



# GETTING THE MOST OUT OF MEDIATION

-a guide for clients-

by Sharon B. Silbert

# WHAT IS FAMILY MEDIATION?

Mediation is a voluntary process where a dispute resolution professional called a mediator helps participants to negotiate a mutually acceptable agreement.

Family mediation is a very effective process for resolving issues that arise during a separation or divorce, including parenting arrangements, division of property, child support, and spousal support.



**PARENTING**



**PROPERTY**



**SUPPORT**

Your mediator will help you and your former partner to negotiate in a constructive way. They will encourage and assist you both to communicate respectfully and act in good faith as you work towards a solution that each of you feels you can live with.

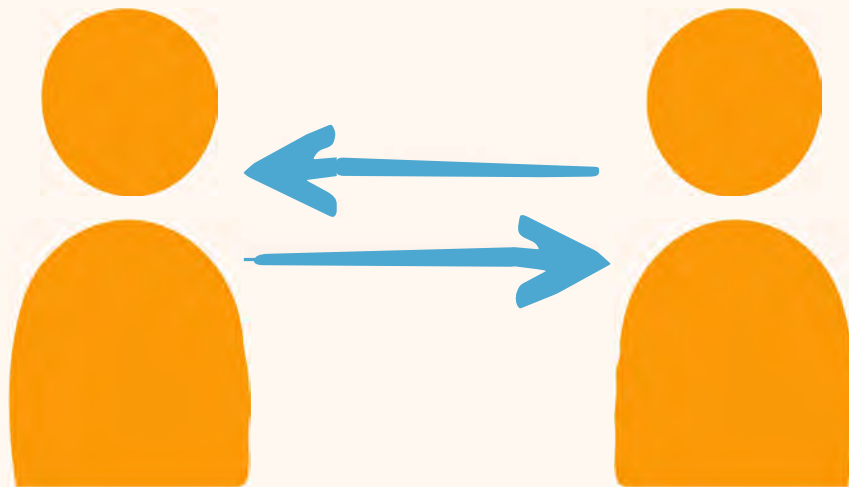
A mediator is not like a judge who can make decisions about what will happen with your family. Instead, your mediator will act as a facilitator to help you make those decisions for yourselves. You and your former partner always maintain control over the outcome of the negotiations.

The negotiations that take place in mediation can focus on legal rights, but they can also address broader interests, including the specific needs, desires, fears and concerns relevant to your family situation.

# WHAT MAKES MEDIATION DIFFERENT?

In mediation, you and your former partner will negotiate directly with each other, with the support, encouragement and guidance of a trained professional. This results in a less costly, more personalized agreement that you and your former partner will craft yourselves.

## MEDIATION IS



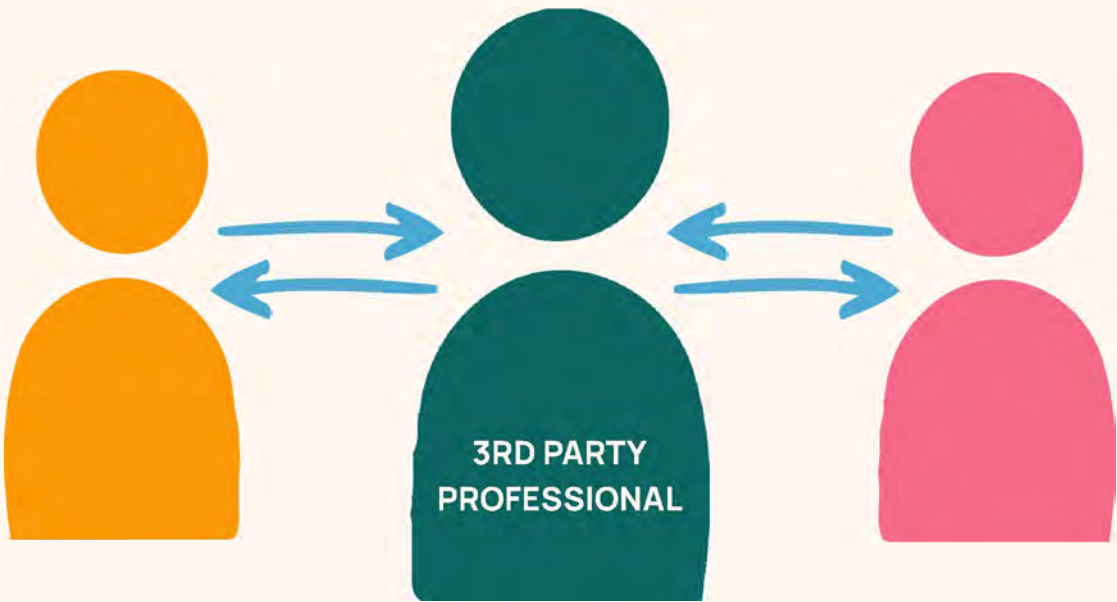
## CO-OPERATIVE

Mediation differs from adversarial forms of family law, such as litigation (court proceedings), arbitration, or even traditional lawyer-led negotiations, because it is a co-operative process. This means that you and your former partner will work together, and not against each other.

Because the amount of time and money it takes to resolve family law issues is usually related to the level of conflict between the parties, taking a co-operative approach can save you both.

Mediation is also different from other co-operative family law processes, because the negotiations that take place in mediation are always facilitated by a professional who is not aligned with one partner or the other, but instead will work to make sure each person’s voice is heard, and their concerns addressed.

# MEDIATION IS FACILITATED



## HOW DOES MEDIATION COMPARE TO OTHER FAMILY LAW PROCESSES?

|                                                                                                                                                       |                                     | CLIENTS CONTROL THE OUTCOME | CLIENTS CHOOSE THE DECISION MAKER | CLIENTS ARE ACTIVELY INVOLVED | LEGAL ADVICE MUST BE OBTAINED SEPARATELY | A NEUTRAL THIRD PARTY IS INVOLVED | COSTS    |
|-------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------|-----------------------------|-----------------------------------|-------------------------------|------------------------------------------|-----------------------------------|----------|
| <div>LESS OUTSIDE INTERVENTION</div> <div> <div>CO-OPERATIVE PROCESS</div> <div>ADVERSARIAL PROCESS</div> </div> <div>MORE OUTSIDE INTERVENTION</div> | DIY (DIRECT NEGOTIATIONS)           | ✓                           | —                                 | ✓                             | ✓                                        | ✗                                 | \$       |
|                                                                                                                                                       | MEDIATION                           | ✓                           | —                                 | ✓                             | ✓                                        | ✓                                 | \$\$     |
|                                                                                                                                                       | COLLABORATIVE PRACTICE              | ✓                           | —                                 | ✓                             | ✗                                        | ✓                                 | \$\$\$\$ |
|                                                                                                                                                       | TRADITIONAL LAWYER-LED NEGOTIATIONS | ✓                           | —                                 | ✗                             | ✗                                        | ✗                                 | \$\$\$   |
|                                                                                                                                                       | ARBITRATION                         | ✗                           | ✓                                 | ✗                             | ✗                                        | ✓                                 | \$\$\$\$ |
|                                                                                                                                                       | LITIGATION (COURT PROCEEDINGS)      | ✗                           | ✗                                 | ✗                             | ✗                                        | ✓                                 | \$\$\$\$ |
|                                                                                                                                                       |                                     | ✓ YES                       |                                   | ✗ NO                          |                                          | — N/A                             |          |

# HOW DOES FAMILY MEDIATION WORK?

## 1 INITIAL CONTACT

### INITIAL CONTACT

When you first contact a family mediator, they will provide you with information about the mediation process, and make sure that you and your partner both wish to participate.

## 2 SCREENING & PREPARATION

### INDIVIDUAL SCREENING & PREPARATION MEETINGS

The mediator will meet with you and your former partner separately before negotiations begin, to make sure that mediation is an appropriate process for your situation.

The mediator will work with you privately to identify any issues that might complicate the mediation or prevent it from being effective, such as domestic violence, power imbalances, or mental health or addiction issues that might make effective communication and decision-making difficult or impossible. They will also consider whether there is any need to employ specific strategies to ensure that mediation is safe and comfortable for all participants.

Meeting with you and your former partner separately before negotiations begin also provides the mediator with an opportunity to gather background information from each of you in a confidential setting about your goals for the process, and to address any concerns you may have.

# HOW DOES FAMILY MEDIATION WORK? CONT.

## 3 SETTLEMENT MEETINGS

### SETTLEMENT MEETINGS

The mediator will facilitate a series of discussions between you and your former partner to help you understand each other's interests and concerns. They will employ various strategies to help you communicate effectively and productively, asking questions to help you to identify the issues in need of resolution.

The mediator might meet with you and your former partner separately at times. In some cases, your mediator may also co-ordinate with other neutral professionals with expertise in child development, parenting, financial planning, etc., if you and your former partner agree that their involvement would be helpful.

Throughout the mediation process, your mediator will help you to understand the issues, brainstorm solutions, and evaluate options. The mediator will not make judgments about who is "right" or "wrong," but instead will help you focus your discussions on what is required to reach a mutually acceptable resolution.

The number of mediation sessions that are required in any particular case will depend on the complexity and number of issues to address, and the level of conflict between the participants.

# HOW DOES FAMILY MEDIATION WORK? CONT.

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## PREPARATION OF MEMORANDUM

### DOCUMENTING THE AGREEMENT

If you and your former partner reach an agreement related to some or all of the issues, your mediator will document the terms of your agreement in a mediation report, which is sometimes called a Memorandum of Understanding. The mediation report is simply a record of the points of agreement reached during the mediation sessions. On its own, it is not a legally binding document. There is one more step you need to take to turn your agreement into an enforceable contract.

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## MAKE AGREEMENT BINDING

### MAKING YOUR AGREEMENT BINDING

After you have received the mediation report, your lawyers will review it with you separately to make sure you fully understand and agree to the settlement terms. Once each participant has received independent legal advice, the lawyers will use the mediation report as a guide for them to prepare a legally binding document for you to sign, such as a Separation Agreement.

SEPARATION  
AGREEMENT



# HOW DO LAYWERS FIT IN?

Even if your mediator has legal training, they cannot offer you legal advice. Because your mediator works for both you and your former partner, giving advice to either participant would lead to a conflict of interest. As a result, it is essential that you and your former partner each have your own lawyer to advise you through the mediation process.

## YOUR LAWYER WILL HELP YOU TO



You and the other party may choose to have your lawyers attend mediation sessions with you and participate in the negotiations, or you may choose to consult with them between meetings, as needed.

At the conclusion of the mediation process, your lawyer will review the mediation report and work co-operatively with the lawyer for the other party to turn your agreement in principle into a legally binding contract.

# WHAT SHOULD I LOOK FOR IN A LAWYER?

When choosing a lawyer to support you through the mediation process, look for someone who is familiar with mediation, and who is comfortable supporting you in making your own decisions, acting as a guide and advisor and not just as an advocate.

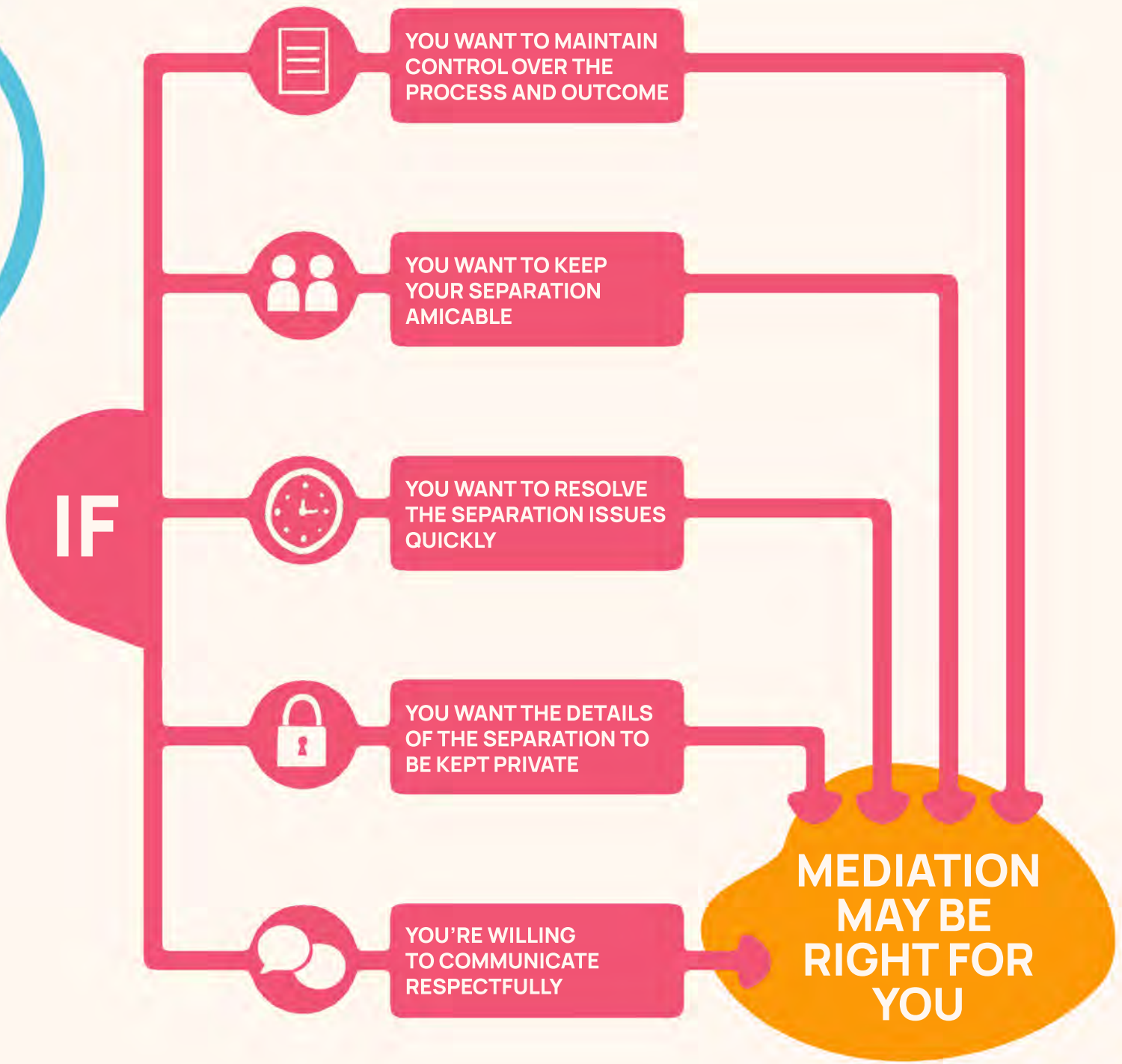


Choose a lawyer that you feel comfortable talking openly with, because they will not be able to give you good advice unless you give them all the relevant information they need to understand your circumstances. If your lawyer is not going to be attending mediation sessions with you, make sure you keep them “in the loop” about what’s going on, and contact them throughout the process to ask questions as they arise.

**IMPORTANT TIP:** Sometimes people think that they will be able to save money if they wait until the mediation process is finished to hire a lawyer, but this approach can backfire. For most people, reaching an agreement with their former partner takes a lot of hard work, and it can be devastating to have a settlement fall apart at the last minute because one of the participants who didn’t consult with their lawyer early on in the process discovers that they didn’t fully understand their rights and obligations during the negotiations and changes their mind about the settlement terms, sending the whole case back to “square one”.

Getting legal advice early and often during mediation is the best way of ensuring that the agreement you reach is going to last.

# IS MEDIATION RIGHT FOR ME?



## DO YOU HAVE AN INTEREST IN KEEPING YOUR SEPARATION AMICABLE?

Couples who use mediation to resolve the legal issues arising from their separation are often able to establish a model for civil communication and problem-solving that can aid in future interactions as co-parents.

## HOW MUCH CONFLICT EXISTS BETWEEN YOU AND THE OTHER PARTY? ARE YOU WILLING TO SERIOUSLY CONSIDER THEIR PERSPECTIVE, LISTEN CAREFULLY, AND COMMUNICATE MATURELY?

For mediation to be effective, you and your former partner must each be emotionally ready and willing to listen to what the other has to say and co-operate to find mutually acceptable solutions. It is valuable to realize that listening to your former partner's feelings and requests is not the same as agreeing with them.

## HOW MUCH CONTROL DO YOU WANT TO MAINTAIN OVER THE SEPARATION PROCESS?

Mediation allows you and your former partner to determine your own future by working out an agreement for yourselves, without giving up decision-making power to a judge or arbitrator who could make decisions that neither of you want.

## HOW QUICKLY DO YOU WANT TO RESOLVE THE SEPARATION ISSUES?

Going through mediation is usually much faster than waiting to take a case through the crowded courts to a trial.

## HOW MUCH MONEY DO YOU HAVE (OR WANT) TO SPEND ON THE SEPARATION PROCESS?

In most cases, mediation is considerably less expensive than more traditional lawyer-led negotiations or court proceedings. The mediator's fees are usually shared by both participants, and legal fees are kept to a minimum because the scope of the lawyer's role is limited to providing legal advice and drafting legal documents. You and your former partner take care of the negotiations yourselves.

## HOW IMPORTANT IS IT TO YOU THAT YOUR SEPARATION BE HANDLED PRIVATELY?

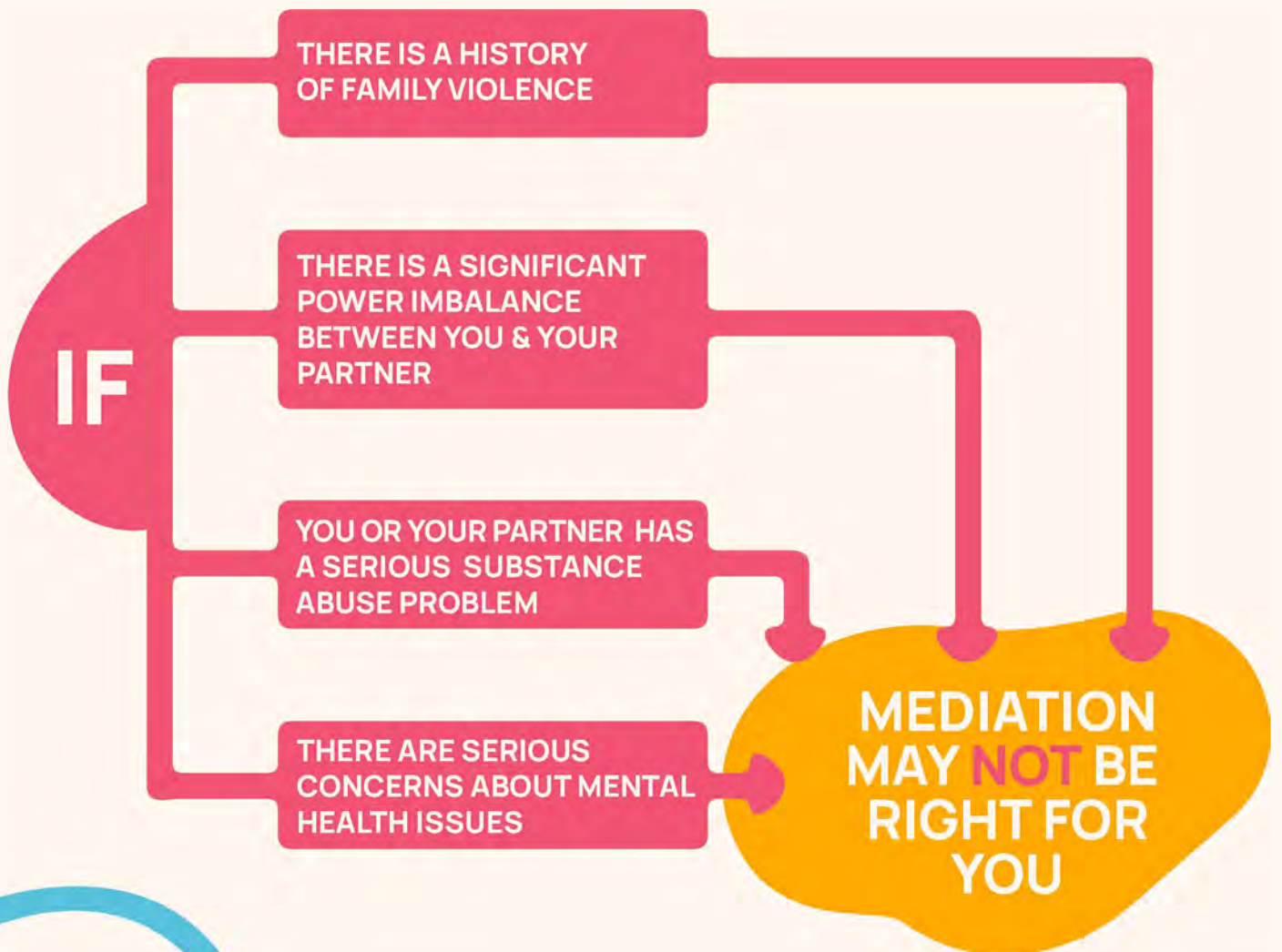
Mediation is a confidential process, and the extent to which information shared in mediation may be disclosed with other people is determined by you, your former partner, and the mediator. In contrast, most documents that are filed with the court, and most decisions made by judges, are all a matter of public record, including highly personal details about relationships and finances.

## IS THERE A HISTORY OF FAMILY VIOLENCE THAT WOULD MAKE IT UNSAFE TO PARTICIPATE IN MEDIATION, OR A SIGNIFICANT POWER IMBALANCE THAT MIGHT LEAD YOU TO AGREE TO SOMETHING YOU DON'T THINK IS FAIR?

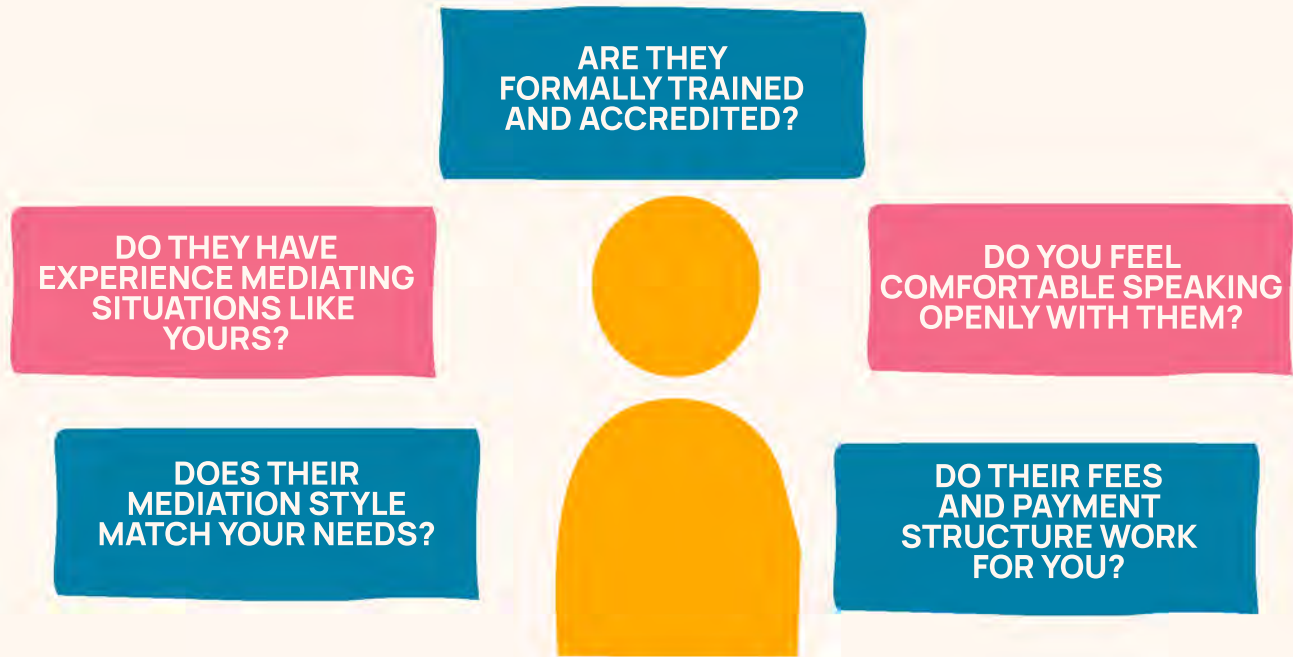
Mediation will not be effective if one partner feels unsafe, unable to communicate freely, or unable to act in their own best interests. If such a situation exists, mediation may not be an appropriate process for addressing the separation issues.

# ARE YOU OR IS YOUR PARTNER STRUGGLING WITH A MENTAL HEALTH OR SUBSTANCE ABUSE PROBLEM THAT WOULD IMPACT YOUR ABILITY TO PARTICIPATE EFFECTIVELY IN NEGOTIATIONS?

For mediation to work, you and the other party must both be able to engage fully in difficult conversations, and must have the capacity to make major decisions about your family's relationships and finances.



# WHAT SHOULD I LOOK FOR IN A MEDIATOR?



## MEDIATION STYLE

It is very important to choose a mediator whose style fits well with your needs and circumstances, so don't be shy about asking prospective mediators about their philosophy and methods. Some mediators adopt an "evaluative" approach, working with clients to identify the strengths and weaknesses of each person's position, and guiding them to an agreement based on what might be expected if the matter was decided by a judge. Other mediators are more "facilitative," and focus on empowering clients to craft solutions that are based on their own unique needs, goals, and concerns.

Above all else, choose a mediator with whom you and your former partner feel comfortable. You need to be able to trust the mediator to remain impartial and non-judgmental, and to be supportive and encouraging as they help you manage conflict and work toward agreement.

## ACCREDITATION

There are several different organizations that train and accredit family mediators in Ontario, including:

[Ontario Association for Family Mediation \(OAFM\)](#),  
[The Family Dispute Resolution Institute of Ontario](#),  
and [Family Mediation Canada](#).

Be sure to ask about formal qualifications, educational background and mediation experience. You may also wish to inquire about the mediator's skills in dealing with the specific issues that are of concern to you, such as parenting, support, property division, etc.



## ABOUT THE AUTHOR

Sharon B. Silbert, J.D., Acc.FM. (OAFM) is a lawyer and mediator who is committed to helping her clients handle family law issues respectfully and constructively, with minimal court involvement. She adopts a problem-solving approach, listening closely, responding mindfully, and guiding clients with care. To learn more, visit [silbertfamilylaw.com](https://silbertfamilylaw.com)