

Elder Mediation: Practical Tips & Best Practices

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Introduction

1. Why Elder Mediation?
2. EM: A Canadian Approach
3. Unique EM Issues
4. Capacity

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Family Conflict and Aging

Mediation of issues impacting older adults.

Nancy Solnick: “loss, stress and change in circumstances as we age may be the true axis around which elder mediation turns”.

- Conflict arises due to decisions that must be made.
- Elder mediation is likely to be multi-party, multi-generational and multi-issue.

Examples of Disputes

- Admission to long-term care.
- Division of caregiving responsibilities among family members.
- Health and personal care arrangements.

Issues often are both legal and relational

- Example: Mr. Singh

Why Elder Mediation?

#1: TIMELY

The number of Canadian families dealing with aging issues is increasing.

- 33 Million Population
- 1 in 8 over 65 now
- 1 in 4 by 2041



Why Elder Mediation?

#2: GREAT POTENTIAL:

Studies have shown older adults want to maintain relationships with family.

Elder mediation provides an opportunity to resolve disputes in an amicable way that maintains relationships.

Why Elder Mediation?

3: PREVENTION

- Mediation can be used preventatively, as family planning before conflict arises.
- Some research suggests that elder mediation employed early in conflict can prevent elder abuse (Yvonne Craig, 1997)

Elder Mediation

A Canadian Perspective



In the U.S. elder mediation is common.

- Wide range of disputes mediated with lawyer and non-lawyer mediators,

In Canada, elder mediation is a small field,

- More narrow range of disputes and primarily lawyer mediators.



This practice area has great potential and is under utilized. However, there are practical challenges.

Unique Aspects of EM

- Multi-Party
- Complex Dynamics.
- Aging Issues
- Disability Issues
- Elder abuse issues
- Legal issues

For mediators expanding into this area, training on aging, elder abuse and relevant laws is important.

Unique Aspects of EM Capacity Issues

Issues related to capacity are complex and are the most difficult for elder mediators to deal with.

This issue arises in elder mediation because of the high prevalence of dementia in the older population.

Dementia is not a single illness, but can be caused by a number of medical conditions.

It results in a serious loss of cognition and is not a normal part of aging.

Capacity is not black and white. A person with dementia often has fluctuating cognition.

Unique Aspects of EM Capacity Issues

Capacity is a legal term with a legal definition. Medical evidence may be needed. However, capacity is a legal determination.

All adults are presumed to be legally capable. Legally capable adults have the right to make decisions about matters that affect them.

However, ethically mediators should not facilitate an agreement in which one of the parties may not understand the agreement.

Therefore, mediators should assess “capacity to mediate”.

A medical assessment may help but is not determinative.

If unsure seek legal advice about how to proceed.

Unique Aspects of EM Capacity Issues

Capacity is decision specific

When asking the questions “Is he/ she capable?” it is important to consider “capable to do what?”

An older adult participant may be capable to make some decisions in mediation but not others.

A capable person:

- Understands the context of the particular decision to be made
- Understands the consequences of the decision.

Unique Aspects of EM Capacity Issues

If an older adult lacks capacity to make a decision in mediation it will be necessary to:

- End the mediation, or
- Include the legally authorized substitute decision-maker (ex. guardian, power of attorney, etc) in the process.

If the older adult has capacity:

- It is important to be attuned to legal rights.
- Sometimes family members or caregivers will speak on behalf of an older adult. However, a capable older adult has the legal right to make his or her own decisions.

Contact Information



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