

Selecting a Mediator

A list of considerations in selecting a mediator, might include the following:

(i) Process or substantive expertise

1. Do you want the mediator to assess the legal issues and give an opinion as to the likely outcome if the matter proceeded to trial?
2. Do the parties have their own technical experts or ability to acquire technical advice?

There is an ongoing debate between mediation theorists, practitioners, and users of mediation services over whether it is better to choose a mediator who has experience in mediating similar disputes, or one who's expertise lies more in managing the process. The former brings substantive knowledge and experience, and is more inclined to try to influence the result in a particular direction. Offering an opinion, however, may put the mediator's neutrality in question; may ignore interests other than those of a legal/technical nature which underlie the dispute; may lead to an impasse or escalation of the conflict; or may prevent the parties from creating options for mutual gain due to the mediator's bias in favour of previous settlements in similar cases. Process experts tend to bring an open mind, and skills in process design and conflict management. However, if the issues are very technical or involve complex legal issues, more time will be required to bring the mediator up to speed.

(ii) Mediator's Style

1. Does the mediator tend to use a particular model of mediation (facilitative, evaluative, therapeutic, transformative)?
2. What is the mediator's style? Does the mediator:
 - ? encourage the parties to negotiate directly
 - ? encourage representatives to negotiate on behalf of their clients
 - ? caucus frequently (use more of a “shuttle diplomacy” model)
 - ? question the parties directly

- ? limit the role of counsel
- ? get parties involved in designing the process

(iii) Experience and Training

1. What is the mediator's training?
 - ? Type and length of courses
 - ? Accreditation
 - ? Professional background (lawyer, engineer, social worker...)

2. What is the mediator's experience?
 - ? How many mediations conducted
 - ? Types of mediations conducted
 - ? Full or part-time mediator
 - ? Experience mediating this type of dispute--are there complex legal technical issues which must be known and understood?

(iv) Neutrality

1. What are the mediator's biases and prejudices?
 - ? institutional biases -- individuals vs. corporations; private vs government organizations
 - ? employee/union vs management
 - ? insurer vs. insured
 - ? gender, cultural group...

2. What kind of bias do you want in your mediator?

3. Is the mediator neutral in terms of:
 - ? not having an interest in the outcome of the dispute
 - ? not favouring one party over the other

4. Does the mediator have a conflict with either party?
If so, is it sufficient that it has been disclosed to each party?

(v) Reputation

1. What is the mediator's reputation?
 - ? ask for and check references--both from former clients and other lawyers

2. Speak to those who have used the mediator in previous cases to determine if the mediator is suitable for your case.

(vi) Interpersonal and Communication Skills

1. Ask if the mediator has any written materials. Are they professional, clear, well written, and well organized?

2. Speak to the mediator to get a sense of his or her verbal and listening skills.

(vii) Fees

- ? What is the hourly rate?
- ? What is the daily rate?
- ? Will the parties share the costs equally?

- ? Is there a cancellation fee?
- ? Is there a fee for booking a space where the mediation will be conducted?
- ? What disbursements will the client be responsible for?
- ? Do the fees include preparation time. If so, how much preparation time will the mediator likely require?