CONSIDERED MEDIATION

Preparing for a Successful Family Mediation

A practical guide for clients and counsel

Family and divorce mediation | 31 October 2026

An offer arrives late in the afternoon. It is closer to what you wanted than anything discussed so far. Your lawyer sees a workable settlement. You see the home you may have to leave, the school mornings you may miss, or the savings you thought would last longer. Someone asks whether you can agree.

That is a difficult moment to begin thinking about what matters to you.

Preparation gives you a way to approach it. You need to understand the proposal, the information behind it, the options still available and what happens if you say no. You also need enough space to make a decision you can explain after the pressure of the meeting has passed.

This guide is for people preparing for family or divorce mediation and the lawyers advising them. It covers parenting, support, property and debt, with practical examples and printable preparation sheets. It is written for a Canadian audience, including Alberta and Ontario. The legal rules differ by province, relationship status and issue; the preparation methods do not replace advice about your own circumstances.

A successful mediation may produce a complete agreement. It may also resolve one urgent issue, identify missing disclosure, narrow a disagreement or show that another process is needed. Agreement is useful when people understand what they are accepting and can carry it out safely. A signature alone tells us very little.

How to use this guide

Read the article before your preparation meeting. Complete the client checklist and decision worksheet privately. Counsel can use the separate lawyer checklist to structure advice and identify gaps. Decide with your lawyer what, if anything, to share with the mediator or the other party. Do not assume that writing on a worksheet makes it privileged or confidential.

General legal information and preparation guidance only. This guide does not provide legal, tax, financial or psychological advice. Laws and procedures change. Obtain independent advice in the jurisdiction that applies to you. All scenarios and figures are hypothetical.

1 Make sure the process can work for this family

Before discussing offers, address whether each person can participate safely, understand the discussion and disagree without fearing the consequences. Justice Canada identifies family violence, controlling behaviour and power imbalances as matters that can make some forms of dispute resolution unsuitable. A private screening conversation is an essential opportunity to raise concerns. [1, 2]

Tell the mediator privately about intimidation, monitoring, threats, financial control, relevant orders or difficulty speaking freely. Explain any concern about what may happen after the session. Do not minimize a problem simply because you can remain calm on camera. Remote mediation does not establish that the room, device or communication channel is private.

Ask what arrangements are available. Separate rooms, staggered arrival times, shorter sessions, an interpreter, a support person or lawyers attending may help. Whether those measures are sufficient requires an individual assessment. Sometimes the appropriate decision is to postpone or stop mediation and seek legal or protective assistance. [2]

Agree on the working arrangements

Read the agreement to mediate before the meeting. Clarify the issues being addressed, the mediator's role, fees, document exchange, who may attend and how private meetings will work. Ask what information from a private meeting may be shared and with whose permission. Confidentiality has limits; do not assume that every statement or document is protected in every circumstance. [3]

Arrange private access to your lawyer. If counsel will not attend, agree on how and when advice can be obtained. For a video session, confirm the private consultation channel, test the connection and arrange a backup telephone number. Keep children out of earshot, and agree in advance on any recording or transcription arrangements rather than switching them on yourself.

Keep deadlines visible

Give counsel all existing orders, agreements and upcoming dates. Ask whether anything must be filed, renewed or dealt with urgently while mediation is underway. Do not assume that booking mediation suspends a deadline or changes an order. Under the Divorce Act, parties must comply with an order until it is no longer in effect. [4]

A requirement to attempt dispute resolution is not a requirement to accept the other person's proposal. Counsel should check the particular court process and any exceptions that apply.

2 Prepare the decisions and the information behind them

Start with a short issue list. “Sort out the children” is too broad. “Decide school-night arrangements, transportation and how we will make non-urgent health decisions” gives the discussion somewhere to begin. For each issue, record what is agreed, what is disputed and what information is missing.

Write down why the issue matters. Wanting to remain in the family home may reflect a concern about the children's school, affordability, a disability or the disruption of moving. Those concerns deserve attention even if retaining the home turns out to be impractical. Knowing the reason helps everyone explore other arrangements that might meet the same need.

Prepare a usable financial record

Exchange the required financial information early enough for it to be reviewed. Ontario's mediation guidance identifies income, property, assets and debts as core disclosure topics. Alberta's public family mediation program also calls for financial exchange before financial issues are discussed. The exact documents and dates required depend on the case. [3, 5]

Ask counsel to identify what is needed: tax returns and assessments, current earnings, business records, account and debt statements, pension information, valuations, insurance and relevant agreements. Organize the material by issue and date. Label estimates, disputed figures and missing records. A spreadsheet is easier to assess when someone can trace its numbers to documents.

A financial proposal should be tested against actual cash flow. Can a payment be funded? Can one person qualify to refinance? What does each household need each month? Which tax, pension or business questions require specialist advice? A calculator can assist, but its assumptions must match the facts and governing law.

For child support, identify the income figures, parenting assumptions and special expenses used. For spousal support, ask counsel to address entitlement, amount, duration and the implications of any proposed lump sum or release. Keep property division and support calculations distinct enough to understand them, even when negotiating a complete package. Do not assume that equal dollar amounts in different assets or payment forms have equal after-tax value.

Bring a picture of the child's ordinary week

Prepare school and childcare times, work schedules, travel distances, health needs and existing activities. Consider holidays and transportation as well as overnights. Ask how the child's views can appropriately be heard without making the child choose between parents. Justice Canada's parenting checklist provides a useful starting point. [6]

In Divorce Act parenting decisions, the child's best interests govern, with particular priority given to safety and well-being. A schedule should be examined through those needs. A parent's wish for a certain percentage of time does not settle the question. [7]

3 Know what you want and what you can do without agreement

People sometimes use “best possible outcome” to mean several different things. Separate them before mediation. Your preferred settlement describes what you hope both people will accept. Your BATNA describes your best realistic course if negotiations do not produce agreement. It is not a prediction that you will win every disputed issue. [8]

Your preferred settlement

Describe a favourable outcome that has a defensible legal and practical basis. Explain how it would work and why it addresses the issues. Then prepare another acceptable package. If retaining the home is your first choice, for example, a sale with a workable transition date may deserve consideration if refinancing is unavailable. A second proposal is still a negotiated option; it is not automatically your BATNA.

Your BATNA

BATNA means Best Alternative to a Negotiated Agreement. Identify the actions genuinely available if this negotiation fails, evaluate their consequences, and select the strongest realistic course. Compare an offer with that course on equivalent terms, including costs and uncertainty. Revisit the comparison as information changes. [8]

In a family case, possible next steps might include lawyer-led negotiation, pursuing a court application or continuing under an existing arrangement while obtaining advice. Which is available and sensible depends on the circumstances. Another person's agreement may be necessary for a proposed process. Private arbitration, for example, cannot simply be assumed available or suitable.

Assess favourable adverse and likely outcomes

For each realistic course, ask counsel to describe a favourable result, an adverse but plausible result, and the most likely result or range. WATNA is commonly used for the worst alternative or downside outcome if negotiations fail. MLATNA refers to the most likely outcome. These are comparison tools, not predictions with scientific precision. [9]

Keep the questions separate: “What would we do next?” and “What might happen if we do it?” A court application is a course of action; the order eventually made is an uncertain outcome. Discuss time, further legal fees, possible costs consequences, implementation and the effect on the family. Counsel should explain what evidence supports the assessment and what could change it.

Your minimum acceptable terms need the same care. Keep private bargaining limits with counsel unless you deliberately decide otherwise. Children's welfare and applicable support rules cannot be reduced to a personal walk-away number.

4 Use a careful process for hard decisions

The WRAP framework in Chip and Dan Heath's Decisive offers four useful prompts: widen your options, reality-test your assumptions, attain distance before deciding and prepare to be wrong. The infographic attributed to Nir Eyal that inspired this guide credits the Heath brothers. The applications below are practical adaptations for family mediation, not a validated family-law assessment tool. [10]

Widen your options

When the discussion becomes “my proposal or court,” look for a third workable option. Could a financial issue be resolved after a jointly instructed valuation? Could an urgent holiday arrangement be discussed separately while longer-term parenting issues remain open? Could a proposed payment date change while the amount remains under discussion?

Keep any partial arrangement clear about scope and legal effect. Do not assume an interim parenting arrangement is consequence-free or can automatically be reversed. Obtain advice before trying it. Equally, do not use parenting time as something to exchange for a financial concession. Consider each parenting option against the child's needs and address support under the applicable law.

Reality test your assumptions

Ask yourself which fact, if different, would change your view. “I can keep the house” needs a financing assessment. “That schedule cannot work” may need an actual school-week calendar. “A judge will certainly agree” needs candid advice about the evidence and the legal test.

Invite counsel to explain the strongest argument against your preferred result. This can be uncomfortable, particularly when you feel you have already spent months defending yourself. It is also useful preparation. An argument is easier to consider privately before mediation than to hear for the first time from the other side.

Separate what you know from what you infer. “The payment arrived ten days late” is more useful than “They will never honour anything.” A pattern of late payment may still be important, but the discussion can then address records, reliability and safeguards. Specific behaviour also helps the mediator understand a concern without relying on labels or diagnoses.

Distinguish missing information that could change the decision from the hope of eliminating every uncertainty. If a business valuation could substantially change the proposal, obtain it or agree on a proper process for dealing with it. Re-reading the same messages for another week may answer nothing new.

5 Give yourself distance and plan for difficulties

Attain distance before deciding

A pause may be needed because you are exhausted, upset, confused or simply facing a consequential choice. Arrange a way to request one without having to explain yourself in front of everyone. A short private consultation can clarify an offer; a major late change may require an adjournment for advice or documents.

Ask what the proposal would mean on an ordinary Tuesday six months from now. Who drives? Who pays? Can you manage the mortgage payment and childcare costs in the same month? Imagine advising someone you care about who had the same facts. Would you apply the same standard to their decision?

Emotions can identify something the proposal has overlooked. The task is to understand that concern and examine the terms. Feeling sad about a separation does not necessarily mean the settlement is unworkable. Feeling immediate relief does not necessarily mean the terms are safe or affordable.

Prepare to be wrong

Consider what could fail even if everyone intends to follow the agreement. Financing may be refused. A work schedule may change. A reimbursement process may prove cumbersome. A child's needs may change over time.

Ask counsel to help turn foreseeable problems into clear provisions: what must happen first, the date for completion, what evidence confirms it, and the next step if it does not happen. Avoid a clause that merely says the parties will “work it out.” A review date should identify what will be reviewed and how a disagreement will be addressed. It does not, by itself, give either person permission to disregard an existing obligation.

Notice the traps in the room

The infographic also invites reflection on overthinking, certainty and the influence of other people. In mediation, ask whether another conversation will bring new information or merely another opinion. Friends may offer support, but their experience of a different divorce cannot determine your result.

Watch for reacting to the identity of the person making an offer, becoming attached to the first number mentioned, or continuing a dispute because of what has already been spent. Ask what further expense and risk would buy from today onward. At the same time, cost pressure should never be used to dismiss a safety concern or push someone into terms they do not understand.

6 Work as a client and counsel team

A preparation meeting should leave the client able to describe the issues and the available choices in ordinary language. Counsel's explanation needs to cover both the legal merits and the practical consequences. “You have a strong case” is incomplete without discussing the evidence, uncertainty, expense and steps still required.

Agree on roles before the mediation. Who will explain the family's day-to-day arrangements? Who will address a disputed legal issue? How will the client correct a misunderstanding or request private advice? If the lawyer does most of the speaking, make sure the client's concerns do not disappear from the discussion.

Counsel can prepare without rehearsing a confrontation

Prepare a short opening that identifies the issues, acknowledges any useful progress and explains what the client hopes to resolve. Detailed legal submissions may be needed on a disputed point, but an accusation-heavy opening can consume time before anyone has examined an option.

For a hypothetical school-night dispute, a client might say: “The current handover means our daughter gets home late before school. I want us to look at a schedule that gives her a predictable evening and works with both our jobs.” This states a concern that can be examined. It does not require the client to abandon it or pretend the relationship is friendly.

Counsel should give unwelcome advice privately and clearly. Ask the client to explain the proposed terms back in their own words. Invite questions about what they fear losing, what they believe the offer means and what would happen next. A nod can mean agreement, fatigue or uncertainty.

Respond to an offer before reacting to it

Write down the complete package. Identify any conditions and linked terms. Ask a clarifying question before rejecting it. If a proposal cannot work, explain the practical problem and, where appropriate, offer a workable change.

Keep client instructions current as the discussion changes. A morning instruction about one package does not automatically authorize acceptance of a materially different afternoon package. Avoid creating a false deadline because a session is ending. If further advice or information is needed, record what remains to be done and when the discussion can resume.

If you do not have a lawyer, consider obtaining advice for defined parts of the process, such as preparation and review of proposed terms. Confirm the scope and availability of that assistance in advance. The mediator cannot act as either participant's personal legal adviser. [1, 3]

7 Compare offers with real alternatives

The following examples are hypothetical. They illustrate preparation questions, not legal entitlements, fee estimates or recommended settlement amounts.

A property payment

Suppose a proposal provides a $120,000 payment on an agreed date, supported by verified financing. Counsel identifies a possible litigation recovery of $100,000 to $160,000, with a working middle estimate of $135,000 before further costs. Assume, for illustration only, an additional $20,000 in your own legal and expert fees.

Subtracting those fees produces $80,000, $115,000 and $140,000 respectively. That arithmetic helps explain why the highest possible award is an incomplete comparison. It is not a probability-weighted forecast or a legal valuation. The $120,000 proposal must also be compared after accounting for settlement completion costs, timing, tax consequences where relevant, collectability, and any costs award for or against either party. Actual costs may differ across scenarios.

Counsel may revise the estimates when disclosure improves. The decision also depends on whether the proposed payment is secure and whether other rights are being released. An attractive headline amount can conceal an unfunded payment or a much broader release than the client intended.

A parenting schedule

Suppose one parent proposes alternating weeks and the other proposes a different division of school nights. Both say stability matters. Begin with the actual difficulty: a long commute, changing shifts, repeated transitions, a child's health needs or a safety concern.

Compare complete schedules. Identify pickups, childcare, school mornings, activities and holidays. Ask which assumptions need evidence and how the child's views can be considered appropriately. Do not attach a dollar value to time with the child or treat a cheaper financial package as compensation for an unsuitable parenting arrangement.

If no agreement is reached, counsel can explain the available process for obtaining a decision and its risks. That assessment should help the client understand the choice; it should not become a threat that they will “lose the children” unless they settle.

When there is no useful overlap

If the packages being discussed do not meet legal, safety or practical requirements, identify why. Further disclosure, expert input or a different process may be needed. Record the unresolved issues rather than disguising them in vague wording. A clear account of the obstacle is more useful than an agreement that neither household can follow.

8 Finish with terms people can understand and use

Before accepting a proposal, read the complete terms together. Check amounts, dates, responsibilities, conditions and what happens if a required step does not occur. Check any release carefully. Resolve inconsistencies between the main agreement and schedules or attachments.

Ask what document is being produced and what legal effect it is intended to have. An agreement to mediate, a mediator's summary, minutes of settlement, a separation agreement and a consent order serve different purposes. Do not assume a document is non-binding because it is called a memorandum, or binding simply because the meeting has ended. Counsel should confirm the applicable law, required formalities and the wording before anyone commits.

Alberta's public family mediation program describes its mediation summary as non-binding. That statement concerns that program; it should not be generalized to every private mediation document. [5] Ontario recommends independent legal advice before and throughout mediation, and before signing an agreement. [3]

Review the practical details

For parenting, check regular time, exceptions, transportation, communication and how decisions will be made. For financial terms, check payment mechanics, necessary documents and any third-party approvals. Do not assume an agreement between spouses releases someone from a lender's claim; obtain advice and the lender's required confirmation.

If terms are intended to remain subject to legal advice, financing or another condition, ask counsel to make that intention explicit. Do not rely on a verbal assumption that everyone can reconsider later. Identify who will prepare the final documents, who will review them and the completion dates.

Take partial progress seriously

Where appropriate, record agreed issues, questions still open and the next step for each. Counsel should clarify whether individual terms stand on their own or depend on a complete package. If nothing settles, arrange a short debrief: what was learned, what changed the assessment, and which realistic course should now be pursued?

A person can make a sound decision and still feel disappointed by the choices available. The useful question afterwards is whether they had the necessary information, understood the consequences and chose freely. Preparation gives clients and counsel a way to answer that question with something more dependable than how the day happened to feel.

To discuss preparation and suitability for family mediation, visit consideredmediation.com or contact contact@consideredmediation.com. Each participant should obtain independent legal advice about their own circumstances.

Client preparation checklist

Use this privately before your meeting with counsel or the mediator. A checked box is a reminder of work completed, not proof that mediation is suitable or a settlement should be accepted.

[ ] I can describe the issues I want to address and distinguish urgent matters from longer-term questions.

[ ] I have identified what matters most to me, why it matters and the child's needs where parenting is involved.

[ ] I have raised safety, coercion, privacy or participation concerns privately and discussed whether the proposed arrangements are sufficient.

[ ] I have provided relevant orders, agreements and deadlines to counsel and the mediator as appropriate.

[ ] I understand the agreement to mediate, fees, confidentiality limits and the rules for private meetings.

[ ] I have exchanged the required information and identified missing records, estimates and disputed numbers.

[ ] I have tested my preferred proposal against actual schedules, household costs and any financing requirements.

[ ] I have prepared another workable settlement package, where one is available.

[ ] I understand my best realistic course without agreement and have discussed favourable, adverse and likely outcomes with counsel.

[ ] I know which assumptions could change my decision and which questions require further advice or evidence.

[ ] I have arranged access to private legal advice, breaks and any communication or accessibility assistance I need.

[ ] I understand that a proposal about parenting must address the child's needs and cannot simply be traded for money.

[ ] Before committing, I will ask what the proposed document means, when it becomes binding and what remains conditional.

Three questions to bring to the meeting

What am I most worried will happen if I agree?

_____

What am I most worried will happen if I do not agree?

_____

What information or advice would help me decide?

_____

Counsel preparation checklist

Adapt this to the retainer, jurisdiction and client's circumstances. It supplements professional judgment and applicable duties; it is not a complete legal practice checklist.

[ ] Confirm scope, client instructions, process choice, legal issues and the client's practical priorities.

[ ] Review suitability, family violence, coercion, capacity or communication concerns; coordinate appropriate safeguards and reassess as circumstances change.

[ ] Identify orders, limitation periods, procedural deadlines, urgent relief and any steps that must continue during mediation.

[ ] Verify the applicable legal framework and disclosure requirements; distinguish agreed facts, allegations, assumptions and outstanding evidence.

[ ] Review financial calculations, valuation dates, cash flow and any need for tax, pension, business or financing advice.

[ ] Assess parenting proposals against the individual child's needs and address how their views can appropriately be considered.

[ ] Explain the merits and weaknesses in language the client understands, including the strongest credible opposing argument.

[ ] Separate the preferred settlement, other acceptable packages and actual courses available without agreement.

[ ] Discuss favourable, adverse and likely outcomes, further costs, delay, enforcement and implementation risk without presenting estimates as guarantees.

[ ] Agree who speaks on which issues, how private advice will be requested and what information may be shared with the mediator.

[ ] Confirm the client's understanding and obtain fresh instructions when the package materially changes.

[ ] Review the complete proposed terms, releases, conditions, formalities, intended binding effect and any order required.

[ ] Record responsibilities for drafting, review, completion and follow-up, including unresolved issues or the next process if there is no settlement.

Questions worth asking privately

“Which part of this proposal do you find hardest to accept?”
“What do you understand you would be required to do?”
“Is there something making it difficult for you to say no?”
“What would you need to know before you could give instructions?”

Private decision worksheet

Complete one sheet for each major issue. Review it with your own lawyer where possible. Decide what may be shared. Privacy or privilege does not arise merely from this heading.

Issue and decision needed

_____

Preferred settlement and why it meets the relevant needs

_____

Another acceptable package if the first cannot be achieved

_____

Realistic courses available if this negotiation fails

_____

My BATNA and why it is the strongest available course

_____

Favourable result on that course and the assumptions behind it

_____

Adverse but plausible result and its consequences

_____

Most likely result or range and why counsel considers it realistic

_____

Further cost time and implementation risks on comparable terms

_____

Effect on the child and any safety or legal constraints

_____

Missing information and what could change my assessment

_____

Private settlement limits or conditions discussed with counsel

_____

Next step person responsible and date for review

_____

Before deciding, ask whether you have examined more than one option, tested your assumptions, had enough space for advice, and considered what happens if the plan does not work as expected.

Sources and further reading

Sources reviewed on 31 October 2026. Numbered references support the legal information and named decision frameworks. The scenarios, preparation questions and checklists are original practical applications. They are not quotations from, or endorsements by, the organizations listed below.

1. Department of Justice Canada. Family dispute resolution: resolving family law issues out of court. Mediator and adviser roles, process options and suitability.
https://www.justice.gc.ca/eng/fl-df/fsfdr-firdf.html

2. Department of Justice Canada. HELP Toolkit, Legal Response Guide, particularly LR.2.1. Family violence, participation and process selection.
https://justice.gc.ca/eng/fl-df/help-aide/guide.html

3. Government of Ontario. Family mediation. Independent advice, intake, agreement to mediate and financial exchange.
https://www.ontario.ca/page/family-mediation

4. Divorce Act, RSC 1985, c 3 (2nd Supp), sections 7.1 to 7.7. Duties of parties and legal advisers. The official consolidation accessed was current to 30 September 2026.
https://laws-lois.justice.gc.ca/eng/acts/D-3.4/page-2.html

5. Government of Alberta. Family Mediation. Preparation, financial disclosure and the status of the public program's mediation summary. Program-specific descriptions are not universal rules for private mediation.
https://www.alberta.ca/family-mediation

6. Department of Justice Canada. Parenting Plan Checklist: Information to help you get started. Topics to consider when developing parenting arrangements.
https://www.justice.gc.ca/eng/fl-df/parent/ppc-lvppp/index.html

7. Divorce Act, section 16. Best interests of the child. Section 15.1 addresses child support orders. Provincial law must also be considered where applicable.
https://laws-lois.justice.gc.ca/eng/acts/D-3.4/page-3.html

Decision framework sources

8. Guhan Subramanian, Program on Negotiation at Harvard Law School. What is BATNA? How to Find Your Best Alternative to a Negotiated Agreement. The core distinction between an agreement and an outside alternative, and comparison on equivalent terms.
https://www.pon.harvard.edu/daily/batna/translate-your-batna-to-the-current-deal/

9. Practical Law Canada. Glossary entries for Worst Alternative to a Negotiated Agreement and Most Likely Alternative to a Negotiated Agreement. Definitions of downside and likely-outcome benchmarks. These terms supplement the distinction between an available course of action and its uncertain results.
https://ca.practicallaw.thomsonreuters.com/9-622-1133
https://ca.practicallaw.thomsonreuters.com/3-622-1107

10. Chip Heath and Dan Heath. Decisive: How to Make Better Choices in Life and Work (2013). Authors' book page and WRAP resources. The four WRAP headings are attributed to the Heath brothers; the family-mediation examples in this guide are adaptations.
https://heathbrothers.com/books/decisive/
https://heathbrothers.com/resources/overview/

Acknowledgment of the infographic

The infographic titled How to Make a Hard Decision (Without Second-Guessing It), displaying a Nir Eyal byline and a credit to Chip and Dan Heath for WRAP, prompted the decision-making portion of this guide. Its artwork has not been reproduced here. Attribution identifies the inspiration and does not imply permission, collaboration or endorsement.

Scope of the legal information

This is a preparation guide for family and divorce mediation, not a review of every provincial rule on settlement enforceability, financial disclosure, limitation periods or court prerequisites. Counsel should check current local law and the proposed documents. No court outcome, settlement range or legal fee is predicted by the hypothetical examples.

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