

## SELF-REPRESENTATION AND MEDIATION

### FAQ

[ 20 FREQUENTLY ASKED QUESTIONS ]

**Q1. What is a mediation with self-represented parties or self-represented litigants?**

This is a mediation where one or more parties in the dispute engage in mediation without a lawyer or paralegal representing them.

**Q2. I am thinking of hiring a mediator to help settle my dispute. When can I initiate a mediation?**

Mediation can usually be initiated at any stage of a dispute if all sides agree, although certain timing and rules apply if you are involved in an Ontario lawsuit (action) to which [Mandatory Mediation](#) applies.

**Q3. Explain ‘neutrality’, or the impartiality of a mediator.**

Mediators are impartial, or neutral, because they do not have an interest or stake in the outcome of a mediation. The mediator is also paid regardless of the outcome. The mediator’s role is to facilitate and assist both sides in their negotiations with one another.

**Q4. What is the difference between the role of a mediator versus the role of a lawyer at a mediation?**

A mediator, unlike a lawyer, is not an advocate for one side or the other. Conversely, a lawyer’s (including a settlement counsel’s) primary duty is to their client, and to advocate for that client. As well, a mediator does not provide anyone with legal advice, even if the mediator is also a lawyer or former lawyer. The mediator is being hired to mediate, and not to provide legal services.

**Q5. What is the difference between a mediator, an arbitrator, and a judge?**

A mediator plays a facilitative role and is not a decision maker. The role of a mediator is to help the parties come to their own decision.

An arbitrator and a judge *are* decision makers. They are called upon by the parties to hear evidence and legal arguments, and to ultimately come to a decision that is imposed on the parties. The only meaningful difference between an arbitrator and a judge is that a judge is a publicly appointed, high-ranking official, whereas an arbitrator is privately hired by the parties and paid a fee to decide the case.

**Q6. What is the benefit of a mediation to a self-represented litigant or disputant (“SRL”)?**

Mediation provides a potentially lower cost, lower time commitment and lower risk opportunity for resolving a dispute, as compared to resolution by way of courts or arbitration. A mediator creates the atmosphere whereby the parties are settling their own dispute with the mediator’s help instead of having a resolution imposed on them by a third party. Mediators can also be useful in the process of potentially repairing a relationship that has broken down because of a dispute. Mediation is also private and confidential, whereas court is public (and arbitration may or may not be, depending upon appeal rights).

**Q7. What can a mediator *not* help me with?**

A mediator will not take your side over the opposing side. A mediator cannot make a decision for the parties. A mediator can, however, make a *recommendation* for a settlement, if asked by the parties or their lawyers—and if the mediator thinks it is appropriate. If accepted by both sides, a recommendation would form the basis of a settlement. However, mediators generally help the parties reach their own decision, and they will only make recommendations if necessary, and sometimes not at all.

Additionally, a mediator should not be called upon to try to convince the other side of a dispute to attend mediation, or to hire that mediator to hire them to mediate. The decision to enter mediation, and which mediator to hire, should be agreed upon by the parties.

**Q8. How do I know whether a particular mediator is right for me, my needs, and the dispute?**

Here are a list of factors to consider when hiring a mediator:

- Experience and working knowledge of the type of dispute in issue
- Reputation of the mediator
- Whether a mediator is a member of an ADR roster, such as the [Canadian Academy of Distinguished Neutrals](#), [ADR Institute of Canada](#), or [International Academy of Mediators](#)
- Referral from lawyers, paralegals, and word of mouth
- Cost of a particular mediator, as mediators charge different prices
- Competence in other areas, such as cultural nuances and emotional intelligence
- Availability of the mediator; some have early dates, while others may be booked up for months
- Experience in conducting virtual mediation on a variety of technical platforms; online dispute resolution is preferred - and even essential - during the pandemic, and where parties are geographically dispersed

**Q9. I do not have a lawyer but I want to initiate a mediation. Is this a problem? Do I need a lawyer?**

A mediator should always recommend that a SRL consult with a lawyer or paralegal before initiating a mediation. However, some SRLs will opt not to hire a legal professional for a variety of reasons, including cost.

**Q10. What is the typical cost of a self-represented mediation?**

The cost of a mediation with SRLs should be the same as the cost of any other mediation. Please refer to your specific mediator's fee rate. Mediators generally charge for half-day or full-day mediations. Normally, these fees are split 50/50 with the opposing side. In addition, there may be additional costs of renting a room, if mediation will proceed in person in whole or part, the cost of bringing a lawyer or paralegal to the mediation, which is optional for a self-represented party, and other expenses such as travel for the mediator.

**Q11. As an SRL who has decided to pursue mediation, what are the next steps in the process?**

If you choose not to consult a lawyer to help you choose a mediator, then, before reaching out to a potential mediator, both you and other side of the dispute should have at least decided that you want to pursue mediation, and you are both going to consider various mediators to hire. I suggest sending the other side the names of two to three mediators whom you think may be suitable and letting

them decide from a list. You can also consider the mediators on a list they provide to you. Feel free to contact a mediator's office to learn more information about the types of cases they handle, how much they charge, their availability, and anything else you wish to know. Expect that the mediator's office will want to receive some details about you, the other side and the case, before determining whether yours is a case the mediator can handle.

When I have been approached by an SRL about a mediation that I think I can handle as a mediator, I will usually have a brief conversation with them to ensure that I am the right fit, and I will ask them to have the other side call contact me as well, if they wish.

**Q12. I have now hired a mediator, jointly, with the opposing parties. What next steps do we take as SRLs?**

Once both sides have agreed on a particular date and time (based on scheduling assistance and calendars), a confirming letter along with a mediation agreement is sent to both parties to review and sign.

Self-represented litigants should have all the relevant documents for the dispute prior to the mediation session as the mediator will ask each party to send them, and the opposing side, copies of those documents which they wish the mediator to review beforehand to understand the dispute. The documents which each side provides, along with a summary of the dispute from the party's perspective, is known as their "Mediation Brief". Prior to this though, the SRL should strongly consider consulting with or even hiring a lawyer or paralegal to prepare for and attend the mediation with them, although this is not required.

On the day(s) of the mediation, you should make sure that you have time off work, or away from other commitments, to ensure focus.

Finally, if you require a support person to attend with you, such as a translator, and if you require any special accommodations, alert the mediator in advance.

**Q13. Can I bring someone to accompany me for support, such as a spouse/partner, another family member, or a friend?**

Yes, provided that the other participants agree to the attendance of that person and they sign the mediator's mediation agreement so that they are bound by confidentiality.

**Q14. Do I have to be in the same room as the opposite party?**

No. For mediations with either represented or SRLs, the parties do not have to be in the same room and can be in separate rooms. However, the rooms are often in close proximity to one another, such as within the same building or neighborhood location, in order for the mediator to move back and forth, between the parties, effectively. If you have any concerns about distancing, health or safety, a virtual mediation is recommended.

**Q15. How long will the mediation session and process take?**

The length and duration of a mediation will vary depending on the dispute. Generally, based on my experience, most disputes will take at least three hours (defined as a half-day mediation) to reach a resolution or to reach a point where no resolution is possible later on that specific day if the parties agree to extend the mediation. Sometimes, the parties' request multiple mediation sessions over the course of a longer period to help reach a resolution.

**Q16. As a SRL, am I at a disadvantage in the mediation, as compared to someone who does have legal representation?**

Unfortunately, there is no substitute for having legal representation at most types of mediations. That does not mean that the disadvantage is so great that a mediation would be inappropriate. The onus is on the individual self-represented party to weigh the costs and benefits of having or not having legal representation. Either way, the mediator cannot provide legal advice to an SRL or advocate for them at a mediation.

**Q17. Can my lawyer also be the mediator of the dispute?**

No. Even if a lawyer is also a mediator, they cannot be both a lawyer and mediator for the same dispute. A mediator cannot give you independent legal advice. The mediator is a person trained to help you and the other party during the negotiation to help reach an agreement without taking sides.

**Q18. As a self-represented party, how can I best prepare for my mediation, to make the most of my time and money?**

Ensure you have prepared all the relevant documents and make sure that all the people required to make the decision with you (e.g. business partners, professional advisors, support people) will be available during the mediation

or can be consulted, so there will not be anything preventing you from reaching a settlement.

Additionally, come with an open mind. Be open to possible ways of resolving the dispute you may not have considered and that the mediator will explore with you.

**Q19. I don't know if I need a mediator or a lawyer. Can I still call Rose Dispute Resolution for an exploratory discussion?**

Before contacting us, you should know whether or not you are interested in hiring a lawyer for yourself, or a mediator in conjunction with the other side of your dispute.

**Q20. What types of self-represented disputes does Rose Dispute Resolution mediate?**

Rose Dispute Resolution has mediated a wide variety of disputes involving self-represented parties, including commercial tenancy matters, collection proceedings, personal injury claims, neighbour disputes, and other matters.

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*These Frequently Asked Questions do not provide legal advice and do not create an attorney-client relationship. If you need legal advice, please contact an attorney directly.*

*Rose Dispute Resolution solves legal problems. Whether you hire us as your Mediator (Rose Dispute Resolution\*) or as your Settlement Counsel (Mitchell Rose Law\*), our expertise in delivering practical solutions can help you avoid excessive cost, manage risk, and end legal conflict. We offer in-person and virtual mediations. Call us at 416-227-3406 or [complete our contact form](#).*

*You can also connect with Mitchell Rose on [Twitter](#) or [LinkedIn](#).*