When the Mediator Is Asked for Legal Advice

Professional boundaries and insurance in mediation

A practice paper from Considered Mediation

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“Should I accept this?” “What would a judge do?” “Can you make the agreement legally binding?” These requests can arise when a participant most needs certainty. The mediator may want to help, particularly if they have legal training. But a useful response must respect the limits of the engagement, the mediator’s current authority and the insurance arranged for the work.

The boundary must be explicit: a mediation practice that does not offer legal services must not provide legal services or legal advice under the label of mediation. It should explain the limitation clearly, observe it in practice and help participants obtain independent legal assistance when needed.

This paper addresses facilitative mediation offered without legal representation or individualized legal advice, with particular attention to family disputes. It does not claim that all mediators have identical powers. Some authorized lawyer-mediators work under rules permitting particular forms of information, evaluation or drafting. Those permissions cannot be assumed to apply to another practitioner or engagement.

State the service clearly

For a mediation-only practice, the following wording makes both the boundary and the service visible. It should be used only where it accurately describes the services offered and their permitted scope.

“We provide mediation services. We do not provide legal services or legal advice, act as your lawyer, or represent either participant. We help you identify the issues, communicate, explore options and consider practical arrangements. Each participant is encouraged to obtain independent legal advice about their rights, obligations and any proposed agreement.”

This wording is a description, not regulatory clearance or a guarantee of insurance coverage. Legal classifications depend on the actual activities and governing rules. A service does not become permissible simply because it is called mediation or because both participants consent to it.

The Federation of Law Societies of Canada’s Model Code separates the lawyer-mediator’s role from acting as counsel for either participant. Its commentary generally distinguishes legal information from legal advice and encourages separate counsel. The Model Code is a model; the applicable provincial or territorial rules govern. [1]

Regulatory authority and insurance both matter

Regulatory limits extend beyond spoken advice

The relevant question is not only whether the mediator has said “you should.” Preparing a legal opinion, determining someone’s legal entitlement, drafting legal instruments or acting as a legal representative may raise regulatory issues. The Law Society of Alberta identifies legal advice, legal-document drafting, negotiating legal rights, and analyzing or interpreting law as activities generally considered legal practice. Current authorization matters; previous legal experience is not a substitute. [2]

That guidance requires attention to the particular activity and jurisdiction. It should not be converted into an unsupported claim that every form of mediation is prohibited for non-lawyers. Where a boundary is uncertain, obtain specific regulatory guidance or advice from regulatory counsel before offering the service. Describe the actual work, proposed documents and marketing language. A disclaimer cannot change the substance of the work.

Mediation insurance must not be assumed to cover legal work

A mediator should not assume that professional liability insurance arranged for mediation also covers legal advice, legal representation or legal drafting. Whether a claim is covered depends on the policy’s definitions, insured activities, exclusions, endorsements and conditions. Moving beyond the declared service can create a coverage dispute or uninsured exposure. It is equally inaccurate to say that every policy automatically excludes every allegation involving legal advice.

For example, Holman Insurance Brokers lists unauthorized-practice and related-legal-services options among its mediation insurance add-ons. That marketing description does not establish the terms of any individual policy. Separately, BFL CANADA’s ADRIC claims guidance identifies unauthorized legal advice and drafting errors as potential claims, and explains that defence costs may arise even when negligence is disputed. [3, 4]

Before offering a service, describe it fully to the broker and obtain written confirmation of the applicable insurer’s coverage terms. Ask specifically about advice, documents, evaluative work, jurisdictions served and any change in professional status. Check claims-reporting requirements and seek advice on any necessary endorsement. Do not rely on the policy’s title or a general assurance that “mediation is covered.”

Insurance does not authorize work that a regulator prohibits. Regulatory permission does not establish insurance coverage. Past coverage also does not necessarily cover new work. ALIA, for example, distinguishes covered professional services, which can include mediation for eligible subscribers, from run-off protection for earlier work; its guidance says run-off coverage does not cover errors in services performed after retirement. [5]

The practical consequence is clear: do not add legal work merely to keep a mediation moving. Confirm the permitted scope and relevant coverage, or direct the legal task to an appropriately authorized professional.

Why the boundary matters beyond regulation and insurance

Participants need someone who can advise on their own interests

A mediator assists a process involving people whose interests may conflict. A participant's lawyer can assess that person's rights, risks and choices from their perspective. Giving both participants the same legal recommendation does not resolve the conflict or make the recommendation neutral.

The Model Code also distinguishes mediation communications from solicitor-client privilege, while recognizing that another privilege may apply. A mediator should explain the relevant confidentiality arrangements and avoid allowing participants to assume they have the protections of a lawyer-client relationship with the mediator. [1]

A confident answer can displace an informed choice

When the mediator says "that is the best you will get," a participant may treat the statement as a reason to stop investigating. The effect can be especially strong when the mediator is known to have legal experience. The concern is not merely the accuracy of a prediction; it is whether the participant feels able to question it, obtain advice or decline the proposal.

Family Mediation Canada's code emphasizes informed, voluntary resolution and limits on professional competence. It does not treat obtaining agreement as a reason to override those responsibilities. [6] A mediator may also lack documents, specialist knowledge or a sufficiently developed understanding of the facts to assess legal consequences responsibly.

Legal information and legal advice need deliberate separation

Explaining where an official resource can be found differs from applying law to someone's circumstances and recommending what they should accept. The distinction is contextual. Selecting a legal rule and assuring a participant that it resolves their particular case may be advice even if the mediator calls it information.

ADRIC's code prohibits legal or professional advice while recognizing expressions of opinion and evaluative approaches. That distinction requires care; it is not blanket permission for individualized legal advice. The practitioner's governing rules, role and authorization still need to be checked. [7]

Changing advice into a question does not remove the problem. "Wouldn't you be better off accepting, because a judge would give you less?" still embeds a legal prediction and a recommendation. A more useful question is: "What information or advice would help you compare this proposal with your alternatives?"

Good boundaries also support trust. Participants should be able to understand when the mediator is facilitating discussion and when another professional is responsible for assessing legal consequences. The distinction should remain clear in joint sessions, caucus, emails and documents.

What we do as mediators

The following statements describe the work of a facilitative mediator within an authorized and competent scope. They give participants a positive account of the service, rather than leaving them with a list of things the mediator will not do.

We assess whether the process can proceed appropriately

We consider suitability, participation needs and process concerns within our training and role. We explain how the process works, check whether adjustments are needed, and reconsider continuation after breaks, new information or changed circumstances. We may pause, adjourn or end the process when appropriate. We do not guarantee safety or an agreement.

We help participants identify and discuss the issues

We organize an agenda, clarify what each person wants to address and help them express concerns in language the other can understand. We facilitate questions and responses, manage pace and interruptions, and choose appropriate joint or separate discussions.

We help participants distinguish different kinds of questions

We separate missing facts, practical difficulties, personal priorities and questions requiring legal or other professional advice. For example, a missing pension valuation is an information gap; deciding what legal claim a person has to the pension calls for legal advice. More negotiation cannot supply the missing answer.

We help participants explore options and practical consequences

We invite alternatives, clarify proposals and examine how an arrangement would work in daily life. We can ask who would collect a child, how notice would be given or what happens if a payment date is missed. We do not turn that practical discussion into an assurance about legal entitlement, enforceability or what a court will order.

We support access to information and independent advice

We identify unresolved questions, help participants prepare a question list and allow time for appropriate consultations. Where permitted and within competence, we can point to reliable general information without adopting it as a personalized legal conclusion. We do not present a private meeting with the mediator as independent legal advice.

We clarify what has and has not been agreed

Where permitted within our role, we can record participants' proposals and intended practical arrangements for clarification and professional review. We distinguish an exploratory idea from an authorized offer. We refer legal drafting, advice on legal effect and other legal services to an appropriately authorized professional. Calling a document a summary or memorandum does not itself determine its legal effect or whether preparing it is permitted.

These activities require active professional judgment. Declining legal work does not mean abandoning the participant; it means identifying the next useful step without taking on a different professional role.

What to do when a participant asks for legal help

Use a response that identifies the question, explains the limit and creates a practical next step. The following examples are proposed wording, not guarantees of compliance or coverage.

When asked whether someone is entitled to support

“That is a legal entitlement question. I cannot determine your entitlement or advise you about it. We can identify the information and questions you need to take to your own lawyer before you make a decision.”

When asked whether to accept or sign

“I cannot advise you whether to accept or sign. We can clarify what the proposal says, what it would require in practice and what questions remain. You should have a meaningful opportunity to obtain independent legal advice before committing.”

When asked to draft a binding agreement

“Our mediation service does not include legal drafting or advice on enforceability. Within the limits of our role, we can clarify the arrangements you wish to explore. An appropriately authorized legal professional should prepare or review the legal document and advise you about its effect.”

When cost is given as a reason to rely on the mediator

“I understand that cost affects your options. It does not change the limits of my role. We can allow time to explore a limited-scope consultation, a clinic or another available legal service. If an essential question remains unanswered, we may need to pause the decision.”

Make independent advice part of the process

Family Mediation Canada describes an ongoing obligation to explain the desirability and availability of independent legal advice; appropriate circumstances may require participants to obtain it. [6] Raise the need while proposals can still be reconsidered. Do not portray legal review as a final formality or a lawyer’s signature on an outcome already treated as inevitable.

The Law Society of Alberta’s guidance on independent advice requires substantive inquiry and analysis even when the consultation is brief or the person believes their decision is made. [8] In mediation, allow enough room for that work. A participant may need ongoing representation rather than a single review appointment.

A practical check is: “Is there a legal question you need answered before we take this further?” Ask whether the need has been addressed without requiring disclosure of privileged advice. If someone declines advice, consider whether informed, voluntary participation remains possible under the applicable rules. A refusal or waiver should not be treated as automatic permission to continue or to supply the missing advice yourself.

Record the role explained, any referral or pause and the process decision, subject to applicable confidentiality and recordkeeping duties. If a boundary may already have been crossed, stop the relevant activity and obtain appropriate regulatory and insurance guidance, including on reporting obligations. A later disclaimer or legal review should not be assumed to erase an earlier problem.

A clear explanation to take into practice

A participant who asks for legal advice is often identifying something important about the mediation: a decision cannot yet be made with confidence. The useful response is to identify that need and make room for the appropriate advice. It is not necessary for the mediator to supply the legal answer to keep helping.

Before using the service statements in this paper, compare them with what the practice actually does. Review the website, intake explanation, agreement to mediate, session conduct and documents together. The description and the work should match. Where the permitted scope or coverage is uncertain, resolve that question before expanding the service.

The message to participants can then be clear: we help you work through the dispute; we do not provide legal services or legal advice in this mediation engagement. Your independent legal adviser assesses your legal position. Our work is to support a process in which you can understand the proposals, obtain the assistance you need and make your own decisions.

Companion reading

Choosing Between Caucus and Joint Sessions considers the purposes of private and joint discussions, confidentiality and decisions about changing format.

Read Choosing Between Caucus and Joint Sessions

Reassessing Mediation After a Break addresses focused checks before continuing and when the process should change, pause or end.

Read Reassessing Mediation After a Break

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Sources and scope

This paper offers an original practice discussion, including proposed scripts and service statements. It does not determine any individual practitioner's authorized scope or insurance coverage. National model provisions, association standards, provincial guidance and insurance descriptions have different purposes and application. The cited organizations have not endorsed this paper. Sources checked 28 October 2026.

1 Federation of Law Societies of Canada

Model Code of Professional Conduct, rule 5.7-1 and commentary. Model guidance on lawyer-mediators, separate counsel, role clarity and privilege. Check the applicable jurisdiction's adopted rules.

Read the Model Code

2 Law Society of Alberta

Unauthorized Practice of Law. Alberta guidance on activities that may constitute legal practice and the need for current authorization.

Read the regulatory guidance

3 Holman Insurance Brokers Ltd

Mediator Insurance, Professional Liability. Lists optional coverage categories; a product description is not an individual coverage determination or policy wording.

Read the coverage overview

4 BFL CANADA and ADR Institute of Canada

ADRIC insurance information and claims examples, page 2. Identifies unauthorized legal advice and drafting allegations as potential exposures and discusses defence costs.

Read the claims examples

5 Alberta Lawyers Indemnity Association

Group Policy guidance. Explains professional services, including mediation for eligible subscribers, and the limits of run-off protection for retired subscribers.

Read ALIA's policy guidance

6 Family Mediation Canada

Members Code of Professional Conduct, particularly articles 3, 5 and 10. Addresses voluntary decision-making, competence and independent legal advice. Applies to its members.

Read the FMC code

7 ADR Institute of Canada

Code of Conduct for Mediators, sections 3.2 to 3.4. Distinguishes the mediator's role, legal advice, evaluative approaches and referrals. Applies as specified in that code.

Read the ADRIC code

8 Law Society of Alberta

Giving Independent Legal Advice, updated January 2026. Describes the substantive work required when a lawyer provides independent advice.

Read the independent advice guidance