mediation is an alternative way of making your point to the other side. It gets everyone together early to start talking sooner. You can make sure that the other side understands the risks of proceeding to trial.

Mediation lets everyone feel they are winning something. This is often not the case in a trial. Mediators, however, do not make judgments on the merits of either side, but help each side reach an agreement.

In some cases, mediators will give opinions on the merits of the settlement proposals. They may even suggest alternative solutions where there are roadblocks to a settlement. Good mediators can help keep the negotiations on track and save them from failing.

## 3. Who are Mediators?

In most estate cases, lawyers or retired judges with estate experience are preferred mediators. Mediators usually are trained or certified in mediation. They play different roles and have different personal styles.

Unlike judges, mediators can help steer you to a satisfactory resolution. A trial judge only decides what the law says.

In mediation, you try to formulate a new agreement on how to proceed in the future.

## **4. How are Mediators selected?**

Typically, both sides agree to select mediators or they are appointed by a court. Hourly rates for mediators vary and mediators come with different degrees of experience and skills.

Your choice of mediator is a decision you will discuss with your lawyer. Whoever you select must disclose any conflict of interest and have you sign a confidentiality agreement to mediate. This confirms that what takes place during the mediation is to be kept confidential.

## **5. Who goes to Mediation?**

Usually, mediation involves everyone in the dispute and their lawyers. A meeting is held in a neutral setting, such as the mediator's office. No court officials or representatives of the court are present at the mediation. No recording, transcript of evidence, or statements are taken.

Before the mediation, everyone in the dispute prepares written summaries called briefs. You use these documents to set out everyone's position in the legal dispute. Your brief is submitted to the mediator usually five days prior to the mediation.

Your brief is your chance to tell your side of the story and what you hope to accomplish. In some cases, settlement proposals are included so mediators can consider options in advance of the meeting.

## **6. What goes into a Mediation Brief?**

Your mediation brief gives the mediator the background to your dispute and the legal issues in question. Depending on the evidence that's available and the nature of the dispute, you may wish to include:

- statements from witnesses
- doctor and expert reports
- financial calculations
- any other material that typically is not produced until trial

You are free to exchange information that may encourage settlement.

## **7. Why is Mediation successful?**

Mediation allows you to discuss your concerns in an off-the-record format. It allows you to approach settlement without risk.

You can win with mediation. Why? You learn the strategies and weaknesses of everyone's position. The costs of proceeding to trial after mediation are usually made clear to both sides. This is usually a good incentive to reach a settlement.

## **8. What does Mediation cost?**

Typically, mediators can charge between \$200 to \$400 per hour. The costs based on a half-day session can be shared by both sides to the dispute. Usually, a mediation session costs from \$2,000 to \$10,000 for experienced estate mediators.

Each party will pay their own legal costs for time to prepare and review briefs. Although in the short run mediation can be expensive, it can lead to considerable savings if your case is resolved without going to trial.

## **9. How do you prepare for Mediation?**

Preparation for mediation must be almost as thorough as going to trial.

Lawyers must be prepared to adjust their negotiating positions. This is so because after the mediation, new information might be disclosed for the very first time.

Lawyers must prepare and be familiar with both sides of the case. They must be flexible through negotiations and understand clearly what it is you wish to achieve.

## **10. What is your role as Client?**

Clients must be prepared to be flexible and listen to the other side's position. You do not need to understand legal theories or be prepared to discuss them.

Some mediators invite you to personally describe how you feel about issues and what you wish to accomplish by settlement. Often these issues can be addressed by your lawyer and there may be no need for you to prepare.

You do not undergo cross-examination or give evidence during mediation. The process is much more controlled and relaxed, reducing stress and expense.

## Let's Summarize

Mediation of estate disputes is not to be feared but encouraged.

It is an opportunity for you to reach an early, cost-effective, out-of-court settlement. This process is much more satisfactory than getting your day in court.

You can be a winner through mediation.

## Want more information?

Are you interested in a consultation with Edward Olkovich? Contact him at [ed@mrwills.com](mailto:ed@mrwills.com).  
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