

# Ten Questions to Think About . . . . If You Are Considering Mediation with a Partner Who Has Hurt You or Whom You Fear



## **Mediation**

The term mediation is used in both family law and criminal law. In family law, mediation is when a separating couple meets with a mediator to help them make agreements about the children and property. In criminal law, mediation is when a victim of crime and the offender meet with a mediator to talk about the effects of a crime. It is a way to try to repair the harm done by the offense and help both the victim and the offender move on. It is important to understand the differences between these two kinds of mediation.

## **Steps in Mediation**

While the purpose of mediation in family and criminal areas is different, the basic process is the same. The mediator's job is to help two people find answers, not to take sides.

- A mediator will meet individually with both parties to see if mediation is appropriate. The mediator will provide information about the purpose and process of mediation. Each person makes a choice about whether to participate. Mediation is voluntary in both family and criminal areas. In family law a judge may recommend mediation, but no one can be ordered to participate.
- If mediation is appropriate, the mediator will arrange a time suited to both parties to meet face to face.
- The mediator will set ground-rules, and the mediator will enforce the ground-rules during the mediation.
- The mediator will give each person a chance to speak and encourage the other person to listen.
- After listening to both people, the mediator will identify the issues that need to be addressed.
- The mediator will help each party to give ideas that can address the issues.
- The mediator will help the parties to reach an agreement about how best to resolve the issues.
- The mediator will help people to make a plan for follow-up after the mediation.

## **Partner Abuse & Mediation**

Understanding mediation is especially important if there has been physical or emotional abuse in your relationship. Mediation can only work if both people know they are safe to tell the truth about the relationship and their feelings. If, for any reason, you have doubts about being able to tell the truth about anything that happened in the relationship or how you feel about it, mediation may not be right for you.

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Adapted from a presentation by Wendy Keats at the Justice Options for Women Workshop held in Prince Edward Island in January, 2002. This information was prepared during the Justice Options for Women Project: Restorative Justice and Women who Are Victims of Violence. For information contact Julie Devon Dodd (902 628-8187 or [jdodd@isn.net](mailto:jdodd@isn.net)) or Kirstin Lund (902 569-1894 or [klund@isn.net](mailto:klund@isn.net)) Thanks to Janet MacLeod for reviewing the information.

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## 10 Key Questions

**1. What is the purpose of mediation and who suggested it?**

**2. Is the mediator trained and experienced?**

**3. Does the abuser take responsibility for his actions?**

**4. Has enough time passed since the abuse?**

**5. Am I ready for a face-to-face meeting?**

**6. Do I feel any pressure to participate?**

**7. Is there any chance that I could be harmed if I do participate?**

**8. Do I want to participate because I think it will fix the relationship?**

**9. Am I strong enough to stop the mediation at any time if I feel uncomfortable?**

**10. Do I have someone to go to for support and counselling after the meeting?**



## 1. What is the purpose of mediation, who suggested it, and why?

For you to be able to decide if mediation is right for you, you will want to be very clear about the purpose of mediation. Is the purpose of mediation to make decisions with your former partner about the children or your joint property? Is the purpose of mediation to talk about how your partner has hurt you and the problems that has caused for you? If you are asked to participate in mediation be sure to ask “What is the purpose of mediation?”

If the purpose of mediation is to make decisions about your children or joint property, the mediation could have been suggested by you or your lawyer, your former partner or his lawyer, and sometimes by a judge. Find out who suggested the mediation and why they suggested it.

If the purpose of mediation is to talk about how your partner has hurt you, you will want to be very clear about why mediation was suggested and who suggested it. If you suggested mediation, you probably want a safe place to ask questions and to hear your ex-partner take responsibility for his actions. If your former partner or someone from the justice system suggested mediation, you will want to find out why. If the purpose is anything other than supporting you to move on with your life, you probably have no reason to want to participate.



## 2. Is the mediator trained and experienced?

If there has been physical or emotional abuse in your relationship you will want to ask a mediator about their training and experience in the dynamics of family violence and woman abuse. There are some very important issues that may make mediation unsafe for you. Perhaps the most important role the mediator plays is one of safety. She/he must do everything possible to ensure your physical and emotional safety at all times throughout the mediation process.

The mediator must be familiar with the issues faced by victims of abuse and have an understanding of the healing process. They must be able to do a thorough review and assessment of the suitability for mediation of a person who has used force or control in a relationship. A mediator familiar with family violence will understand issues of control and intimidation. Some women have talked about how what appears to be a simple facial or hand movement is a threat, and they feel afraid and intimidated. Is the mediator trained to understand the ways an abuser might try to control the session?

Mediators must be very objective people. It is their job to do a thorough assessment and they must not come to the mediation with strong prejudices or biases.

### 3. Does the abuser take responsibility for his actions?



Accepting responsibility goes beyond admitting guilt. The abuser must show strong indications of remorse and a genuine desire to make amends. This is something a good mediator is always looking for when assessing a case. While it is true that some abusers have selfish motives, there are also abusers who are remorseful and want to apologize for what they have done. It is very important that a mediator understands the difference between abusers who pretend to be sorry to get what they want and genuine remorse.

In victim-offender mediation most victims who seek out mediation say they have two goals. First, they want answers to questions that plague them. “How could you have done that? Was there something I could have done to prevent it? Are you going to try to hurt me again?”. And secondly, they want to hear the abuser accept total responsibility and genuinely apologize for what they have done.

In family law mediation it will be difficult, if not impossible, to reach fair agreements if a person who has been abusive does not accept responsibility for his behaviour, and continues to intimidate the victim of abuse.

### 4. Has enough time passed since the abuse?



It is rare for a victim of abuse to be “ready” for mediation in the weeks or months following abuse as she is often still in a state of shock. Facing her abuser while in this fragile state can be devastating and add to the trauma she is already experiencing.

When a violent act is committed, there are both “immediate” and “longer term” harms done. The immediate harms may be obvious – cuts and bruises, fear, financial impacts, etc – however the longer term harms may be hidden and are more complex. Some victims find themselves unable to trust and live in fear of another attack. Others speak of recurring nightmares, changes to relationships with their friends and family, and ongoing feelings of shame and guilt.

When enough time has passed and victims have been through counselling or therapy, they are in a much better position to mediate with their abuser. In criminal law, when they have gone through the initial stages of recovery and are at a point where they feel it’s important to confront their abuser in order to continue their journey of healing, then and only then, should a mediation take place.

In family law, only when a victim of woman abuse feels that she will not be intimidated and will feel safe expressing her needs, should a mediation take place.

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## 5. Am I ready for a face-to-face meeting?

Abuse leaves scars. Some victims refer to the memory of abuse as being “like an albatross” that they carry with them always, weighing heavily on their minds and on their hearts. Others talk of the intense anger and injustice they feel. They feel wounded not only by the abuser but sometimes by the justice system and often by their friends and family. It is all too common to find victims of violence who’ve been “blamed” by friends or family for having played a role in their abuse. “You should have known he’d get violent” or “Why didn’t you get out of there before this happened?” The saddest part is that some come to believe that they were somehow responsible for the abuse. This is never true.

These and many other issues face victims in their recovery process. They are complex and can play out in a victim’s life in a variety of ways. It is critically important that victims are provided with counselling and have progressed to a stage where a counsellor feels a woman is ready to participate in mediation before any face to face meeting occurs.

Abusers should also have counselling and therapy prior to participation in mediation. Experts who work with offenders say that denial and minimizing are the greatest barriers in dealing with abusers. Unfortunately the very nature of our current justice system – innocent until proven guilty - supports denial and minimizing. Offenders are encouraged to not accept responsibility for the crime unless there is no other possible option. Those found guilty by a court of law are passed into a correctional system that has traditionally ignored the victim and focussed entirely on the offender. Only recently have correctional treatment programs incorporated “victim empathy” into their agendas and allowed victims to participate in parole hearings. The fact that the victim is almost completely ignored by our systems helps the abuser to forget about her too.



## 6. Do I feel any pressure to participate?

Pressure can take shape in many forms - the over zealous mediator who tries to “sell” the victim on the benefits of mediation – the justice system which decides the case is right for mediation – the family law lawyer who suggests mediation as a cheap way of working out custody and financial issues – the parole system that wants to see “evidence” of the offender’s acceptance of responsibility – the pastor who encourages the victim to forgive. And the list goes on. Both the victim and abuser are in vulnerable positions and either can be easily swayed towards mediation by a persuasive person or by the threat of more/less severe consequences than those that would happen if mediation didn’t take place.

On the other side of the coin is the pressure to not participate in mediation. Friends and family members of the victim often don’t understand why she feels the need to confront her abuser and can put a great deal of pressure on her to “just forget about it and get on with life.” Likewise, the abuser is often actively discouraged from participation by others around him who are suspicious of the victim’s motives. They tell the abuser to “forget the past” and suggest that she’s just out to get him.

## 7. Is there any chance that I could be harmed if I do participate?

The threat of harm is present to some degree in every mediation when there has been abuse in a relationship. No one has the power to predict the future nor the impact of mediation with total accuracy and we can never be sure how someone will react in a stressful situation. The risks can be minimized to the greatest degree possible through careful screening and assessment. If any person involved in the assessment believes there is a real threat of harm, the mediation should not proceed any further.

In some victim-offender mediations it takes a year or more from the time of initial contact to the actual face to face meeting. It is often necessary for the mediator to meet individually a number of times with the victim, abuser and support persons before bringing the victim and offender together for a meeting face-to-face. Throughout this time the mediator must rely heavily on the counsellors involved as they are the people most qualified to assess the suitability and readiness of the victim and offender and to detect any potential for further harm. Not only should they be actively involved in the assessment but should also be involved in helping the victim and abuser to deal with the emotions and issues that arise as the face-to-face meeting approaches and once it is over.

In family law, the mediation is likely to take place much sooner. Because less time has passed since the abuse, emotions are high and the potential for harm is greater.

## 8. Do I want to participate because I think it will fix the relationship?

We hear the words “reconciliation” and “forgiveness” by some people who talk about “healing justice”. Some people have a vision for peaceful conflict resolution that heals all wounds and allows both victims and abusers to start anew. However, even the most idealistic advocates do not support the use of mediation in domestic violence or to reconcile a violent relationship. They are the first to say that mediation is not a cure-all. Issues of safety must always come first in any kind of justice process and mediation is no exception to this rule.

Many abusers would jump at a chance to participate in mediation if they thought they could get back into the good graces of their victim. A skilled mediator can normally see through these motives and immediately screen the case out.

However, there are some victims who want to use mediation to try to get the relationship back. For some, the fear of being alone or their dependence on the abuser is difficult to deal with and they fall prey to denial. Some victims become convinced that the violence will never happen again or that the abuser has been reformed. This can be especially so when the victim has strong religious values and beliefs about the importance of marriage. Regardless of who might want the reconciliation, this is a very dangerous area and mediators should do their utmost to screen out any cases where the motivation for mediation is reconciliation.



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## 9. Am I strong enough to stop the mediation at any time if I feel uncomfortable?

It is one thing to say that mediation is always voluntary however one must be very clear about what that means. It does mean that both the victim and the abuser willingly agree to take the next step in moving a mediation forward. It does not mean that a face-to-face meeting will necessarily ever take place. Mediation in cases of violence must be taken just one step at a time. If, at any point, one of the parties is hesitant or wants to take some more time, then the mediator should encourage that.

One of the key issues arising from the recent interest by governments in the use of mediation in criminal or family law cases, is that the process must take place within the time frames they set down. This is a problem since mediation is a voluntary process between two parties. Not only should mediation be initiated by the parties themselves, it should be directed by their needs and take place in the time frames that are good for them. If, at any point, one or the other wishes to pause or stop mediation, they should not be made to feel there will be repercussions by the system or by anyone else.



## 10. Do I have someone to go to for support and counselling after the meeting?

Whenever mediation takes place, information is exchanged. In victim-offender mediation, the abuser answers questions that may have plagued the victim for some time and both share information about how the abuse has impacted their lives. Sometimes this information can shake-up long held beliefs and can be very difficult for people to deal with. Following mediation, people often need the support and guidance of a professional to help put new information into perspective. Preferably it is someone who has supported them throughout the process.

Victims often struggle with issues of forgiveness when participating in mediation. Some say they feel pressured by others to forgive and others have no intention of forgiving the offender. However, many do feel the need to address the issue during mediation and are usually the person who brings it up. Whether or not the victim forgives the offender during the mediation, she will likely experience strong feelings about it following the mediation. Some may wonder if they gave in too easily while others think they might have been too harsh. Victims often need help understanding what “forgiveness” really means. These are feelings that must be addressed with a counsellor or support person as soon after the mediation as possible.

However the process must not end at one counselling session. When a successful mediation has taken place, the doors have been opened for both the victim and the offender to continue their journey towards healing.

In family mediation, it is important that, in addition to having the support of a counsellor, victims have a lawyer they can talk to about their rights before signing any mediated agreement.