

Accommodating People with Disabilities

A Reference Guide for Mediators



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February 2009

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1



Introduction

About this Reference Guide

According to Statistics Canada's *A Profile of Disability in Canada, 2001*, about 3.6 million Canadians (12.4%) report having a disability. In light of these numbers, it is likely that most mediators will encounter a party who has difficulty with the process, physical space, timing, or some other facet of mediation — unless some accommodation is provided so that they can participate effectively in the mediation process.

This reference guide is primarily oriented to British Columbia's mediators, but may also be a useful resource for mediators in other jurisdictions. It is intended to be a general overview for mediators in making appropriate accommodations for people with disabilities. Not every type of disability or condition could be anticipated in this guide. It will, nevertheless, serve as a starting point for mediation practitioners as they endeavour to make mediation broadly accessible to everyone wishing to use it.

Background

In recent years, the most intensive efforts on the topic of accommodating people with disabilities in a mediation context have been seen in the United States. There, "disabilities mediation" in connection with the *Americans with Disabilities Act* — and subsequently the *ADA Mediation Guidelines* — has set the scene for more formal policy and practice in this area.

In Canada, the progress has been more gradual, with few statutory or other legal mechanisms to encourage mediators in their accommodation efforts. Some that

have been instrumental, however, include:

- the duty to accommodate — as it has been interpreted under applicable human rights legislation, and by rulings of the Supreme Court of Canada
- the *Employment Equity Act*
- the Federal Contractors Program, and
- various examples of provincial legislation such as the *Accessibility for Ontarians with Disabilities Act*.

In British Columbia, no specific legislation on this topic is presently in place. There is, nevertheless, broad recognition amongst the province’s mediators that there is work to be done in this field. They seek better information about accommodation techniques, and about how these might best be incorporated into their mediation practice.

USEFUL LINKS AND RESOURCES

“ADA Mediation Guidelines”, *Cordozo Journal of Conflict Resolution*. New York: Yeshiva University, developed 1998-2000. <http://www.cojcr.org/ada.html>

Leslie, Donald R. and Kaye, Leslie. *Designed Inclusion – A Guide to Facilitate the Accommodation of Employees With Disabilities in Learning*. Access to Learning Canada, undated article. http://accesstolearning.ca/index.php?view=article&id=107%3Adesigned-inclusion-a-guide-to-facilitate-the-accommodation-of-employees-with-disabilities-in-learning-and-training&option=com_content&Itemid=61

2



Guiding Principles

Self Determination and Accessibility

The need to assess whether a person can fully participate in mediation is not, of course, a question that arises only in connection with someone who has a disability. The freedom of participants to be self-determining — that is, to make voluntary and informed decisions about the matters that affect them — is fundamental to mediation. While the parties bear responsibility for divulging possible impediments of which they are aware, the mediator, nevertheless, has a responsibility to explore barriers to exercising this freedom if mediation is to proceed. They also have a responsibility to work with the individual to remove or neutralize those barriers, to the extent that this is possible.

Accessibility is, really, the other side of the self-determining coin. The mediator is not only wanting to ensure that mediation participants are free to make voluntary and informed decisions, but also to ensure that the process is available to anyone who is either a party to a dispute or a person who might contribute to its resolution. The practice of accommodating people whose disabilities might otherwise limit their participation in the mediation process is, then, an important application of both the principles of self-determination and accessibility.

Other Legal and Ethical Principles

The principles of self-determination and accessibility, as they operate in mediation, are consistent with other ethical and legal principles that apply in this area. For example, the *U.N. Convention on the Rights of Persons with Disabilities* is based, among other things, on

“... respect for inherent dignity, individual autonomy including the freedom to make one’s own choices, and independence of persons” [article 3(a)].

Similar principles form the underpinnings of the Canadian *Charter of Rights and Freedoms* and the *British Columbia Human Rights Code*.

The British Columbia *Human Rights Code* specifically prohibits discrimination because of a disability. Additionally, in keeping with the Code and with other human rights legislation, the Human Rights Commission, the courts, and arbitrators in British Columbia have given the term “disability” a broad, liberal interpretation, so that a wide variety of physical and mental conditions are captured by this term.

USEFUL LINKS AND RESOURCES

Cohen, Judith. “Fulfilling Your Obligations on Mediation Capacity”, *Mediate.com: Resolution Solutions*. July 2003. Resourceful Internet Solutions Inc., copyright 1996-2008. <http://www.mediate.com/ADAMediation/editorial5.cfm>

Convention on the Rights of Persons with Disabilities. United Nations, General Assembly, A/61/611, 6 December 2006. <http://www.un.org/disabilities/convention/conventionfull.shtml>

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Context, Terminology, and Etiquette

“Person-First” in Focus

When deciding how to provide an accommodation in a mediation setting, there are important reasons why the broadest possible definition of “disability” should be used. Many disabilities are hidden, and some may be considered temporary or event-dependent. They can, nevertheless, interfere with a person’s full participation in mediation. Even quite common conditions, such as asthma, allergies, a heart condition, or anxiety, can affect a person’s ability to fully take part in the mediation process.

The focus is, however, not only on tailoring the process to fit the individual, but also on concentrating on the needs of the individual rather than on their disability — and so, putting the *person first*, not their disability.¹ This person-first focus does not infringe upon the mediator’s efforts to remain impartial. Rather, accommodating the needs of *all* parties at mediation — in so far as this is possible — is part of what is done to secure and maintain fairness throughout the mediation process.

¹ This theme is supported by rulings of the Supreme Court of Canada: “By placing the emphasis on human dignity, respect, and the right to equality rather than on a simple biomedical condition, this approach recognizes that the attitude of society and its members often contribute to the idea or perception of a “handicap”. In fact, a person may have no limitations in everyday activities other than those created by prejudice and stereotypes.” [Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Montreal (City); Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Boisbriand (City), [“Mercier”], 1 S.C.R. 665 at para. 77.]

“Person-First” in Language

A person-first focus is also conveyed through words. Language reveals attitudes, so that an attitude of respectful sensitivity to the requirements of the parties in mediation — and other participants in the process — is sure to be expressed by a mediator’s choice of words.

There are a number of useful guides to terminology and etiquette available. Perhaps the most important instruction, however, is simply “don’t be afraid to be yourself”. The key is sincerity, and a genuine interest in doing whatever is necessary to make mediation an accessible and effective process for the individuals involved. This attitude will smooth the way as the person with a disability shares insights into their story and their perspective on the matter at hand.

USEFUL LINKS AND RESOURCES

Disability Etiquette. Brochure. Toronto: Ryerson University, undated. <http://www.ryerson.ca/hr/working/docs/disability-etiquette.pdf>

Human Resources and Social Development Canada. *A Way With Words and Images: Suggestions for the portrayal of people with disabilities*. Government of Canada, 2006. Cat. No. HS4-25/2006E, ISBN: 0-662-44082-X. http://www.hrsdc.gc.ca/en/disability_issues/reports/way_with_words/way_with_words.pdf

Job Accommodation Network. *Disability Etiquette in the Workplace*. Morgantown, WV: Office of Disability Employment Policy, U.S. Department of Labor, original printing 8 March 2006. http://wsd.dli.mt.gov/local/polson/pdf/Disability%20Etiquette_webcasthandout.pdf.

“Person-First” Focus and Language

- Inquire about a person’s requirements, not their disability or condition.
- Characterize a person by their ability, not their disability.
- If referring to a group of people, and particularly addressing an issue related to their disability, use references to their disability or condition as an adjective, rather than a noun, e.g., “people who are blind or partially sighted”, rather than “the blind”.
- Be aware that it takes different people different amounts of time to do or say things — let them set the pace.
- Use neutral, plain language and speak professionally. Avoid words that suggest the person has either superior or inferior strengths because of their disability, e.g., “courageous” or “afflicted”.
- When speaking to a person with a disability who is accompanied by a companion or aide, speak directly to the person rather than through their companion.
- Ask before you help, and only ask if the person appears to need assistance.
- Everyday terminology for different actions is appropriate, e.g., “walk” with a person in a wheelchair, and “see” a solution with a person who is blind.
- Focus on the matter at hand, not on the disability. If the disability is not relevant to the issue, then it is not necessary to draw it into discussion of the issue.

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Getting to Know One Another

Early Considerations and Questions

Building a trusting relationship with the parties is, typically, the first step for all mediators. Most mediators will confirm that, as the relationship builds, it becomes easier to ask questions, and easier to answer the questions asked. It is during the early trust-building stage, and during pre-mediation discussions about the mediation process, that exploration can begin into what a person may require to fully participate in mediation.

The time taken by the mediator in getting to know the parties — and for the parties in getting to know the mediator — will be time very well spent. Asking people how they deal with stress and conflict, and how they are likely to deal with them in the context of mediation, is a common practice. These questions can sometimes lead to the disclosure of other issues that may suggest how mediation should subsequently be managed.

As the mediator develops a rapport, further inquiries into a party's overall emotional and behavioural condition can be made without being intrusive. Of course, the mediator's questions are not being asked for diagnostic purposes, but rather for screening or preparation purposes. The answers to these questions all contribute to either a better determination of whether mediation will be suitable for the person, or an assessment of how best to manage the process over the course of the mediation.

While a prospective party for mediation bears some responsibility for disclosing any condition that might impede their full participation in the process, it is clearly not sufficient for the mediator to rely on self-disclosure alone. Particularly for a first-time participant, the process may be something of a mystery until they experience it, even in spite of the mediator's best efforts in describing it. It is therefore incumbent

upon the mediator to be proactive, and inquire — sensitively and unobtrusively — into the kinds of things that might be impediments to participation.

If a disability has already been disclosed, and if a support person normally accompanies the person, the mediator should ensure that they are also part of these early discussions. The extent of their participation in the upcoming mediation sessions will need to be determined at the outset. Additionally, if other support persons are identified as being of possible assistance during the sessions — such as a health care professional or a lawyer — their role in the process can also be discussed at this time.

Finally, a mediator should take care to respect the person’s privacy, and hold in confidence any health or disability-related information that they may disclose. There may be information the person does not wish to have revealed, and this should not be disclosed without their express permission.

Capacity

The question of whether mediation can be made to suit the parties is, in part, a question of determining the party’s mediation “capacity” or readiness. The subject of capacity has been a controversial one. There is concern that drawing capacity into question further stigmatizes a person with disabilities as being more dependent and/or less capable of making decisions about the matters that affect them. In using a person-first approach to mediation, however — for everyone, despite their different abilities — this concern is considerably diminished. The issue becomes simply one of determining what needs to be done, if anything, to ensure that a person can fully participate in the process.

For parties with mental health or substance use issues, note that capacity in mediation may not be the same as the legal capacity to enter into a contract or to make decisions, such as to make health care or financial decisions, or to vote, marry, or drive. For example, even a party who is the subject of a certificate under the *Mental Health Act* or similar statute may still be able to participate in mediation. They may demonstrate a sufficient understanding of what is required of them and of how they and others are expected to interact with one another in mediation. Capacity, in this sense, is as much a focus on the capacity of the mediation process and environment to suit the people wishing to participate in mediation — its format, pace, and physical surroundings — as it is on the capacity of the person.²

² This approach is also reflected in the American *ADA Mediation Guidelines* that oblige a mediator to “... determine whether a disability is interfering with the capacity to mediate and whether an accommodation will enable the party to participate effectively” (part D.2.).

An accommodation may be necessary if the party:

- appears not to comprehend the nature of the mediation process
- has difficulty appreciating who the other parties are, or understanding the role of the mediator or the parties' relationship to the mediator
- appears to be having difficulty understanding the issues to be discussed in mediation
- has difficulty following a conversation, has a limited attention span, or a high degree of emotional discomfort
- has difficulty speaking or communicating
- cannot navigate, or is uncomfortable with, the physical setting of the mediation sessions
- has difficulty with the schedule or pace of mediation sessions, or
- may not be able to assess options, or to establish and comply with the terms of an agreement.

Shape to Fit

Assessing whether mediation can be *shaped to fit* a person is a two-step process. It involves, first, an evaluation of whether or not the person is able to take part in the mediation process and enter into a contract. Second, if it appears that the person may not be able to take part in the process without an accommodation, it involves an evaluation of how the mediation process or its environment can be adapted to meet the needs of that person.

This approach is very much in keeping with what has come to be known as *mediation process design*. Mediation process design employs the notion that the format of a mediation can and should be made to suit the needs and/or limitations of the parties. It may involve holding more caucus sessions, conducting a shuttle mediation process, breaking more frequently, or reviewing the issues and the progress made more thoroughly. Styling the process to suit the parties is, therefore, simply part of regular mediation practice.

A good place to get information about suitable accommodations for specific

disabilities is at a local *Disability Resource Centre*. These centres are affiliated with *Independent Living Canada*, a network of disability resource centres in communities across Canada. Additionally, on-line resources — such as Service Canada’s *Persons with Disabilities Online* or the website for the *Disability Resource Network of BC* — can be very helpful (see ‘Useful Links and Resources’ at the end of this chapter). These sites then direct the user to additional resources that are more specific to a particular disability.

When Mediation Can’t Be Shaped to Fit

In some cases, the mediation process cannot be shaped to fit the person. In these instances, it may be advisable not to proceed with mediation unless a surrogate — that is, someone authorized to represent the person — can make mediation decisions on the person’s behalf.

The decision not to proceed, or to proceed only with the help of a surrogate, should never be made lightly. Although a person may not be able to enter into a contract — that is, understand the nature and conditions of a settlement or comply with it, in a legal sense — they may still profit from the broader benefits that ensue from participating in a mediation process. These might include an enhanced relationship with the other party, or new communication and conflict management skills. The possibility of a settlement may not be, therefore, the only factor in deciding whether or not to proceed with mediation.

Many positive mediation outcomes, including a settlement, can also be gained with the assistance of a surrogate. It is important to encourage the participation of the person with disabilities, in spite of the presence of a surrogate. It is also important to define the role of the person acting as a surrogate, and carefully explain this role to both individuals. Finally, and most importantly, the surrogate should be reminded that they speak for the interests, values, and preferences of the person on whose behalf they are acting.

USEFUL LINKS AND RESOURCES

Cohen, Judith. "ADA Mediation Guidelines: An Ongoing Endeavour", Cadre, Consortium for Appropriate Dispute Resolution in Special Education, the National Centre on Dispute Resolution, undated. http://www.directionservice.org/cadre/ada_guidelines_cohen.cfm#top

Disability Resource Network of BC. Vancouver: Vancouver Community College. <http://www.drnbc.org/>.

Persons with Disabilities Online. Service Canada, Government of Canada. <http://www.pwd-online.ca/pwdhome.jsp?&lang=en&geo=2&fontsize=0>.

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Methods of Accommodation

Thinking Ahead

Assessing whether there might be any impediments to a person’s participation in mediation requires the mediator to be proactive to a certain extent. That is, they must be proactive in the sense of actively posing questions or eliciting information that sheds light on a person’s degree of comfort with the mediation process. The mediator must also be proactive — and creative — in devising accommodations to overcome those impediments. Often, it is only a matter of the mediator anticipating what difficulties the person may encounter, and acting to alleviate those difficulties before they become an issue.

While it may seem an obvious place to start, it is important to emphasize that the person with the disability is usually in the best position to know what kinds of accommodations will be most effective in helping them to participate fully in the mediation process. The parties usually welcome questions along these lines. At times, however, a person may have a hidden disability, or disclose an impediment to full participation once the process has already begun, even in spite of the mediator’s best efforts to bring this to light during pre-mediation preparations. It is therefore important to be alert and adaptable — for instance, ready to call a caucus meeting, take a break, offer a pencil and paper, or stop to summarize key points — at any time, should the need arise.

Suggestions for accommodations that can be made for specific types of disabilities follow later in this section. In general, however, thinking ahead about the venue, process, and timing of mediation is the first step in the shape-to-fit exercise.

THINK ABOUT THE VENUE. The venue includes not only the mediation room, but the exterior of the building as well. Is the parking suitable, and are the doors and elevators accessible? Are there public conveniences the person can use, such as an accessible restroom, drinking fountain, and telephone? If not, are there alternatives, such as an employee restroom, a glass of water, or a desk phone or cell phone? Will the door to the mediation room be manageable, and do the furnishings in the room allow for easy passage? Does the room have good in-door air quality? For someone who may have difficulty keeping track of what transpires during a mediation session, will an easel or paper and pencil be available?

THINK ABOUT THE PROCESS. Is there any additional or different information about the mediation process that should be provided to the person at the pre-mediation stage? Once mediation begins, would more frequent caucus sessions provide more opportunities to review what has transpired during mediation? Will the person require more frequent bathroom, food, refreshment, or rest breaks? Do documents need to be explained orally, or in greater detail?

THINK ABOUT THE TIMING. Do the start and finish times of mediation sessions suit the person's requirements? The timing could conflict with a health care regimen, or the length may cause fatigue. Would adjusting the pace — to either speed up or slow the discussion — improve communication and comprehension? Would either a longer or shorter period between sessions assist the person in assimilating what has transpired during a given mediation session?

Thinking ahead in this fashion will help a mediator to assess the need for many types of accommodations, and also their own ability to make those accommodations. Mediators are not, of course, expected to make accommodations that are unreasonable, prohibitively expensive, or of a character that would interfere with the standard practice of mediation. Rather, it is a question of taking all reasonable steps to ensure that — as much as possible — mediation is accessible to people with disabilities.

Mobility Impairments

DESCRIPTION

Mobility impairments limit a person's use of their arms and/or legs, and may necessitate the use of a wheelchair, crutches, cane, walker, brace, or other support to aid ambulatory movement or task performance. They are sometimes distinguished from dexterity impairments, which affect specifically the arms, hands, or fingers. A mobility impairment may be any condition that affects the ability to move, and may range from a lack of flexibility or coordination to complete paralysis. In British Columbia, the largest proportion of people living with disabilities falls into the mobility, agility and pain categories.

ETIQUETTE

- Before giving assistance, ask first. For example, before pushing a wheelchair or offering an arm, ask if help is required.
- Consider the wheelchair, cane, or other support a person is using to be an extension of their body. Do not lean on or move these items without first confirming that this is appropriate.
- When talking to a person in a wheelchair, seat yourself, if possible, so that the conversation can be at eye level.
- Allow a cane or service dog to be situated beside the person or nearby.

POSSIBLE ACCOMMODATIONS

- Arrange for nearby parking with wide access to accommodate a vehicle door and any ambulatory supports.
- Arrange mediation sessions and other meetings in a building that has entrance ramps, accessible doorways, elevators, and washrooms.
- Increase the number of breaks for someone who, for example, has multiple sclerosis, and experiences varying levels of fatigue.
- Allow a person to keep their wheelchair, crutches, or other support within easy reach.
- Arrange the chairs and other furnishings so that the person can manoeuvre around them.

- Consider employing telecommunications technologies, such as the telephone, on-line audio-conferencing, or videoconferencing for those who find it difficult to function in a traditional office setting.

USEFUL LINKS AND RESOURCES

Arthritis Resource Guide for BC. Sponsored by the Arthritis Society of Canada. <http://www.argbc.ca/>.

British Columbia Paraplegic Association. <http://www.bcpara.org/default.aspx>.

“Mobility Impairment”, *Disability Resource Centre*. University of Calgary <http://www.ucalgary.ca/drc/node/62>.

Visual Impairments

DESCRIPTION

A visual or vision impairment limits a person’s eyesight in such a way that it cannot be corrected by corrective lenses, medication, or surgery. The terms partially sighted, low vision, legally blind, and totally blind may also be used to describe various types of visual impairments. A visual impairment may be caused by disease, trauma or a congenital or degenerative condition. This results in some people with a visual impairment never having experienced sight, while others have lost or had diminished eyesight after at least some period of sightedness.

ETIQUETTE

- Before giving assistance, ask first. For example, before extending an arm or hand, ask if help is required.
- Offer your arm rather than taking theirs.
- When assisting a person with a visual impairment in an unfamiliar building, guide the person’s hand to the railing of a staircase or to the side of an area or room so they can orient themselves.

- Let a person with a visual impairment follow you into a room, rather than having them go first into an unknown space.
- To hand a visually impaired person an object, first explain that you are doing so. Take their offered hand and place the object in it.
- Allow a cane or service dog to be situated beside the person or nearby.
- For safety purposes, leave doors either fully closed or fully open. A partially closed door may be perceived as an open door, and the person may walk into it.

POSSIBLE ACCOMMODATIONS

- Identify yourself and others in the mediation room to a person with a visual impairment. Inform them when leaving the room, or when others enter or exit.
- Explain, and then read orally, any documents that are discussed over the course of the mediation.
- Arrange for the documents to be translated in Braille, or sent to a computer capable of speech synthesis with text-to-speech software.
- Consider employing telecommunications technologies, such as the telephone or on-line audio-conferencing, for those who find it difficult to function in a traditional office setting.

USEFUL LINKS AND RESOURCES

Bailey, Ian L. and Hall, Amanda. *Vision Impairment: An Overview*. New York: American Foundation for the Blind, 1990.

“Links”, Provincial Resource Centre for the Visually Impaired. Ministry of Education Provincial Resource Program, hosted by the Vancouver School Board. <http://www.prcvi.org/links/>.

Hearing Impairments

DESCRIPTION

A hearing impairment either fully or partially limits a person's ability to detect or understand sounds. Although some people may be hearing impaired from birth, illness, disease, or excessively high noise levels may also cause hearing loss. Those who have had hearing impairments since birth may also have speech impairments because they have never heard their own voices. Deafness is a term commonly used to describe hearing loss. Hearing impaired is, however, the preferred term as it more accurately reflects the fact that there can be different degrees of hearing loss.

ETIQUETTE

- Ask how you can best make yourself heard.
- When addressing a person with a hearing impairment, gently gesture to them in their line of vision or touch their arm or shoulder.
- If the person reads lips, look directly at them and speak clearly. Ensure that your hands are away from your mouth, and refrain from eating or chewing gum while speaking. Do not over-exaggerate your speech or yell, as this makes lip reading more difficult.
- Speak clearly and concisely. Do not slow down your speech or raise your voice unless asked to do so.
- If a sign language interpreter is present, speak directly to the person you are addressing.
- Avoid telephone contact unless the person has a device to aid hearing on the telephone.

POSSIBLE ACCOMMODATIONS

- If asked, modify the speed and volume of your speech.
- If you have difficulty making yourself understood, try written communication where suitable.
- Use an easel, white board, or overhead projector to display discussion points.
- Arrange for a sign language interpreter to attend. Note that there are different types of sign language (e.g., American Sign Language, British Sign Language) and that captioning or transcription services may be required.

- Consider employing computer technologies, such as e-mail or instant messaging, for those who find it difficult to function in a traditional office setting.
- Increase the number of breaks, as communication with a hearing impairment can be tiring.
- Amplify sound by way of an assistive listening device (ALD), such as a personal neck loop or an audio induction loop.

USEFUL LINKS AND RESOURCES

BC Ministry of Education. *Hard of Hearing and Deaf Students: A Resource Guide to Support Classroom Teachers*. Province of British Columbia, 2007. <http://www.bced.gov.bc.ca/specialed/hearimpair/toc.htm>.

“Resource of services available online”, *HearingCenterOnline.com*. copyright, 2008. <http://www.hearingcenteronline.com/services.shtml>.

Vancouver Island Deaf and Hard of Hearing Centre. Victoria, Nanaimo. <http://www.idhhc.ca/>

Communication or Speech Impairments

DESCRIPTION

A communication or speech impairment is a limitation of a person’s ability to articulate. It refers to a variety of difficulties, including voice disorders, fluency problems such as stuttering, aphasia (a difficulty in using words, perhaps because of a brain injury), speech or language delays, or complete inability to speak (muteness). A speech impairment may also come about as a result of hearing loss. A speech impairment that is not related to or caused by other developmental disorders, hearing loss, or brain injury may also be called a *specific language impairment*.

ETIQUETTE

- Speak in a normal tone of voice. Unless the speech impairment has occurred because of a hearing impairment, the person is not hearing impaired.

- Be patient, and don't finish the person's sentences for them.
- Be supportive and encouraging by maintaining eye contact and using appropriate gestures, such as nodding your head.
- Ask questions in such a way that they can be answered in few words.
- Don't pretend to understand if you do not. Ask for clarification.
- If the person is accompanied by an interpreter, speak directly to the person you are addressing.
- Keep external noise and distractions to a minimum, as this can interfere with the ability to formulate words.

POSSIBLE ACCOMMODATIONS

- Repeat or re-phrase the communication to ensure the correct interpretation.
- Increase the number of breaks, as communication with a speech impairment can be tiring.
- Arrange for a family member, interpreter, or other support person to attend.
- If necessary, use note pads to facilitate written forms of speech.
- Consider employing computer technologies, such as e-mail or instant messaging, for those who find it difficult to function in a traditional office setting.
- Use communication boards or speech and voice enhancement equipment.

USEFUL LINKS AND RESOURCES

Field, Debbie et al. Augmentative and Alternative Communication (AAC) Services in British Columbia, December 2004. <http://www.bcchildrens.ca/NR/rdonlyres/C53B232B-5019-49CB-9A6E-9AB8E1EDABCA/11221/4846AACServices.pdf>.

"Speech Impairment Resources", *Adaptive Technology Resource Centre*. Toronto: Faculty of Information, University of Toronto, 2008. http://atrc.utoronto.ca/index.php?option=com_content&task=view&id=157&Itemid=47#Speech%20Impairment%20Resources.

Mental Function Impairments

DESCRIPTION

A mental function impairment is a limitation of a person’s brain function, which may affect their cognitive, interpersonal, social, and/or vocational effectiveness. The World Health Organization’s International Classification of Functioning, Disability and Health distinguishes between two functions of the brain: global mental functions, such as consciousness, energy and drive; and specific mental functions, such as memory, language, and calculation mental functions. There can be any number of causes and effects of impairment to either of these two brain functions — from someone who has an anxiety disorder or depression, to someone who is developmentally delayed or has a brain injury.

ETIQUETTE

- Learn about the person’s particular abilities. Before giving assistance, ask first what assistance the person may require or what has been helpful in other similar settings.
- For someone who is affected cognitively or emotionally, use specific, clear, and plain language and speak at a pace that is appropriate for the person’s abilities.
- If helpful, use gestures and physical movements to assist with understanding.
- Treat adults as adults, and children as children.

POSSIBLE ACCOMMODATIONS

- Ask questions that inquire into the person’s ability to concentrate and process information, and about how they normally respond in stressful situations.
- Be aware that the person may act differently in a pre-mediation meeting than during a mediation session. Also, watch for changes in mood, perception, behaviour, thought process, and/or physical state during a mediation session.
- Carefully assess the person’s level of understanding, and spend additional time — as necessary — explaining the intent of mediation.
- Some people may benefit from the use of visual aids, in addition to the mediator summarizing and repeating key points.
- For a person who is anxious or experiencing heightened levels of stress during mediation, break frequently and allow them to be seated next to the door.

- Shuttle mediation, or additional caucus sessions or breaks may be required.
- Arrange for a family member, advocate, or other support person to attend mediation sessions.
- Allow more time for the mediation process. For example, invite the parties to take tentative agreements home for further consideration.

USEFUL LINKS AND RESOURCES:

Finlay, Bob. "Accommodating Mediation Participants with Mental Health and Addiction Issues", *The Roster Report*. BC Mediator Roster Society, Issue 15, March 2007. http://www.mediator-roster.bc.ca/Finlay_Accommodating.pdf

Morrison, James. *The DSM-IV Made Easy: The Clinician's Guide to Diagnosis*. (Updated) New York: The Guilford Press, revised 2006.

Simmie, Scott and Nunes, Julia. *A Survival Guide to Mental Health Care in Canada*. Toronto: McClelland and Stewart Ltd., 2001.

Addiction or Substance Use Impairments

DESCRIPTION

An addiction or substance-use impairment is a limitation caused by the use of drugs or alcohol. These impairments may include intoxication, dependence, abuse, and substance withdrawal. A drug or alcohol addiction is a psychological and physiological dependence on drugs or alcohol, to the extent that the use of these substances is beyond a person's voluntary control. Addiction may have long-term effects on behaviour, health, and lifestyle even after successful rehabilitation. In the short term, the use of a substance may result in a number of substance-induced states, including: intoxication, withdrawal, and various mental conditions (such as dementia, psychosis, anxiety, and mood disorder).

ETIQUETTE

- Learn about the symptoms that a person may have because of an addiction or substance use impairment.
- Employ neutral, plain language and speak professionally.
- With people whose substance use problem has produced behavioural side effects, use facial expressions and gestures that are calming and aid understanding.
- Addiction or substance use impairments are often hidden. Ask questions that inquire into the person's ability to concentrate and process information, and about how they normally respond in stressful situations.

POSSIBLE ACCOMMODATIONS

- An accommodation may not be necessary. Determine how current or historical addiction problems have impacted on the person's health or lifestyle.
- If possible, offer food and beverages. Some people recovering from or currently experiencing an addiction or substance use impairment benefit from, for example, something sweet or a cup of coffee.
- Consider the time and day when scheduling mediation sessions. In particular, take into consideration any treatment or rehabilitation regimens in which the person may be taking part.
- Structure mediation sessions to take into account any fatigue the person may experience at different times in the day.

- Set ground rules around communication with other parties and attending mediation sessions while under the influence of drugs or alcohol.
- Some people may benefit from the use of visual aids, in addition to summarizing and repeating key points. A written compilation of discussion points for review after sessions may also be helpful.
- Allow additional caucus sessions or breaks.

USEFUL LINKS AND RESOURCES

Finlay, Bob. "Accommodating Mediation Participants with Mental Health and Addiction Issues", *The Roster Report*. BC Mediator Roster Society, Issue 15, March 2007 http://www.mediator-roster.bc.ca/Finlay_Accommodating.pdf

Weber, Ellen M., *Employing and Accommodating People with a History of Alcohol and Drug Abuse*. Cornell University, ILR School, Employment and Disability Institute, March 1994, updated May 2001. http://www.ilr.cornell.edu/edi/hr_tips/article_1.cfm?b_id=1&h_id=6&view=true#hid6.

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In Closing

Notes in Review

This reference guide provides only a brief overview of some of the issues and possible ways of accommodating people with disabilities in mediation. For those who wish to become better informed about specific topics as they are addressed, web links and additional resources have been provided throughout the guide and in the list of references at the back.

The methods of accommodating people with disabilities within mediation are as many and as varied as are the individuals who step through the door seeking mediation services. There is, therefore, no one right method to adopt within a mediation practice. There are, however, some general points to consider when an accommodation appears to be necessary:

- Put people first. Employ an approach that puts people first — not their disability — and displays an attitude of respectful sensitivity to the requirements of the parties in mediation. Use neutral, plain language, and speak professionally. During mediation, focus on the matter at hand, not the disability.
- Shape to fit. Tailor the process to suit the person by, first, evaluating whether they are able to take part in the mediation process and enter into a contract; and, second, making a determination of how the mediation process or its environment can be adapted to meet the needs of that person.
- Be proactive. Ask questions, and be creative in devising accommodations to overcome any impediments to a person's participation in mediation. Think about the venue, the process itself, and the timing — both of scheduled meetings and of the pace of the proceedings.

Most importantly, be sincere and willing to do all that can be done to make mediation an accessible, effective process for all concerned. With such openness and willingness to engage in a “shape to fit” process, mediators are in the best position to determine — with the assistance of the person with a disability — the most appropriate accommodation that can be made under most circumstances.

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