

# HIRING A MEDIATOR: A BUYER'S GUIDE

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## Introduction

Mediation is a collaborative form of dispute resolution where the parties in dispute resolve the dispute themselves, with the assistance of a 3rd party neutral (the mediator), instead of an arbitrator or judge ruling who is right or wrong.

Are you thinking mediation may be a good way to resolve your dispute? Here are **15 things you should consider when hiring a mediator**. Think of each of these things as a desirable mediator attribute.

## Mediation Outcomes

1. **Client service.** You are in conflict. Hiring a mediator should not make the situation worse. The mediator should be doing all they can to make it easy for you, and the other party(s), to come together, build consensus, and resolve your differences. They should be removing barriers to settlement.
2. **Results.** You are hiring the mediator to help you “resolve” your conflict. It is not enough for everyone to just sit down and talk. Results matter. What is the mediator’s settlement rate? How satisfied are others with the mediator’s service? Success leaves clues.
3. **Personalization.** Every conflict is different. People are different. There is no one-size-fits-all solution. At all times, the mediator should be actively seeking to understand your unique situation, and be responding appropriately. Are they matching the solution to your problem?

## Mediator Experience, Skills and Qualifications

4. **Experience.** Is the mediator experienced in resolving disputes similar to yours? Do they understand your business? Talk your language? A mediator of family disputes may be like a fish out of water when it comes to a business dispute involving business-2-business issues (and vica versa, of course). How many disputes have they resolved? Expertise is gained through continuous practice and intentional learning. What is the mediator’s track record?
5. **Communication and relationship skills.** At the heart of conflict are people and their relationships. How well does the mediator communicate verbally and in writing? What about their personality? Are they someone who relates well with other people, puts them at-ease, AND yet can also manage difficult, emotionally-charged conversations?

6. **Consistency.** What are the mediator's values? What are their values and beliefs about conflict and dispute resolution? Do they align with yours? Do they appear to practice their beliefs? If not, it is just "talk".
7. **Effective facilitator.** One of the key roles of a mediator is to facilitate. The mediator needs to effectively balance the process (how people in the mediation talk about things), content (what is being talked about), and the emotions (relationships) present. The mediator guides the parties in positive and constructive ways, without coercion, directly confronts inappropriate behaviour, and facilitates negotiation between the parties, towards resolution and settlement. This should be basic stuff for an experienced mediator.
8. **Structure and Organization.** Mediation is a process. It is not a free-for-all where people get together and things automatically work themselves out. There are stages to mediation. A mediator should be organized. The mediator should make it clear to you how the mediation will be conducted, and what the expectation of all parties is, including the mediator.
9. **Project management.** There is a project management component to mediation. Deliverables, responsibilities, schedule and budget apply to mediations too! Monitoring and adaption, to circumstances that arise in the mediation, is a vital project management AND mediator skill.
10. **Creativity.** The craft of mediation is as much art as science; right brain and left brain. Mediation has a structure and logic to it. There is a process, a methodology. These are left brain qualities. Breaking an impasse often requires creative, intuitive, innovative approaches. These are right brain qualities. An effective mediator combines both. Does the mediator have both? Evidence?
11. **Online Fluency.** More and more of today's conversations, and disputes, are taking place online. Fluency with web-based technologies, managing information online, and facilitating online conversations, often leads to quicker settlement. Working online provides another meetup option, and/or supplements face-to-face conversations. Interacting online can also be an effective way to mitigate interpersonal issues; e.g., power imbalances, that may prevent collaboration when disputants are in the same room together. What's the mediator's online competency level?
12. **Credibility.** What do you know of the mediator? If information is all second-hand, what are the sources you are relying on? Testimonials? Do you believe them? Are they certified by a professional body? What is their position in the professional mediator community? Do they have a digital footprint that provides insight into their character. "Google" them. What shows up? Is this someone you can trust?

## Value for Money

13. **Pricing.** Does the mediator work on a fixed fee basis, or do they bill hourly. Hourly billing is great when things resolve quickly. Agreeing on a fixed fee up-front can alleviate cost uncertainty, and allow everyone to focus on collaborative resolution and settlement.
14. **The Big Picture.** Mediation seeks to reduce the costs of conflict; not only direct costs such as professional fees, also productivity costs linked to the value of lost time, continuity costs associated with the loss of ongoing relationships, and the emotional costs of being held hostage by one's emotions. Does the mediator discuss mediation and resolution options in the context of your big picture? They should.
15. **When all is said and done.** Does the mediator inspire confidence? At the end of the day, will the mediator have given you value for money? Measuring value can be subjective. Does the mediator understand how you measure value?