The Limits of Confidentiality in Canadian Mediation

What is protected and when disclosure may be required

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A participant is about to explain something difficult. Before speaking, they ask, “This stays here, right?” The mediator needs an answer that is reassuring and accurate. An unqualified promise can induce disclosure on a basis the mediator cannot honour. A vague warning that “there are exceptions” leaves the participant to guess what those exceptions mean.

The better approach is to explain the protections that apply, the limits that matter to this engagement, and how a disclosure question will be handled. That explanation belongs before sensitive conversations begin. It should be revisited when circumstances change, including before a private meeting or a discussion involving a new participant.

Across Canada, confidentiality is substantial but not absolute. Its limits arise from several sources: settlement privilege, legislation, court and tribunal procedures, professional duties, privacy law and the agreement to mediate. This paper provides a national framework, selected statutory examples and a reporting-law reference for all ten provinces and three territories. It does not suggest that a single mediation statute governs every Canadian dispute.

Separate the questions hidden inside the word confidential

Confidentiality can refer to a duty not to disclose information outside an agreed circle. That duty may arise from a contract, professional code or statute. It concerns what a person may communicate, to whom and for what purpose.

Settlement privilege addresses a different question: whether communications made in genuine settlement negotiations can be used as evidence. A communication may have this protection even without a signed mediation agreement. Conversely, a contractual promise may cover information beyond what settlement privilege protects. The Supreme Court of Canada explained the distinction in *Union Carbide Canada Inc. v. Bombardier Inc.* [2]

Privacy law concerns the collection, use, safeguarding, retention and disclosure of personal information. It can apply to intake records, recordings, contact details and administrative systems as well as negotiation content. Which privacy regime applies depends on the organization, activity and jurisdiction. PIPEDA is one relevant federal statute, with its own scope and exceptions; it is not a universal mediation confidentiality code. [7]

Caucus confidentiality concerns what the mediator may carry from a private conversation to another participant. It needs its own agreed convention. Solicitor-client privilege is another distinct protection. A mediator with legal qualifications does not become each participant’s lawyer merely by conducting the mediation.

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Before disclosing, ask four separate questions: Is disclosure required? Is it permitted? Could the information be admitted in proceedings? Can the mediator be compelled to provide it? An answer to one does not automatically answer the others.

Understand the protection for settlement negotiations

In *Sable Offshore Energy Inc. v. Ameron International Corp.*, the Supreme Court confirmed the importance of protecting settlement negotiations. Protection does not disappear because negotiations succeed, and the precise label "without prejudice" is unnecessary. The purpose and circumstances of the communication matter. [1]

This protection supports candid attempts to resolve a dispute. It is not a means of hiding every underlying fact. A pre-existing document does not acquire immunity from ordinary production merely because it was discussed at mediation. Ontario's *Commercial Mediation Act, 2010* expressly preserves that distinction, subject to its specific provisions. [4]

Imagine a business dispute in which an invoice existed months before mediation. The invoice and a new compromise proposal about it are not necessarily treated alike. The mediator should not assure the parties that placing both in a mediation brief gives them identical protection. This is a hypothetical illustration; the actual legal analysis depends on the document and proceeding.

Nor does the privilege permit a mediator to decide that any allegation of misconduct opens the entire file. *Sable* recognizes exceptions where a competing public interest outweighs the interest in settlement, including circumstances involving misrepresentation, fraud, undue influence or overcompensation. The existence and scope of an exception require analysis. An accusation alone is not a general disclosure licence. [1]

An agreement may need to be proved

Confidentiality can become disputed after the participants disagree about whether they settled or what they settled. *Union Carbide* recognizes an exception allowing disclosure of communications necessary to establish a settlement's existence or scope. The Court also explains that parties may agree to different protection within applicable legal and public-order limits, but clear contractual intention is required to displace that exception. A routine confidentiality clause does not necessarily do so. [2]

In *Association de médiation familiale du Québec v. Bouvier*, the Supreme Court's majority confirmed that the settlement-proof exception can apply in Quebec family mediation. It also distinguished an unsigned mediator's summary from the parties' contract: the summary is not automatically an agreement merely because the mediator prepared it. Whether the parties later assented and what evidence proves that remain separate questions. [3]

The practical lesson is to discuss the intended status of proposals and closing documents before the end of the session. Participants should obtain appropriate advice about commitment, approvals, drafting and legal effect. The mediator should avoid both extremes: promising that nothing said can ever be used, or suggesting that every private discussion becomes available once settlement is disputed.

Check the law governing this particular process

Ontario's *Commercial Mediation Act*, *2010* concerns commercial disputes, with exclusions and provisions for agreed variation. It does not automatically govern family or *Rules of Civil Procedure* mediation. Section 8 addresses confidentiality and exceptions, including legal requirements, settlement implementation, mediator defence and necessary health or safety protection. Section 9 addresses discovery and admissibility under different exceptions. A safety exception does not itself create a freestanding reporting duty. [4]

Quebec's *Code of Civil Procedure* contains general confidentiality provisions for private dispute resolution and more specific mediation rules. Article 606 addresses noncompellability and inadmissibility, with exceptions concerning legal requirements, life, safety or personal integrity, and defence against professional-fault allegations. A mediator claiming that article's noncompellability protection must satisfy its certification, conduct-rule and insurance or security conditions. Read the provision with the applicable jurisprudence; do not advertise unconditional immunity from testimony. [5]

The *Federal Courts Rules* provide another example. Rule 388 protects discussions and documents prepared for a court-referred dispute-resolution conference, while rule 389 addresses reporting settlement or non-resolution. Those provisions govern a particular court process. They do not establish the terms of every private mediation in Canada. [6]

Professional codes add obligations without replacing the governing law. ADRIC's code, for example, provides confidentiality rules and exceptions for those within its scope and requires explanation of private-session limits. Its ethical provisions should not be presented as an Act binding every Canadian mediator. [8]

Child protection duties can override a promise of secrecy

Information about a child's circumstances may trigger a statutory reporting duty, including when it arises in a commercial or workplace mediation rather than a family dispute. The mediator must identify the applicable law, the reporting threshold, the child or youth age provisions, the recipient and the timing. The provincial and territorial reference later in this paper identifies starting provisions; it is not a substitute for reading them.

A reporting threshold is not the same as proof at trial. Where the statute requires reporting on reasonable grounds to suspect or believe, a mediator should not conduct a private investigation to obtain certainty before acting. Equally, a mediator should not announce that every uncomfortable disclosure meets every jurisdiction's threshold. Identify the information actually received and apply the relevant provision.

The age rules differ. Ontario, for example, distinguishes the mandatory reporting provisions for children under 16 from permitted reporting for 16- and 17-year-olds. Quebec differentiates some reporting duties by professional role and type of concern. The reference explains these and other qualifications. [Appendix A]

Confidentiality and professional privilege exceptions also differ. Many statutes expressly preserve solicitor-client privilege, but that does not make a mediation conversation solicitor-client privileged.

Some enactments use broader language. A mediator should neither assume a universal privilege exemption nor announce that all legal privilege is overridden everywhere.

Where the duty is personal, telling a colleague or assuming counsel will report may not discharge it. Check any continuing duty when new information arrives. Do not seek a participant's permission as a prerequisite to a report the law requires, and do not delay an immediate statutory duty while attempting to secure agreement about it. Obtain prompt guidance when necessary without postponing required action.

Safety concerns require a precise response

A threat may call for urgent protective action, but the applicable legal basis must still be identified. A statutory obligation to report, a permission to disclose for protection and a professional rule allowing disclosure are different things. The existence of one does not establish all three. No general statement in this paper should be read as a Canadian rule requiring mediators to report every crime or every past unlawful act.

Prepare for foreseeable emergencies before the session: know the participants' relevant locations, how appropriate emergency assistance can be reached and what the engagement says about safety disclosures. If immediate danger arises, prioritize appropriate emergency action. For less immediate concerns, identify the applicable law and professional role, and obtain timely legal or regulatory guidance where needed.

Child protection is not the entire reporting landscape. Adult-protection, care-facility, professional and other sector-specific duties may also matter. Their application depends on facts such as vulnerability, setting, occupation and jurisdiction. Do not assume that the child-reporting table supplies an answer about an adult, or that all Canadian mediators have the same adult-abuse reporting duty.

When disclosure is required or justified, identify the proper recipient and the information necessary for that purpose. A report to a statutory authority does not automatically authorize circulation to the other participant, an employer, a referrer or the public. Avoid disclosing the rest of the mediation file simply because one exception applies.

A subpoena needs a response rather than an automatic release

If a mediator receives a subpoena, production request, court order or demand from an investigator, first identify what it actually requires and by when. Preserve the relevant material. Obtain prompt legal advice about privilege, statutory protection, scope, objections and any application that may be needed.

Do not ignore compulsory process. Do not assume that receiving a document headed "subpoena" settles every question about admissibility or permits unrestricted disclosure. Ontario's separate evidence rules and Quebec's qualified noncompellability protections show why that analysis matters. [4, 5]

Where legally permitted and appropriate, affected parties may need notice and an opportunity to assert their own protections. Notice itself must be considered carefully if a law prohibits it or if it could create a safety problem. The mediator should comply with applicable legal requirements and final directions while preserving available objections through the proper procedure.

A professional complaint or negligence claim raises a similar need for precision. Some regimes expressly permit disclosure for the mediator's defence. That is a defined purpose, not permission to publish a rebuttal containing the negotiations. Obtain advice about the necessary information, the proper forum and insurance notification. [4, 5]

Make caucus permissions understandable

Participants should know the private-meeting convention before they disclose sensitive information. Some mediators obtain express permission before conveying anything. Other processes use a different default. Ontario's commercial statute itself contains a default permitting mediator-to-party disclosure unless the originating party expressly asks the mediator not to disclose that information, subject to the Act's operation and any valid variation. It is unsafe to assume that everyone arrives with the same understanding. [4]

Before leaving a caucus, confirm the precise offer, explanation or document that may be shared. Distinguish permission to relay a proposal from permission to disclose the reasons behind it. Confirm who may receive the message and whether any condition attaches. A safety or statutory exception should not be confused with ordinary bargaining permission.

Private meetings can create pressure to conceal something the mediator cannot responsibly ignore. Explain that possibility before it arises. Where a significant issue cannot be handled within the agreed confidentiality rules, consider whether the process can continue appropriately. Do not solve the problem by silently changing the rules after receiving the information.

Protect records and digital conversations

Confidentiality depends partly on ordinary administration: secure links, access controls, private rooms, accurate recipients and a considered retention policy. Explain what records are created, who can access them and how long they are retained under the applicable obligations. PIPEDA, where applicable, addresses limiting retention and safeguarding personal information. [7]

Do not promise to destroy all notes immediately regardless of legal obligations, complaints or preservation requirements. A legal hold, production issue or insurer's requirements may affect what must be retained. Nor should a mediator collect a detailed personal history without a purpose connected to the engagement.

For remote mediation, address recording, screenshots, automated transcripts and AI meeting assistants explicitly. Third-party processing may create additional access and retention. Check the relevant settings and legal authority before allowing it, and arrange suitable accessibility alternatives. An agreement between the participants does not by itself prove that every privacy or security requirement has been met. Canadian privacy authorities' AI guidance emphasizes applicable law, transparency and appropriate authority or consent. [9]

Teaching and marketing create further risks. Removing names may not prevent identification through a distinctive set of facts. Prefer invented examples clearly identified as hypothetical. A mediator's wish to demonstrate expertise is not a reason to use a participant's private story without the necessary authority.

Give an explanation participants can use

The following is proposed introductory wording, to be adapted to the actual engagement and explained alongside its specific rules:

“We protect mediation communications under the rules that apply to this process. That protection has limits. The law may require certain reports or disclosures, and some information may be used in proceedings for a defined purpose, such as proving a disputed settlement. Before we begin, I will explain the relevant limits, our private-meeting rules and how records are handled. If a disclosure issue arises, I will identify the applicable requirement and obtain advice where needed. I cannot promise absolute secrecy.”

This wording is an introduction, not a substitute for identifying the actual exceptions. Invite questions and check understanding: “What would you expect me to do if a legal reporting obligation arose?” Correct misunderstandings before asking for a sensitive account. Encourage independent advice about the agreement to mediate where appropriate.

Use a disciplined disclosure decision

When an issue arises, identify the information and the immediate concern. Then identify the jurisdiction, process and role; locate the rule requiring, permitting or restricting disclosure; and determine the proper recipient, timing and scope. Seek advice where needed. Keep a proportionate record of the basis for the decision, subject to the applicable protections.

Communicate with participants where lawful and appropriate, without promising advance notice in every circumstance. A reporting obligation or emergency may make delay or notice inappropriate. Disclose what the governing requirement calls for, protect unrelated material and reconsider whether mediation can continue on a suitable basis.

The aim is a confidentiality explanation that remains true when the process becomes difficult. Participants should understand both why they can speak candidly and why the mediator cannot offer secrecy without limits.

Appendix A Child protection reporting across Canada

Use this table to locate the relevant statute, then read the complete provision, definitions and applicable Indigenous law. It summarizes reporting starting points and selected qualifications; it does not determine whether a particular disclosure triggers a duty. The Act titles link to government sources. Age definitions, reporting duties and service eligibility are not interchangeable.

Jurisdiction and statutory starting point	Reporting rule and important qualifications
British Columbia Child, Family and Community Service Act, RSBC 1996, c 46, ss 1, 13–14	Reason to believe a child under 19 needs protection under s 13: report promptly to a director or designate. Section 14 overrides confidentiality and privilege except solicitor-client privilege. For an Indigenous child, s 14(1.1) provides an alternative when an Indigenous authority confirms it will assess the report.
Alberta Child, Youth and Family Enhancement Act, RSA 2000, c C-12, ss 1, 4	Reasonable and probable grounds to believe a child under 18 needs intervention: report forthwith to a director or police officer; police must pass the report to a director. Section 4 overrides statutory confidentiality but preserves information privileged through a solicitor-client relationship.
Saskatchewan The Child and Family Services Act, SS 1989–90, c C-7.2, ss 2, 11–12	Reasonable grounds to believe a child needs protection: report to an officer or peace officer. The child definition is now under 18, rather than the older under-16 definition. Section 12(2) overrides confidentiality and professional privilege except solicitor-client and Crown privilege. A peace officer must report immediately to an officer.
Manitoba The Child and Family Services Act, CCSM c C80, ss 1, 17–18	Information leading reasonably to believe a child under 18 is or might be in need of protection: report forthwith. Section 18 permits agency or, in limited cases, parent/guardian reporting; s 18(1.1) requires agency reporting in specified circumstances. Section 18(1.2) provides an Indigenous-service-provider alternative. Confidentiality does not remove the duty; solicitor-client privilege is preserved. Read the recipient conditions carefully.
Ontario Child, Youth and Family Services Act, 2017, SO 2017, c 14, Sched 1, s 125	Reasonable grounds to suspect a listed protection circumstance: report immediately and directly to a children's aid society. Further grounds require further reporting; the duty cannot be delegated. The mandatory duty does not apply to ages 16 and 17, although s 125(4) permits specified reports. Confidentiality and privilege are overridden subject to the lawyer-client privilege saving.
Quebec Youth Protection Act, CQLR c P-34.1, ss 1, 38–41	Child means under 18. Professionals providing care or assistance to children and specified workers have broader duties to report prescribed danger on reasonable grounds, without delay, to the director of youth protection. Other persons must report physical or sexual abuse on the specified grounds; other reports are permitted. Section 41 addresses professional secrecy with an advocate/notary exception. The mediator's actual role matters.
New Brunswick Child and Youth Well-Being Act, SNB 2022, c 35, ss 1, 33–35	Reason to believe a child or youth's well-being is in danger: inform the Minister without delay. The combined age definitions cover persons under 19. Listed reporters have an additional reasonable-suspicion duty for information acquired in their duties and must report directly. Section 33 includes mediators under this Act. Section 35(12) preserves solicitor-client privilege.

Jurisdiction and statutory starting point	Reporting rule and important qualifications
Nova Scotia Children and Family Services Act, SNS 1990, c 5, ss 3, 23–24A	Child means under 19. Section 23 requires anyone with information indicating a need for protective services to report forthwith to an agency. Section 24 adds duties for professionals or officials working with children. The text expressly addresses confidential or privileged information without an express solicitor-client saving in these provisions. That wording alone does not resolve the final privilege analysis. See the currency note below.
Prince Edward Island Child, Youth and Family Services Act, RSPEI 1988, c C-6.01, ss 1, 12	The 2026 text requires a report without delay to the Director or a police officer where there is knowledge or reasonable grounds to suspect that a child's safety or well-being is endangered. Child means under 18. Section 12 makes the duty continuing and personal, overrides confidentiality and preserves solicitor-client privilege. Police must inform the Director.
Newfoundland and Labrador Children, Youth and Families Act, SNL 2018, c C-12.3, ss 2, 10–11	Information that a child or youth is or may be in need of protective intervention: report immediately to a manager, social worker or peace officer. The provision covers children under 16 and youth aged 16 to under 18. Section 11 expressly includes solicitors and confidential or privileged information, without an express solicitor-client saving. Obtain appropriate advice on privilege rather than importing another province's exception.
Yukon Child and Family Services Act, SY 2008, c 1, ss 1, 21–22	Reason to believe a child under 19 needs protective intervention: immediately report the underlying information to a director or peace officer. Section 22(2) overrides statutory confidentiality and privilege except solicitor-client privilege. Separate confidentiality protection for collaborative planning and alternative dispute resolution under s 9 must be read with its exceptions and the reporting duty.
Northwest Territories Child and Family Services Act, SNWT 1997, c 13, ss 1, 1.3, 7–8	Information that a child needs protection triggers s 8 reporting without delay to a Child Protection Worker or, if unavailable, a peace officer or authorized person. Read the ordinary under-16 child definition and specified continuing orders with s 1.3's extended meaning for youth-related actions and proceedings; do not assume an unqualified under-16 cutoff. The duty is non-delegable; judicial-proceeding and solicitor-client qualifications also apply.
Nunavut Child and Family Services Act, CSNu c C-50, ss 1, 7–8, 29.1–29.6	Information or reasonable grounds to believe a child needs protection: report without delay to a Child Protection Worker or, if unavailable, a peace officer or authorized person. The child definition covers under/apparently under 16 and specified continuing orders. Youth have a separate protection regime. Section 8 preserves solicitor-client privilege. Do not equate service eligibility with mandatory-reporting scope. See the currency note below.

Currency and interpretation notes

Sources accessed 28 October 2026. PEI's live consolidation is current to 29 May 2026; older indexed versions use a superseded reporting threshold. Saskatchewan's retrieved consolidation includes the 2024 age change. The Nunavut consolidation retrieved is dated 1 July 2021; Nova Scotia's retrieved statutory text is dated 1 May 2022. Later amendments and commencement must be checked before relying on those entries; the final text of Nova Scotia's 2026 amending legislation was not verified. Northwest Territories youth application requires reading s 1.3 with s 8 and the current local framework. This table is a navigation aid, not certification of all legislation in force on the research date.

Sources and scope

This is an educational practice paper, not advice about a particular disclosure, subpoena or reporting decision. Sources were checked on 28 October 2026; official consolidations have their own currency dates. The discussion uses leading Supreme Court decisions and selected legislation. It is not an exhaustive survey of every program, adult-protection regime or later case, and no comprehensive citator review is claimed. Appendix A provides statutory starting points for child-protection reporting throughout Canada.

1. *Sable Offshore Energy Inc. v. Ameron International Corp.*, 2013 SCC 37, paragraphs 13–19. Read the source

2. *Union Carbide Canada Inc. v. Bombardier Inc.*, 2014 SCC 35, paragraphs 30–40 and 49–54. Read the source

3. *Association de médiation familiale du Québec v. Bouvier*, 2021 SCC 54, majority reasons, paragraphs 8–9, 95–99 and 102. Read the source

4. Ontario, *Commercial Mediation Act, 2010*, S.O. 2010, c. 16, Sched. 3, sections 2–3 and 8–9. Read the source

5. Quebec, *Code of Civil Procedure*, CQLR c. C-25.01, articles 4 and 606; official text updated 15 October 2026. Read the source

6. Canada, *Federal Courts Rules*, SOR/98-106, rules 386–391; official consolidation current to 30 September 2026. Read the source

7. Canada, *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, sections 3–4 and 7, Schedule 1 clauses 4.5 and 4.7; official consolidation current to 30 September 2026. Read the source

8. ADR Institute of Canada, *Code of Conduct for Mediators*, section 6; applies as specified in the code. Read the source

9. Office of the Privacy Commissioner of Canada and provincial and territorial privacy authorities, *Principles for responsible, trustworthy and privacy-protective generative AI technologies*, 7 December 2023. Read the source

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