

Frequently Asked Questions

What does a mediator do?

A mediator is a neutral person who is specially trained to listen and help people identify issues and work out their own solutions. They do not take sides or make decisions for you, but they will help you reach agreement by focusing on common interests.

What sort of things can I resolve through the Family Law Mediation Program?

The Family Law Mediation Program helps families resolve issues related to their children following a separation or divorce. These are usually things like child support, where the children will live, and visitation.

Why should I try mediation?

There are many benefits to mediation:

- Studies have found that people who develop agreements through mediation are more likely to stick to them;
- It is a less-costly than court and is faster and simpler than the Court process;
- It is a private, informal and flexible process;
- You decide on how to resolve issues rather than letting a judge decide. The mediator will assist by helping to generate ideas and is skilled in bringing parties together;
- You can avoid the trial process, which can be painful for children, parents and extended family;
- It helps to keep the focus on the best interests of the children;
- You can change your mind at any time and opt out of the mediation process.

Who decides who participates in mediation?

Normally, the parents are the only participants along with the mediator. In some instances, someone other than a parent may want to participate, i.e. a grandparent, aunt, uncle, etc. The children are not usually involved. At the end of the day, the decision about who participates is up to the mediator. If you have questions or concerns about who should participate, you should discuss them with your mediator.

My ex-partner or I live outside the NWT, can we still access services?

The Northwest Territories must be the primary residence of at least one of the parents.

Can someone other than a parent access services if they need to resolve issues relating to custody, access etc.?

As long as the parties meet the program criteria and have unresolved legal issues related to a child they may access services.

Why do both ex-partners need to call before a referral is made to a mediator?

Both parties must confirm they are willing to mediate:

- to ensure that they are willing participants;
- to determine if the situation is appropriate for mediation;
- to ensure they understand that mediation is voluntary; and
- to ensure they receive consistent information about program limitations.

Can I be forced to attend mediation?

No. Participation in the Family Law Mediation Program is voluntary and both parties must agree they are willing to try mediation before a referral is made. A judge may, however, direct that parties attempt mediation.

What if my ex-partner does not agree to mediate?

Parties who do not agree to mediate have some options:

- 1) Seek legal advice;
- 2) Negotiate a settlement through lawyers;
- 3) Go to court.
- 4) Try to come up with an agreement on your own.

How much does mediation cost?

The program is free for a limited number of hours.

- Each party is allowed one hour of private pre-mediation time with the mediator to discuss their personal circumstances and to ensure they understand the mediation process.
- Nine hours of joint mediation time (both parties and the mediator together) are permitted per file.

How long does mediation take?

While nine hours of joint mediation time are provided through the program, they are often not necessary. Some people are able to resolve disputes after a few hours of mediation.

Once a referral is made, how long until the actual mediation begins?

Depending on the availability of mediators, you should be contacted within two to three weeks to set up pre-mediation session along with the joint sessions.

How much time will mediation take?

Each session is normally 1-2 hours in length. There may also be some back and forth dialogue with the mediator outside mediation sessions or when they begin drafting the MOU (Memorandum of Understanding). The mediator will set the schedule based on progress that has been made along with the issues that need to be resolved.

Are evening appointments available?

Most mediators conduct mediations during business hours, but you can discuss your availability and schedule sessions with them directly.

Who will my mediator be?

The Department of Justice maintains a roster of qualified mediators. You cannot select your mediator; one will be assigned to clients who qualify for services.

How are mediation sessions held?

Mediation services may be provided in person (if the parents reside in the same community as the assigned mediator), or over the phone. Mediators reside in Yellowknife, Hay River and Alberta.

Do I need to hire a lawyer?

No, but it is helpful to retain a lawyer so if a legal issue arises during mediation you may seek advice without delaying the mediation process. Clients are encouraged to obtain independent legal advice before and throughout the mediation process.

Can the mediator tell us what our legal options are?

No. As the mediator is acting in a different role, they are unable to provide legal advice. It's best to speak with your own lawyer about your options.

Can I get a separation agreement from the mediator?

For those who successfully mediate some or all of their issues, the mediator creates a document called a Memorandum of Understanding (MOU).

Formal signed agreements are not provided. Clients are asked to take the MOU to a lawyer once mediation is complete. The lawyer can tell you if the agreement is a good agreement based on your own personal legal rights but they can also formalize the agreement into a legally binding document (separation agreement), which means it would then be enforceable in a court of law.

We agreed on some issues during mediation, but there are unresolved issues, new issues or the agreement is not being followed. What can I do?

Several options are available:

- 1) Try to resolve the issues yourself;
- 2) If you are unable to resolve the issues, you may be able to try mediation again if you meet the program criteria;
- 3) Seek legal advice;
- 4) Negotiate through lawyers; and/or
- 5) Go to Court so that a Judge can decide.

I want to hire a lawyer but it is hard to find a family law lawyer in the NWT who is accepting new clients. What am I supposed to do?

- 1) Depending on your income, you may qualify for legal aid.
- 2) Try using the lawyer referral service on the NWT Law Societies' website <http://www.lawsociety.nt.ca/public/lawyer-referral-service/>.
- 3) Look through the yellow pages.
- 4) Consider using the community outreach clinics that the Legal Aid offers (contact them for dates/times). <https://www.justice.gov.nt.ca/en/legal-aid/>

We have agreed on all issues. Whom can we contact to make an agreement?

- 1) You can try to draft an agreement yourself. You may want to refer to the NWT Family Law Guide for assistance <https://www.justice.gov.nt.ca/en/family-law-guide/>; or
- 2) Contact a lawyer and provide details of what you have agreed upon so they can create an agreement for you.

I do not have any children or I want to try mediation. Whom can I contact?

This program is limited to people who have children who are minors and/or dependent. Many people offer mediation services outside the program.

- 3) Use the Lawyer Referral Service on the NWT Law Society website under Alternative Dispute Resolution <http://www.lawsociety.nt.ca/public/lawyer-referral-service/>;
- 4) Look in the Yellow Pages;
- 5) Contact various law firms and ask if they provide dispute resolution services;
- 6) If you have an employee assistance program through your employer, this service may be available;
- 7) Word of mouth;
- 8) Internet or Google search.