

Estate Mediation

Answers to 10 Most Frequently Asked Questions

Edward Olkovich

About Edward Olkovich



Ed is recognized as a leading Canadian estate expert. He has practised law in his own firm since 1978. Ed is one of Ontario's few Certified Specialists 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), past member of the Canadian Association of Professional Speakers (CAPS), and National Speakers Association (NSA).

He is the founder of 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 or by telephone at 416-769-9800 or toll free at 1-877-MrWills.

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A handwritten signature in black ink, appearing to be 'Ed' with a stylized flourish.

Edward Olkovich, B.A., LL.B., C.S., TEP

Estate Mediation: 10 Most FAQs

1. What is Mediation?

Mediation allows people involved in estate disputes to resolve their disputes. Ontario court rules require mandatory mediation to take place in estate court cases. Participants meet informally with an impartial mediator who can facilitate understanding and reach agreements. Mediators do not make decisions. They are not judges or arbitrators.

In court trials, judges decide for you. Trials are formal legal processes with winners and losers. At mediation, on the other hand, you make decisions. Mediation allows you to reach agreement without going through formal and complex steps to trial.

Settlements require all parties to agree. Usually some degree of compromise by everyone is required. Written agreements to end legal disputes are usually signed by all parties.

2. How Does Mediation Work?

The courts are clogged with estate 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 their risks of proceeding to trial.

Mediation can make everyone feel they are winning something. This is often not the case after trial. Mediators, however, do not judge the merits of either side. They can help you negotiate agreement.

Mediators can give opinions on the merits of settlement proposals. They may even suggest alternative solutions if there are roadblocks to settlement. Good mediators keep negotiations on track and save them from failing.

3. Who Are Mediators?

In estate cases, lawyers or retired judges with estate experience are preferred mediators. Mediators usually need some training in mediation processes. They play different roles and have different personal styles. Unlike judges, mediators can help steer you to satisfactory resolution. Trial judges only decide what laws apply and what remedies are permitted.

In mediation, you can broaden your understanding of your counterpart's position. You also can tell your story. This process deepens insights and helps explore possibilities to formulate agreements for the future

4. How Are Mediators selected?

Your choice of mediator will be discussed with your lawyer. Typically, parties in the dispute agree to select mediators, or they are appointed by court. Hourly rates for mediators vary, and mediators come with different degrees of experience and skills.

Mediators must disclose any conflict of interest. Everyone attending mediation will sign confidentiality agreements to mediate. Confidentiality agreements confirm that what takes place during mediation is without prejudice. Confidential information from mediation cannot be used in court.

5. Who Goes to Mediation?

Usually, mediation involves everyone in the dispute and their lawyers. Mediation meetings are held in neutral settings, such as the mediator's office. No court officials or representatives of the court are present at mediation.

No recording, transcript of evidence, or statements are taken. Before the mediation, everyone in the dispute prepares written summaries called mediation briefs. Participants use mediation briefs to set out their position and interests in the dispute.

Your brief is submitted to the mediator usually five days prior to the mediation. Your brief tells your side of the story and what you hope to accomplish. In some cases, settlement proposals are included. This allows mediators to consider options in advance of your meeting.

6. What Goes into Mediation Briefs?

Your mediation brief gives the mediator background to your dispute. Usually, your position on issues in question are discussed. Depending on the evidence available and the nature of the dispute, briefs may include:

- statements from witnesses
- doctor and expert reports
- financial and income tax calculations
- other material typically not produced until trial
- summaries of legal issues

You are free to exchange information that may encourage settlement. Tell your lawyer what non-legal issues are important to you. These may also be included in your brief. Your lawyer usually will meet with you to prepare your brief.

7. Why is Mediation Successful?

In mediation, an informal, off-the-record format is used to allow you to discuss your concerns. This format allows you to approach settlement discussions with less risk. You can also make informed decisions about your case's merits.

You can resolve your dispute at mediation. Why? You learn the strengths and weaknesses of everyone's position. The costs of proceeding to trial after mediation are usually made clear to both sides. You will have opportunities and incentives to find common ground. This may reduce the issues that shorten your trial or settle your dispute.

8. What Does Mediation Cost?

Typically, mediators charge between \$400 and \$600 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 \$6,000 to \$10,000 for experienced estate mediators.

Each party pays their own legal costs to prepare and review briefs. In the short run, mediation can be expensive. It can lead to considerable savings if your dispute is resolved without trial.

9. How Do You Prepare for Mediation

Preparation for mediation needs to be thorough. You and your lawyers must be prepared to adjust negotiation positions. At mediation, new information might be disclosed for the very first time.

Lawyers must prepare and be familiar with both sides of your case. They must be flexible to negotiate and understand clearly what you wish to achieve. You should understand your best possible alternative if your case does not settle.

10. What is Your Role at Mediation?

You must 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. You may be asked what you hope to accomplish at mediation.

Often these issues can be addressed by you or your lawyer. There is no need for you to be anxious. You do not undergo cross-examination or give evidence during mediation. The process is much more informal than court. It is relaxed, less stressful and less expensive than trial.

Understandably, your feelings may affect you at mediation. You should speak calmly and avoid anger. Your demeanour and credibility will be observed and evaluated.

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 allows you to determine how your legal and nonlegal issues are addressed. This can be done in ways more satisfactory than having judges decide for you 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. By telephone at 416.769.9800 or, toll free at 1.877.Mr Wills (1.877.679.4557).