



MEDIATION

MUNICIPAL
DISPUTE
RESOLUTION
SERVICES

Mediation Handbook

Municipal Affairs | Municipal Services Branch

Alberta 

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Introduction to **Mediation**

The Intermunicipal Dispute Resolution Initiative has been established to address disputes between municipalities or municipalities and another public agency. When parties are flexible and are interested in establishing or maintaining an ongoing relationship, we recommend the mediation process. Involving a third party to help develop solutions both parties can agree on, may help municipalities save money and avoid lengthy and unnecessary legal proceedings.

This booklet has been designed as a guide to help you work through the mediation process. The contents describe the advantages of mediation, information on the mediation process, including how to choose a mediator, and a sample contract.

Mediation

In mediation, an unbiased, independent mediator facilitates a discussion between two or more parties who need to resolve an issue. The mediator is a knowledgeable, yet neutral, process manager who can help the parties communicate and negotiate more efficiently and effectively. As a result, parties can often resolve their issue or come to a mutually agreeable solution easier than on their own.

While the mediator is actively involved in the process of mediation, it is the responsibility of the parties to craft their own solutions and make their own decisions. The mediation process seeks to develop solutions that satisfy the interests of all parties.

Glossary of Terms

Issue

This is the subject matter of the dispute.

Position

This is one party's solution to the issue being discussed based on their own interests.

Interest

These are the needs, wants, fears and concerns, which motivate people to take a certain position. They are also the items that will have to be addressed if the issue is to be satisfactorily resolved.

Consensus

Consensus is the general agreement among parties to support the solution reached by the group through mediation.

Dispute Resolution **Options**

There are a number of options parties can choose from when confronted with a dispute or a difference of opinion:

- **Informal discussion/problem solving** - Parties work together informally to either reach a solution or agree to drop the matter.
- **Direct negotiation** - Formal unassisted negotiations directly between the affected parties.
- **Mediation** - A neutral third party helps parties develop a solution they can both agree on.
- **Fact Finding** - A knowledgeable third party hears a summary of each party's best case and renders a non binding opinion of the likely outcome if the matter went to court or to a formal hearing.
- **Arbitration** - A private process in which a third party renders a decision after hearing evidence from all involved. The decision is normally binding.
- **Tribunal/Courts** - A public process where a judge or a hearing panel have the responsibility of arriving at a solution. Often a lawyer represents each party, addresses the judge or the panel and brings in evidence.

MEDIATION	TRIBUTAL/COURTS
Low cost	High cost
Timely	Time consuming
Scheduled quickly	Dependent on court times
Direct communication between parties	Lawyers speak to decision maker
Encourages dialogue	Discourages dialogue
Builds relationships	Discourages relationships
Parties develop solutions	Solution imposed

A Case **Study**

A town and its neighbouring county had a long-standing dispute over an annexation proposal. The bottom line? The town wanted more land and the county felt threatened. Both sides had a strong adversarial history that included lawsuits. Mediation would allow for a solution that didn't involve the courts and would satisfy both municipalities.

**“a key to the mediation process was the
focus on current and future issues”**

After a call to Municipal Affairs, the Minister met with, and encouraged both groups to try mediation, and offered financial assistance as an incentive. Over five months, the parties, facilitated by the mediation team, spent 105 hours developing an annexation agreement that would resolve their concerns. To begin, each municipality formed a team of five people (three councillors and two staff) who had the responsibility of bringing forward names of potential mediators. A team of two mediators was chosen.

At the first mediation meeting, ground rules were set, including when the group could meet, and the protocols for the meeting. Mediation meetings were held weekly and each side was to be represented by a chief elected officer (mayor or reeve), one councillor and a staff member, but alternates were also appointed. Early in the mediation process, both sides identified what the critical issues were and why. Each issue was brought to the table and given time for discussion. Everyone was given the opportunity to speak but only one person spoke at a time. In time, they began drafting a preliminary agreement.

**“one mediator encouraged the participants to
imagine packing the past in a suitcase
and leaving it at the door”**

A key to the mediation process was the focus on current and future issues. One mediator encouraged the participants to imagine packing the past in a suitcase and leaving it at the door. The approach allowed the participants to stay on-task and the final agreement not only provided for a staged annexation, but also a joint drainage study, a schedule for road transfer and maintenance, and an agreement to leave the farm land undeveloped for as long as possible.

As you can see by reading this case study, one of the major benefits of mediation is that it allowed discussion to take place on a wide range of issues. Also, the skills that were developed during the mediation process were transferred to the participants, allowing them to use the same process to resolve conflicts in other situations.

Benefits of **Mediation**

Local resolution for local issues: those most impacted by the agreement build the solution; this reduces tension and improves harmony between neighbours.

Clarifying complicated issues: mediation sorts and prioritizes complicated concepts and breaks them into manageable pieces.

Impartial process manager: mediators understand what motivates people to come to resolutions, and are skilled at managing emotions during negotiation.

Flexibility fosters creative solutions: the group reviews new issues that arise, and determine together whether to integrate them into the discussions; this opens the door to better innovation.

Building positive relationships: when people go beyond personalities to come up with a “win-win” solution, it establishes more trusting relationships.

Agreement durability: when solutions are built through consensus, there is better buy-in resulting in long lasting agreements.

Improved workplace productivity: less conflict and better communication in the workplace promotes more effective interaction between people.



The Mediation **Process**

The mediation process takes a mutual gains approach to bargaining. It seeks to develop solutions that satisfy the interests of all parties. It asks the parties to clarify the position they have taken on an issue and determine the underlying interests that are at the core of an issue. Rather than taking a hardball approach (the more I get, the less you get) or a soft approach (seeking a compromise to appease the other side), mutual gains negotiations strive to ensure the interests of all are met.

The parties identify as many different items/elements related to a potential solution as they can, creating a maximum number of opportunities to develop a solution that satisfies all the parties. Determining what those items/elements are requires that the parties have a good understanding of each other's interests or needs.

THE MEDIATION PROCESS	
1	Assessment
2	Preparation
3	Convening the Parties – The First Meeting
4	Identifying the Issues
5	Understanding Interests & Gathering Data
6	Creating & Evaluating Options
7	Crafting a Solution
8	Ratification

Step 1: Assessment – Is Mediation an Option?

Mediation is an effective option to resolving disputes or differences when all or some of the following conditions exist:

- the dispute has been characterized by poor communication and distrust between the parties;
- the sharing of information will lead to the possibility of a better understanding of the issues involved;
- all parties are needed in order to implement a solution;
- the establishment of a trusting working relationship will help future interactions with the other parties;
- there is a likelihood that neither party would get what they want if the dispute went before a tribunal or courts;
- there are a broad range of related issues that an administrative tribunal or the courts might not have the ability to address; and
- there is room for collaboration and creativity.

Step 2: Preparation

Once the decision has been made to use mediation, it is important that time be spent ensuring that the necessary conditions for a successful outcome are in place.

The mediator seeks to confirm that:

1. All the stakeholders are supportive of the process and willing and able to participate.
2. There is support for the process from the municipal councils involved.
3. All participants are willing to be involved in establishing and agreeing to the rules governing the process of mediation.
4. The necessary financial and time resources are available to get the job done.
5. The participants have the basic communication skills needed to be effective negotiators.

(See Appendix A for a sample document that will help you establish some basic ground rules around the mediation process.)

Selecting a mediator

The mediator is selected and agreed to by all parties in the dispute. Alberta Municipal Affairs encourages parties considering the use of mediation to use a team of two mediators. The complexity of the issues being addressed, the number of participants at the table, and the time involved in the negotiations support the value of a team approach.

Referrals can be obtained from Alberta Municipal Affairs' roster of qualified private sector mediators, the ADR Institute of Alberta, or the ADR Institute of Canada.

Choosing the right mediator for you

Remember, the mediators will be working with you and the others during some tense times. It is important that you feel confident that the chosen mediator is knowledgeable enough to help with the issues, and that you trust the mediators will conduct a fair and impartial process.

After interviewing the mediators, take some time to reflect on their responses. How did they communicate with you? Were they good listeners? Did they ask good questions? What knowledge did they have about the dispute, its context, politics, etc.? (For a complete list of questions designed to assist you in choosing a mediator refer to Appendix B.)

When all parties are satisfied that they have chosen the right mediator, the mediator will draw up an "Agreement to Mediate" (see Appendix C for a sample contract). This document will outline the mediation process, procedural guidelines, and service fees, and will need to be signed by all parties.

Selecting your organization's team

Deciding who will form the mediation team within your organization is an important step in the process. Different decision-making processes require different skills on the part of the participants. If your case was before a judge or a tribunal, your primary concern would be to convince the decision maker of the merits of your case and to question the other party's case. This approach calls for an individual who is skilled at presenting the facts that support only your position.

On the other hand, mediation takes a mutual gains approach and requires effective two-way communication. Joint crafting of a resolution requires that all parties have a clear understanding of each other's issues and interests. Parties will normally set up a negotiating team consisting of a lead representative and an alternate. Support personnel may or may not be part of the team.

For mediation to be effective, participants should:

- be effective listeners;
- be good communicators;
- be able to separate personalities from the problem to be solved;
- seek resolution that focuses on the bigger picture;
- be committed to an outcome that is mutually acceptable to all the parties;
- look for collaborative ways to get beyond the positions each group takes;
- be imaginative in crafting solutions; and
- commit the necessary time to the process.

Before beginning, the selected mediator will spend time with each of the individual parties to ensure that they are prepared for the negotiations. These discussions will include focusing on interests rather than positions, and providing the participants with a better understanding of effective negotiation techniques.

At this stage, the parties should ask themselves:

- What are the options for the other parties?
- How important is an ongoing relationship?
- Who will represent us?
- Is there organizational support (including time and money) for this effort?
- What options are available if negotiations fail?

At this stage, the mediator asks:

- Are the right parties involved?
- Is there an understanding by the parties of the issues/topics under discussion?
- Do the parties have a good understanding of negotiation strategies?
- Where is the most appropriate place to hold the negotiations?
- Is there a commitment from the parties for an initial meeting?

Step 3: Convening the Parties – The First Meeting

During their first joint meeting with the mediator, the parties finalize the mediation agreement (Appendix C). This is signed by all the participants and outlines:

- the timeframe;
- the agreement to mediate;
- who the mediator(s) are;
- the rules of behaviour;
- the willingness of all parties to negotiate;
- the subject matter of the mediation; and
- a variety of other topics related to the process.

A separate contract may be signed with the mediator(s) detailing rates, roles, etc. (A sample “Agreement to Mediate” contract is provided in Appendix C.)

At this stage, the parties should ask themselves:

- What ground rules have to be in place for me to feel comfortable with this process? (See Appendix A)
- Do all the parties and the mediator understand the time lines I am under?
- Am I clear who in my organization has to approve any final agreement?
- Am I committed to attending the meetings?
- Who will be my back up?
- Do we agree with the selection of the mediator?

At this stage, the mediator ensures:

- The agreement to mediate is in place;
- The ground rules are in place and all the parties understand and are comfortable with them;
- The parties have signed the agreement to mediate; and
- If negotiation training is required it has been completed.

Step 4: Identifying the Issues

Once the “Agreement to Mediate” contract (Appendix C) is finalized, the participants identify all the issues that need to be addressed to reach a final solution. These issues make up the agenda.

At this stage, the parties:	At this stage, the mediator:
<ul style="list-style-type: none">• Identify the issues that from their perspective will have to be addressed in order to resolve the dispute; and• Ensure that all of their issues are on the table.	<ul style="list-style-type: none">• Ensures that each party has had an opportunity to get their issues out on the table; and• Collates the issues into one document, which becomes the group’s working agenda.

Step 5: Understanding Interests & Gathering Data

Parties must identify the interests that support the position that they have taken on an issue. Having a clear understanding of the reasons that drive you to a position is critical to developing the final solution. In some cases this involves jointly selecting a consultant to do studies and provide required information, and in others it could be a simple agreement to use data that one of the parties already has. Whatever data is used, all parties must agree to its credibility and acceptability.

At this stage, the parties:	At this stage, the mediator:
<ul style="list-style-type: none">• Reflect on what is really important to them in this dispute;• Articulate to the other parties what is important to them;• Listen carefully and when necessary seek to clarify and get a better understanding of the interests of the other parties;• Identify what data they need; and• Agree on how the data will be obtained and who will be carrying out the required studies.	<ul style="list-style-type: none">• Assists the parties in identifying their interests;• Allows each party uninterrupted time to articulate their interests (as opposed to their positions);• Works to ensure that the parties have a clear understanding of each other’s interests;• Summarizes the interests and identifies the parties’ common interests; and• Ensures that there is agreement on the type of data and how it will be obtained.

Step 6: Creating & Evaluating Options

The tendency in any group is to immediately evaluate options as they are put on the table. While there is some merit to doing an immediate check to see if there is an obvious solution available, it is important to avoid doing anything that might reduce the creation of additional options. If a quick solution is not available, the group should take the time needed to brainstorm and develop as many options as possible.

Once the list of options has been generated, evaluate each option and do some reality testing. Ask yourself:

- How do these options meet our interests?
- Can this option be sold to my council and to our ratepayers?

When a preferred option is selected, the mediator will often ask the parties to re-examine some of the rejected options to determine if any elements can be added to enhance the preferred option.

At this stage, the parties should ask themselves:

- What options exist?
- What independent criteria can we use to evaluate the options?
- Can this deal be sold to our constituents or ratepayers?
- What can we do to help the other parties sell it to their ratepayers?

At this stage, the mediator:

- Works with the parties to ensure that all the technical information is available;
- Guides the parties through an option generation process;
- Works with the parties to develop evaluation criteria;
- Ensures that each option is evaluated and that each party reality tests the solutions to determine whether or not it can be implemented; and
- Works with the parties to reassess the preferred option to see if it can be improved by adding elements from some of the rejected options.

Step 7: Crafting a Solution

Once the group has evaluated all the options, and ensured their interests are addressed, a final package is put together. This package reflects the differing interests of all the participants and includes:

1. the substantive components of the solution;
2. an implementation plan; and
3. an alternate dispute resolution process for use, if disagreements arise during implementation and subsequent operations.

At this stage, the parties ask:

- What requirements do I have regarding implementation?
- Does the implementation plan meet my interests?

At this stage, the mediator:

- Works with the parties to develop an implementation strategy including who will do what when; and
- Works with the parties to develop a conflict resolution strategy to deal with unforeseen problems that could emerge during implementation.

Step 8: Ratification

Once the negotiations are complete, each party takes the agreement back to their council for ratification. The ratification process can involve either a joint presentation by both negotiating teams to a joint meeting of all the councils involved or individual presentations made to individual councils. In both of these cases the mediator can be involved by working with the negotiating teams to prepare their presentation materials and develop a presentation strategy.

At this stage, the parties ask:

- Do the other parties clearly understand the requirements I have for ratification and what the timelines are?
- Would a presentation by the entire negotiating team to a joint meeting of the councils involved be a good idea?

At this stage, the mediator:

- Ensures that all the parties have clearly articulated their ratification process; and
- Provides assistance to each of the parties as needed and agreed to by all.

Frequently Asked **Questions**

How is mediation different from organizing a discussion ourselves?

Mediation is different because:

- A mediator manages the process for you, allowing participants to fully take part in the discussions;
- The mediation process provides a structure for discussions in a safe and respectful environment, thus a productive exchange of information can occur;
- Mediation is typically confidential so you can have candid discussions; and
- The mediation process can allow each party to understand the other party's point of view. Understanding does not necessarily mean agreement, but it can help build consensus.

Isn't it faster to go to the Municipal Government Board and get a decision right now?

Not all issues that arise between municipalities can be dealt with by the Municipal Government Board, but if it does go to the Board, it can still take significant time depending on its complexity. There can be pre-hearing preparations, and legal challenges can take six months or more.

What does it cost to hire a mediator?

The rates will vary, but typically range upward from \$200 per hour, plus expenses. Funding grants from Alberta Municipal Affairs generally cover one-third of the mediator costs, while the other two-thirds is split between the parties.

How are expenses handled in mediation?

Once the grant is approved by Alberta Municipal Affairs, one municipality agrees to act as the banker and administer the funds for the mediation.

Do our administrative support people take part?

Sometimes chief administrative officers, chief financial officers or planning personnel are present. You decide whether these people have a voice at the table, or act only as a resource.

Some of our issues are quite technical. Can the mediator help with these?

The mediator can help you decide how you reach agreement on technical questions. This can include who to consult, how you will abide by the advice, whether outside legal opinions are required, or an agreement to use technical information that already exists. However, the mediator will not provide technical advice themselves.

How much time will be spent in mediation?

Every issue is different, so municipal mediations have varied from half-a-day to forty days. Scheduling mediation meetings in advance helps everyone commit to the process. Meeting regularly keeps the momentum going.

Frequently Asked **Questions** con't...

How many mediators are typically required?

We suggest choosing two mediators since this can ensure everyone is heard when managing a large group discussion.

Can we meet with the mediator before we have joint discussions?

Each mediator has their own way of working, but typically mediators will meet separately with each party at least once to discuss the preparations for mediation.

What is an “Agreement to Mediate”?

An “Agreement to Mediate” is a formal, signed contract between the parties, and includes a description of the expectation and role of the mediator(s). The agreement outlines how the parties will share expenses, sets out confidentiality guidelines, and may indicate whether the parties want the agreement to be legally binding or not.

The agreement also states that the mediator does not give technical or legal advice, and cannot appear as a witness at subsequent court or board hearings.

Why is it important to include confidentiality in an agreement?

The parties generally agree that discussions during and after mediation are confidential. This allows for candid discussions during the process, making mediation more productive.

Is there a difference between confidentiality and “without prejudice”?

Yes. When parties commit to confidentiality, they are agreeing that discussions during the mediation will only be shared as they have outlined in the Agreement. For example, the parties may agree to issue a joint media release on their progress, or may establish how and when to report to council.

The term “without prejudice” is an aspect of confidentiality, and means that neither party can make a case against the other by sharing these discussions in court or at a hearing.

Can our council take part in the mediation?

It's possible to have the whole council present during mediation, but generally it's more efficient to have representatives from council attend.

If the full council is not represented, doesn't the proposal risk being voted down when it goes to council for approval?

This is certainly a consideration. However, it can be cumbersome to have full representation from both councils at the mediation, so it's your decision how to proceed. One option may be to have the mediation team regularly report to council so all of council is kept informed, and can provide their feedback as the negotiations progress.

Appendix A: Framework for Mediation

It is the group's responsibility to develop a document that sets out ground rules, protocols, and a framework for a process that will work for them. In order to prepare for that discussion, you will need to identify the concerns that the ground rules will address so that you will be comfortable with the process.

Some sample concerns could be:

- I'm afraid the group will get bogged down with...;
- These processes are always unfair because of...;
- What would happen if they did...; and
- I need to be assured that I will be heard and respected.

The agreement generally includes the following items:

- Purpose of the group (why we exist, the task at hand);
- Structure of the group (the use of observers or alternates);
- Timelines to complete the mediation;
- Decision-making process;
- Terms of confidentiality;
- Media contact (if, when and how contact will be made);
- Expenses (how costs will be shared or handled);
- Meeting procedures;
- Definitions of consensus; and
- The mediator(s) involved.

What suggestions do you have for each item? What other items should be added?

Appendix B: Selecting the Mediator(s)

To assist you in choosing the mediator(s) who best fits your needs, please review the following questions you may want to ask them regarding:

Experience

- What experience do you have? (Does the mediator's track record indicate that he or she has the experience necessary to conduct this mediation?)
- If you don't have substantive knowledge of these issues, how would you handle this knowledge deficit?
- Can you give us some examples of cases/situations similar to this one that you have worked in?

Personal Attributes

- Have you signed/endorsed a code of ethics?
- Can you describe your style as a mediator?
- Is the mediator a good listener and communicator?
- Does the mediator demonstrate integrity and honesty?
- Is the mediator free of any previous involvement in the dispute; can they function independently?

Training

- What training do you have? (40 hours of basic mediation training is considered the acceptable minimum.)
- Have you been involved in ongoing professional development?

Process

- Who is responsible for meeting logistics, preparing agendas, keeping meeting notes?
- What expectations do you have of each of the parties?
- Can you explain the process that you intend on using?
- Can the mediators work together as a team (if more than one is chosen)? Have you worked together in the past?

Fees

- What do you charge for your services?
- How much will the entire process cost?
- How much time will it take?
- Is there a way we can keep costs down?
- Do you have separate rates for travel time?
- Is the same rate charged for preparation as for the actual mediation?

Appendix C: Agreement to Mediate

This agreement is made between _____ Mediator
and _____ Parties

Purpose: This agreement governs the terms and conditions of the mediation.

What The Mediator Will Do:

1. The Mediator agrees to help the Parties discuss the matters in dispute between them, assist the Parties in communicating and negotiating as effectively as possible, and assist the Parties in reaching a settlement of the dispute.
2. The Mediator also agrees to keep the confidentiality of discussions in the mediation proceedings, and all documents generated for the purpose of reaching a settlement of the dispute.
3. The Mediator's agreement to keep matters confidential does not apply if the Mediator is required by law to disclose the discussions or documents, or if the Parties both agree in writing that the Mediator can disclose all or part of the discussions or documents.

What The Mediator Will Not Do:

Mediation is a process of facilitated negotiations and, accordingly, the Mediator will not:

1. make decisions for the Parties;
2. provide legal advice to the Parties; and/or
3. provide technical advice to the Parties.

Fees and Expenses:

1. The Mediator's fees will be charged at the rate of \$_____ per hour for telephone discussions, preparation, meetings, mediation sessions and follow-up work.
2. The Parties will pay all expenses incurred by the Mediator. Expenses could include fax messages, messenger costs, long distance telephone calls, travel accommodation, meals and word processing.
3. The Parties agree to each pay ____ of the Mediator's fees and expenses, plus G.S.T.

Dated in _____ on (date)_____

Signed _____ Signed _____ Signed _____





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