



Lancaster, Brooks & Welch LLP
Niagara's Lawyers Since 1882

Mediation



Accessibility and Convenience

Lancaster, Brooks & Welch LLP have offices in both St. Catharines and Welland which are conveniently located in the downtown core.

Regular office hours are Monday to Friday from 8:30am to 5:00pm.

We are happy to make appointments at other times to satisfy our clients' needs.

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Must I go to Court?

When a disagreement arises, there is usually some effort to sort out matters without lawyers and lawsuits. Sometimes this works, but often it doesn't. The court process is lengthy and costly, both economically and emotionally. Some people feel pressured to agree to settlements they don't like, due to the cost of continuing. Many attempt to represent themselves in court proceedings.

The legal system is adversarial: lawyers are hired to represent clients' conflicting interests. The court system produces winners and losers more often than solutions that address everyone's best interests. There is a better way - to solve disputes through mediation. It's one of the alternatives referred to under the heading "Alternative Dispute Resolution".

Why Mediate?

The Law Society of Upper Canada reports that lawyers and clients cite the following as the most compelling reasons for using mediation:

Speed: Court dockets are full. It can take years to have cases heard. Mediation is fast.

Choice of neutral: You cannot choose your judge, but with mediation, the parties or their lawyers can choose

a neutral person, often on the basis of ability or special expertise.

Privacy: Disputes are resolved privately without the publicity connected with court cases.

Cost: Escalating legal fees chip away at any profits. Quicker mediation procedures help keep costs down.

Win-Win solutions: Unlike traditional litigation which tends to produce winners and losers, the goal of mediation is to find solutions where both parties are pleased.

Preserving relationships: Because of its adversarial nature, litigation often fosters antagonism which can affect business or family relationships. Mediation can reduce or eliminate that damage.

What Is Mediation?

An independent, neutral third person with specialized



mediation training and skills helps the disagreeing parties find a solution. The mediator does not reach the solution, the parties do, with the mediator's help.

Who can be a Mediator?

Lawyers and non-lawyers can mediate in disputes. A lawyer, trained as a mediator, can insure that solutions have a proper legal basis. A non-lawyer who has skills in a particular technical area, can be effective as a mediator in certain situations. Co-mediation can be used when the matter calls for a person skilled in mediation process together with one having technical expertise.



Can the Mediator give any legal advice?

No. The mediator must make it clear at the outset that their function is to help the disputing parties reach agreement and not give legal advice to either one. Each party should have separate counsel and any settlement reviewed by a lawyer before being concluded.

Are Mediated settlements binding?

Yes. Once an agreement is reached, it can be written down and signed. With proper formalities, it is as valid as any binding contract.

Can I force the other person into Mediation?

No. Mediation is a voluntary process designed to help people reach a satisfactory settlement. Unless an existing contract requires mediation, a party need not participate. Even with a contract, there is nothing to compel either party to settle if a solution is not acceptable.

How do I choose a Mediator?

The mediator is selected by agreement between parties. You can obtain suggestions from your lawyer or consult the ADR Directory of the Canadian Bar Association.

How does Mediation work?

Your mediator sees everyone together and each side explains the nature of the dispute. Information and facts will be shared, including written documents. You then work through the issues identifying areas of agreement and exploring solutions. Your

Mediation & Arbitration Department

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mediator should make creative and reasonable suggestions. However, they should not force solutions on you. It is your solution, not the mediator's.

Can what I say be used against me?

When mediation begins, discuss whether it will be "closed" or "open". Closed mediation means that nothing said by any party can be quoted or used in a later trial or arbitration hearing, nor can the mediator be called on as a witness. In open mediation, the details can be used later, and the mediator called on by either side to give evidence, subject to the usual rules of evidence.

How much does this cost?

A mediator should assess your dispute and give an estimate of costs, based on the number and length of the sessions anticipated. The parties share the cost of the mediator. Since the process is designed to bring people together, it is usually quicker and cheaper than a court case. Even if no final settlement is reached and further proceedings are required, costs will be reduced where some of the issues are resolved through mediation. Cost savings are a prime reason for the rising popularity of mediation as an alternative to court.

And if we can't agree?

Although often successful, mediation may not result in an agreement. Sometimes there will be no consent to even enter the mediation process. In those cases, unresolved issues must be decided in a hearing of some sort. The usual trial process is available or the parties can use arbitration. As with mediation, in arbitration the parties choose their own arbitrator, and the place and time of hearing. After listening to the evidence, the arbitrator makes a binding decision. Costs are usually far less than traditional trial costs since the matter can be dealt with quickly and without expensive pre-trial proceedings.

Yes, there is a better way!

The mediation process minimizes the atmosphere of combat and replaces it with a more peaceful setting for discussions. With the help of a trained mediator, people can find reasonable solutions, spending less money and resolving matters without delay.

The information provided in this brochure is designed to provide topical information of a general nature only. You may wish to discuss any specific matter with your lawyer and you should feel free to do so at any time. This material is provided for information purposes only, not as legal advice, and is not intended to be exhaustive of your rights under the relevant legislation.

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