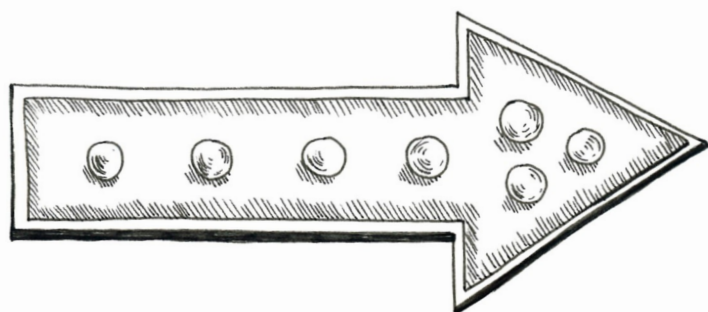




# A GUIDE



to

# MEDIATION



Human Rights Tribunal



Ontario

(Disponible en français)

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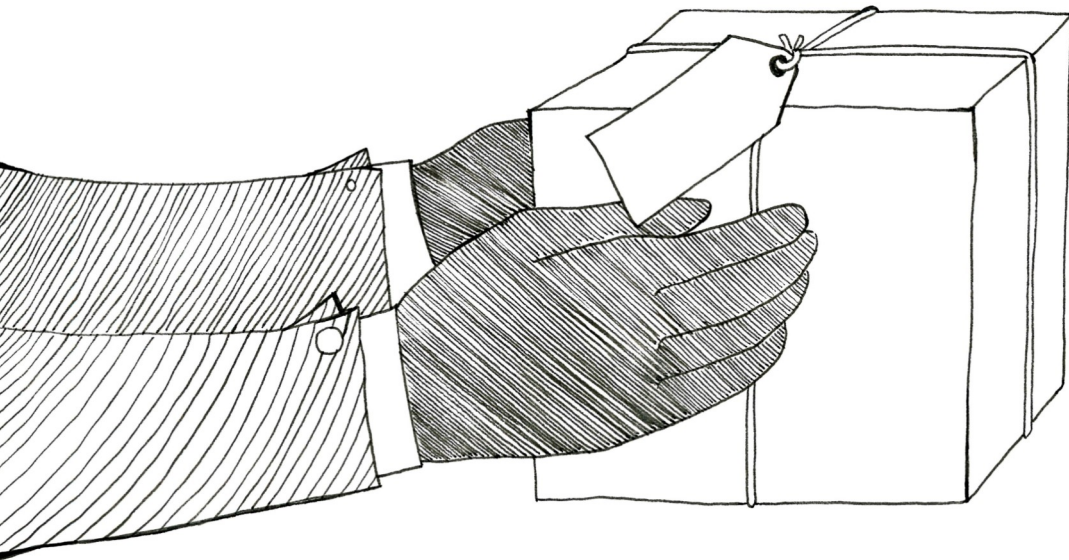
**WHY  
MEDIATION?**



As an applicant, you have filed an application with the Human Rights Tribunal of Ontario (HRTO), claiming that you have experienced discrimination, harassment, or reprisal as prohibited by the Ontario Human Rights Code.

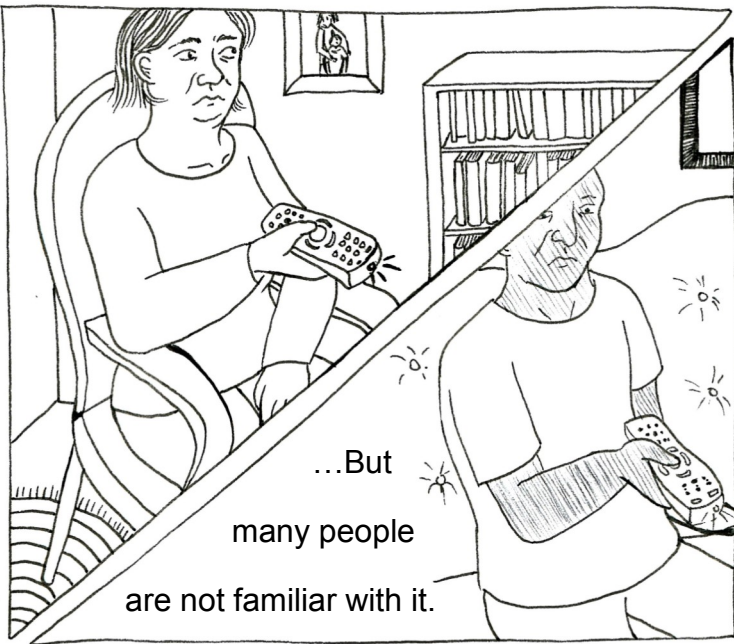


As a respondent, you are answering the applicant's claim that you have infringed the Ontario Human Rights Code.



The HRTO encourages both applicants and respondents to try mediation as a method of resolving an application without a public hearing. Mediation is a negotiation between the parties where parties work with an HRTO mediator to find a way to settle their case. It is a voluntary process. If no agreement is reached, there will still be a hearing.

Mediation is an important part of the dispute resolution process...



...But many people are not familiar with it.



Mediation is not something often discussed in the media...

Daytime television:



Mediation:



While you may not see mediation

on your favourite television show, it can offer benefits unavailable at a traditional adjudication.



Mediation is faster. It may take months to gather the documents and prepare witnesses for a hearing. Mediations are scheduled early in the HRTO process. If successful, the result is immediate—no waiting for a decision or approval.

In a mediation, the parties are in control. Rather than allowing someone else to decide your case, you decide the outcome.

This provides you with the opportunity to minimize your risk. While the tribunal will decide the case at a hearing, in a mediation, both parties can try to arrive at a mutually acceptable agreement

Still unclear about

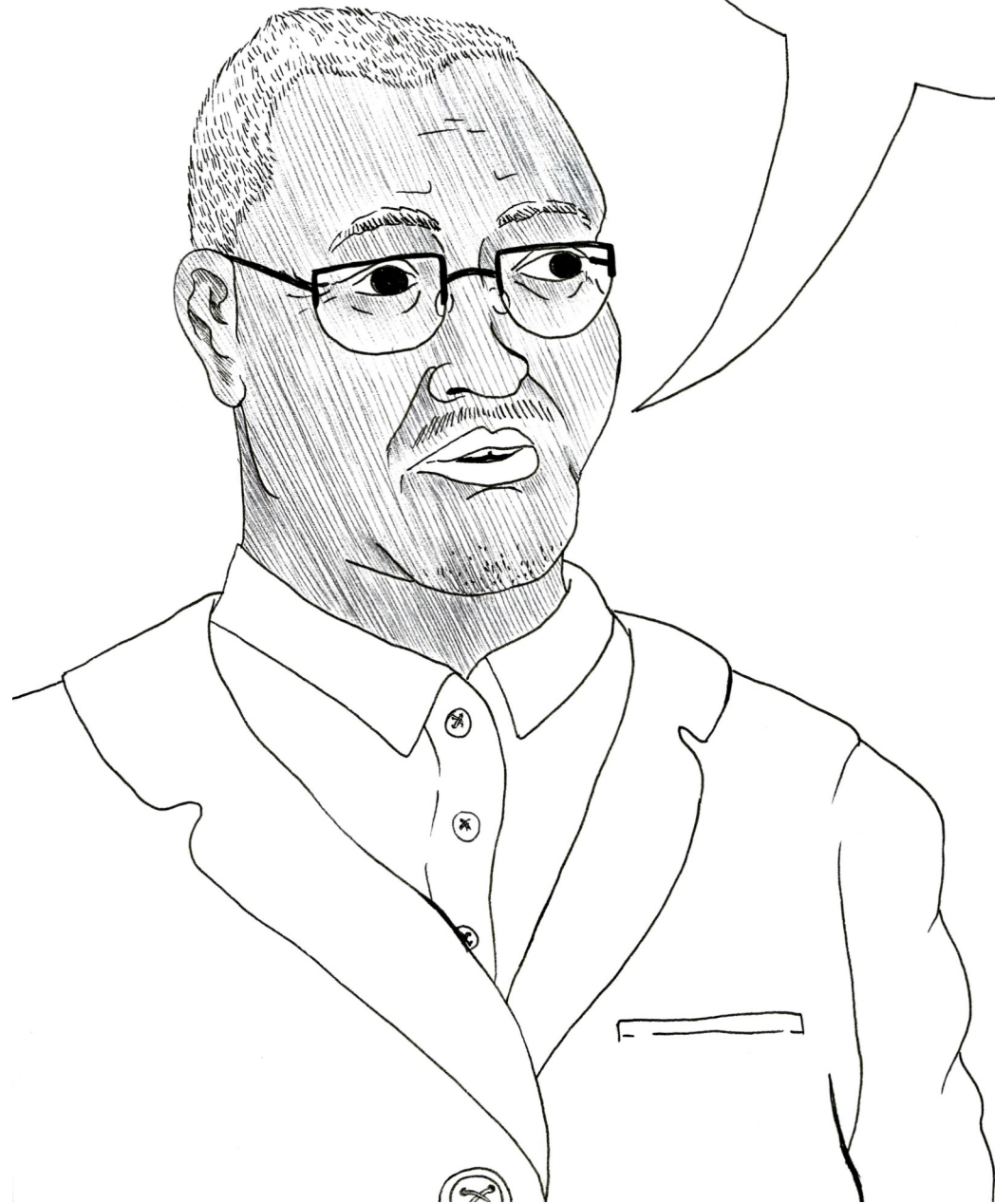
mediation?

Let's talk with an

HRTO mediator...

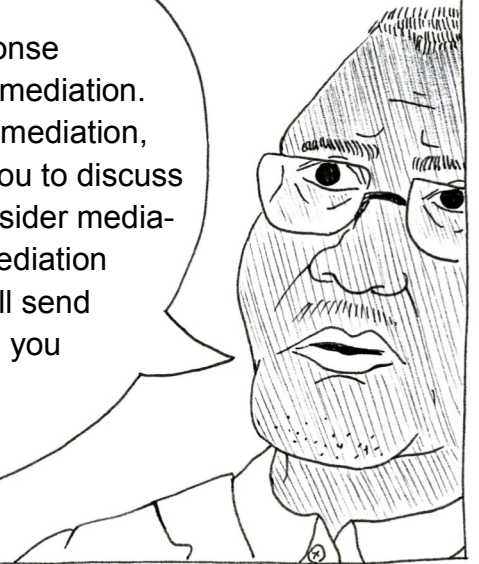


**A WORD  
FROM A  
MEDIATOR**



**Q:** How does an HRTO mediation get set up?

Mediation requires the agreement of the parties. The application and response forms ask each party if they agree to mediation. If you don't mark the box agreeing to mediation, an HRTO adjudicator might contact you to discuss the process and see if you would consider mediation. If the parties do agree, then a mediation date will be scheduled. The HRTO will send you a Notice of Mediation giving you the date, time, and place.



**Q:** Tell me about the qualifications and work experience of mediators at the HRTO?

Well, HRTO mediators come from various backgrounds. We are not just mediators, but also adjudicators, so we all participate in both mediation and adjudication.

These two roles are really important. An HRTO mediator may tell you how they would think about the case as an adjudicator, including possible strengths and weaknesses. This can help you decide what to do.



All our adjudicators are appointed to the HRTO by the government following a competitive process that includes a detailed interview, and testing. Once at the HRTO, we receive further advanced training.



**Q:** Is mediation a common practice today?



Yes—as it turns out, mediation is used to resolve way more disputes than adjudication. People generally find that resolving their disputes through an agreement is better, as it avoids risk. It also avoids a public hearing—which takes time and can cause stress.



**Q: Are there other reasons parties should try mediation before a hearing?**

A key value at the HRTO is that everyone has the option of going to a hearing. Many people decide to give mediation a chance because it gives them more control and they may be able craft a more creative solution.

Parties who settle at mediation avoid leaving their dispute in the hands of someone who wasn't there, and who only gets the information through evidence at a hearing.

**Q: So would you say that people generally find mediations to be less stressful?**

I think mediations and hearings can both be stressful, but a hearing requires more preparation and the decision is not made right away.

You're in a more formal situation. You and your witnesses will be cross-examined.

We talk to people about this in the mediation so that they are aware of what a hearing is really like.



**Q: What kinds of things can applicants and respondents do in preparation for a mediation?**

What's really key is to think about what's important to you. Think about the big picture of your case—what do you want the mediator and the other side to understand about your side of the story?



If you are the applicant, why do you believe there was discrimination? If you're the respondent, why do you say there wasn't or that you have a defence?



Then think about the other side's case and what they may have to say. Finally, remember that mediation is about being prepared to compromise in order to come to a mutually acceptable agreement.



We also encourage you to think about ways you would be prepared to resolve the case. Do you know how cases with facts similar to yours were decided by the HRTO? You can research this using the HRTO's Guides and its decisions. The HRTO's decisions can be found at <http://www.canlii.org/>.





**Q: How are parties able to have more control and achieve more creative solutions at a mediation compared to at a hearing?**



Creative settlements happen all the time. For example, the majority of our applications arise in the social area of employment. I have seen people agree on the language of a letter confirming employment or of a letter of reference. Other ideas might include donations to a charity or even an apology from the respondent to the applicant.

**Q: Does it help to go into a mediation with a certain mindset?**



I think so. Obviously, the purpose of mediation is to help people move from a dispute towards a resolution that both people can live with.

No one will ever come out of a mediation getting everything they want. Mediation is by definition a compromise.



So, in the end, the best way to get ready for mediation is by reading the rest of this Guide so that you understand the process and come to the mediation with an open mind about settlement.





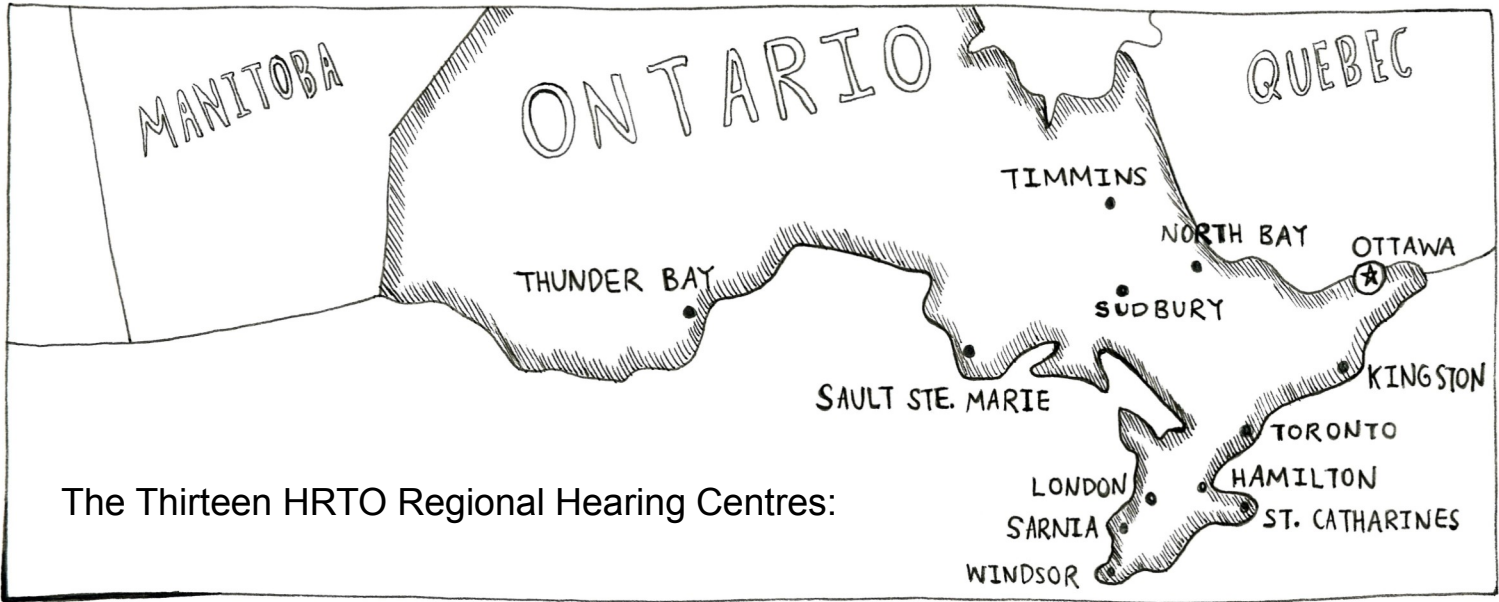
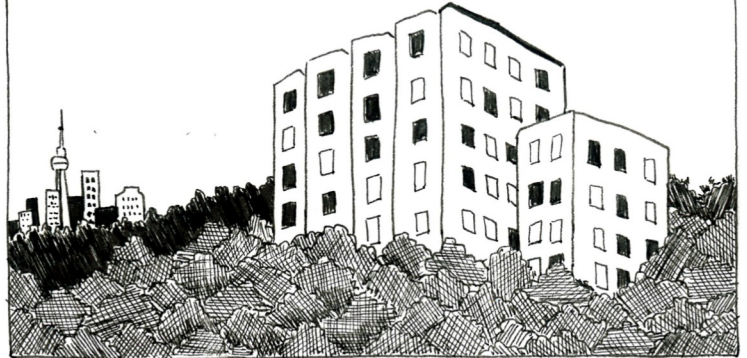
**THE  
MEDIATION  
PROCESS**



The HRTO holds mediations in 13 regional hearing centres throughout the province. The busiest is 655 Bay St. in Toronto.

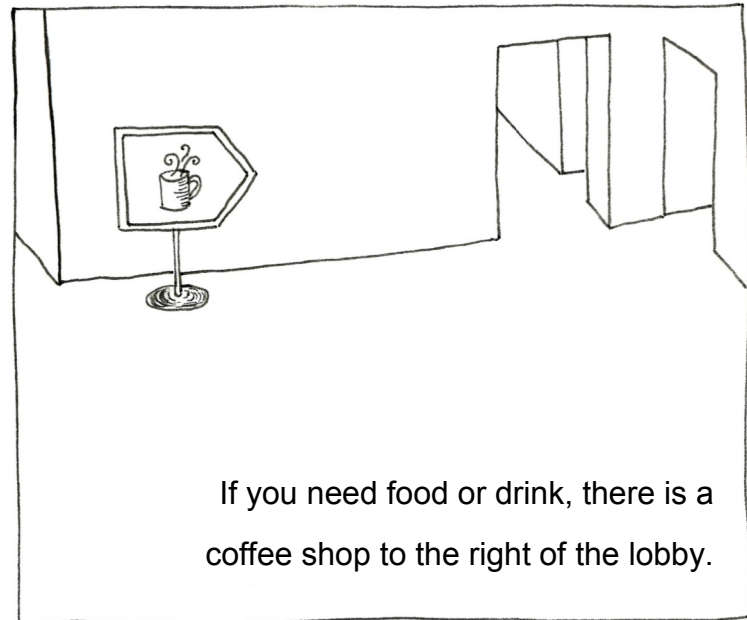


Outside Toronto, mediations may take place in another tribunal's office, a hotel, a government building, or some other location.



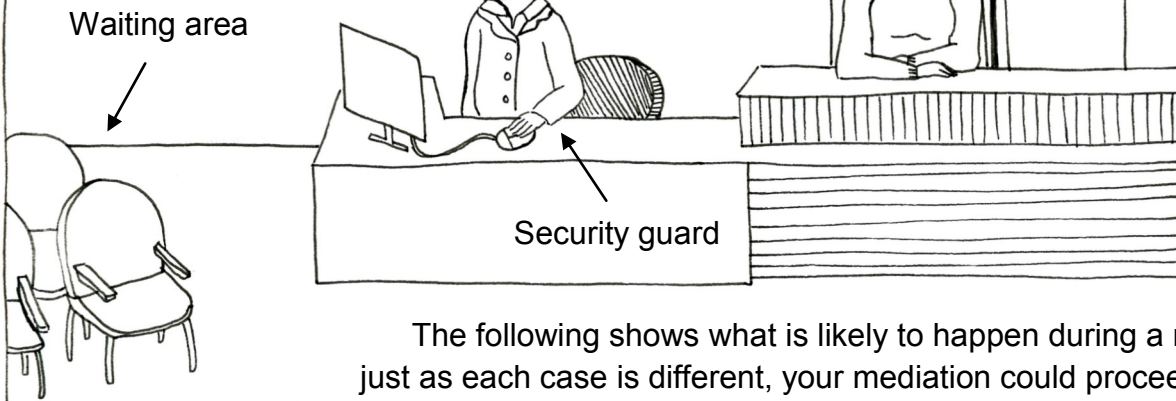
The Thirteen HRTO Regional Hearing Centres:

At 655 Bay in Toronto, the HRTO is located on the 14<sup>th</sup> floor, in a space designed specifically to accommodate mediations and hearings.



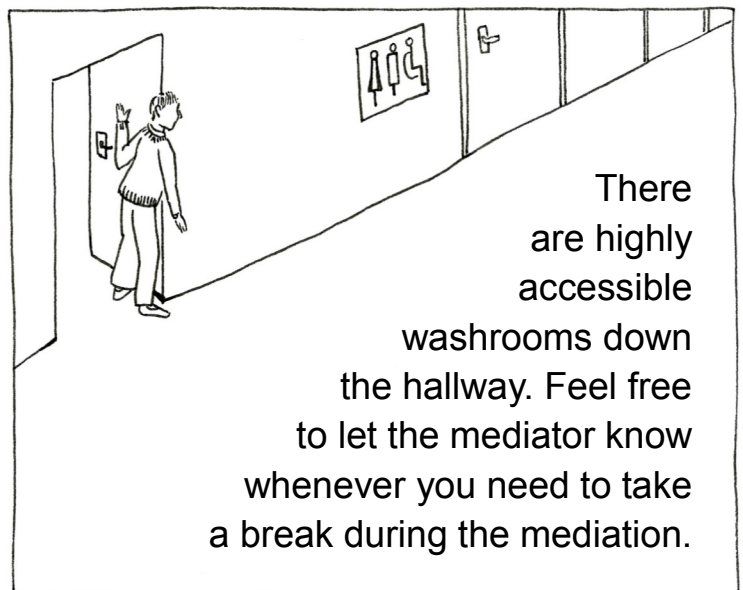
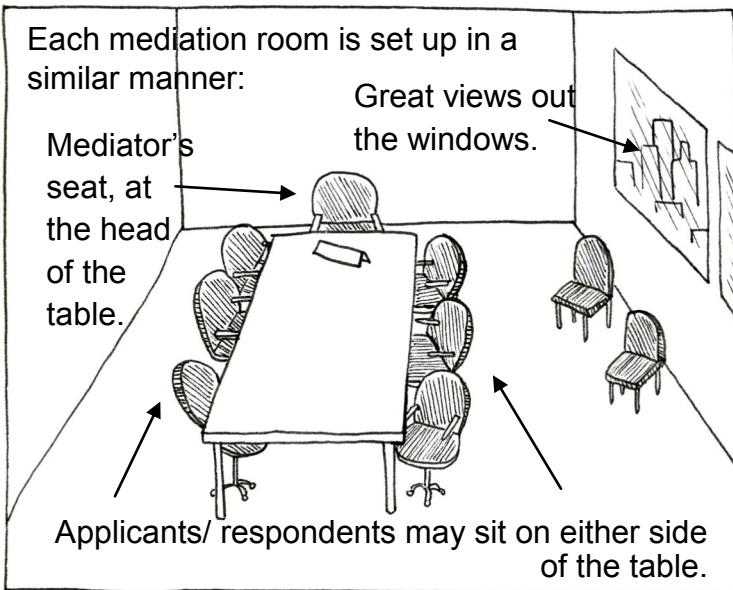
If you need food or drink, there is a coffee shop to the right of the lobby.

The sliding glass doors of the fourteenth floor lead to a reception area. Please check in with the front counter when you arrive for your mediation.

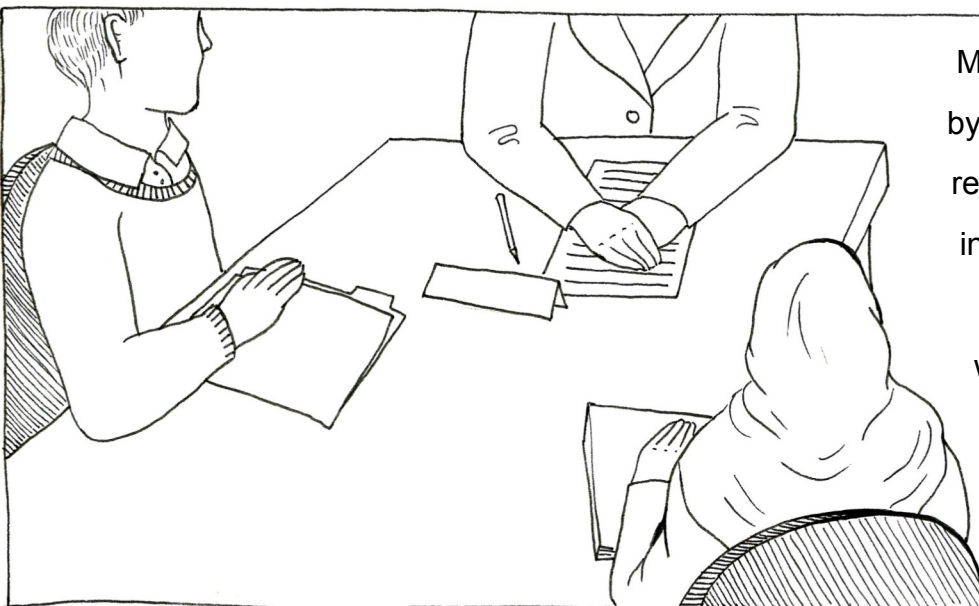


The following shows what is likely to happen during a mediation. However, just as each case is different, your mediation could proceed slightly differently.

Each mediation room is set up in a similar manner:

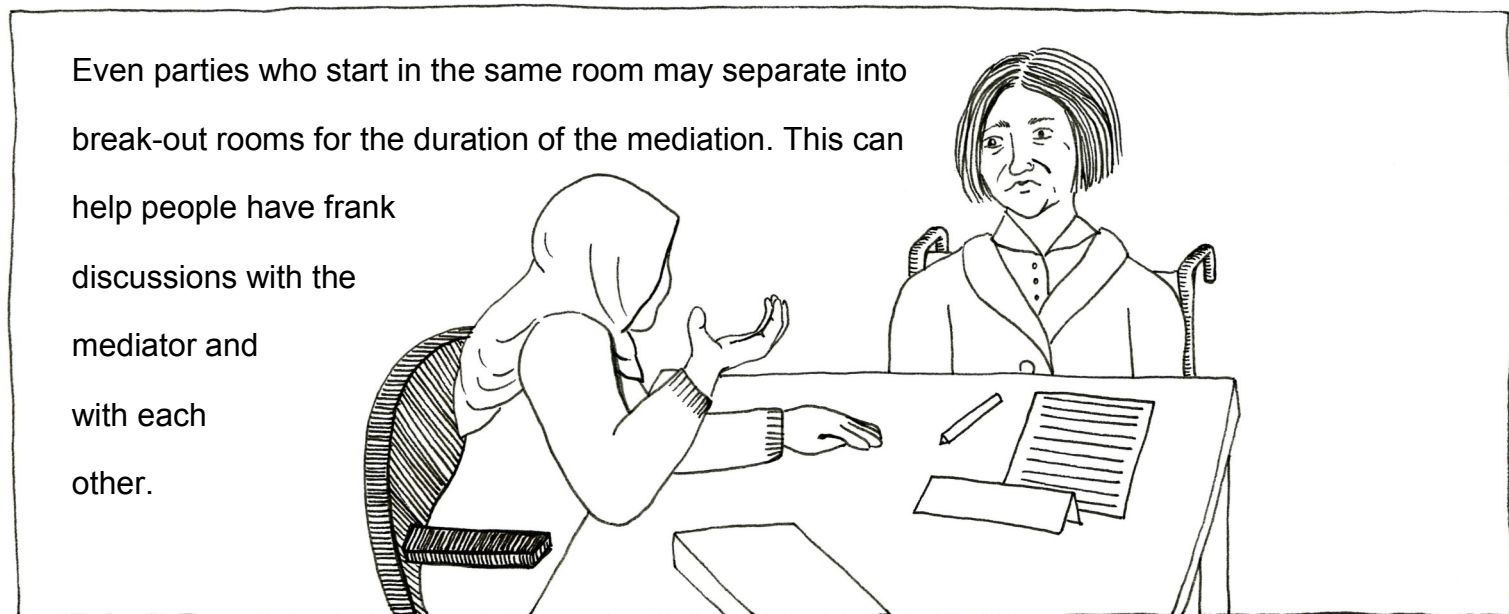
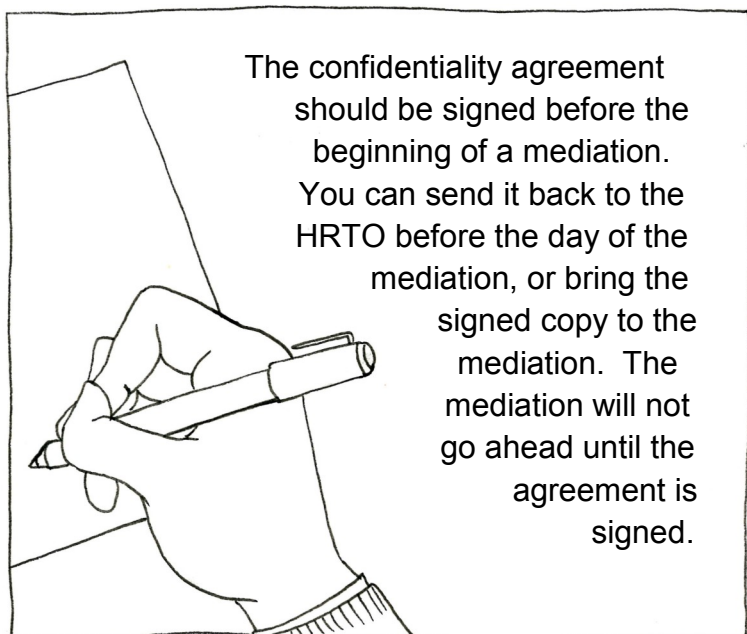
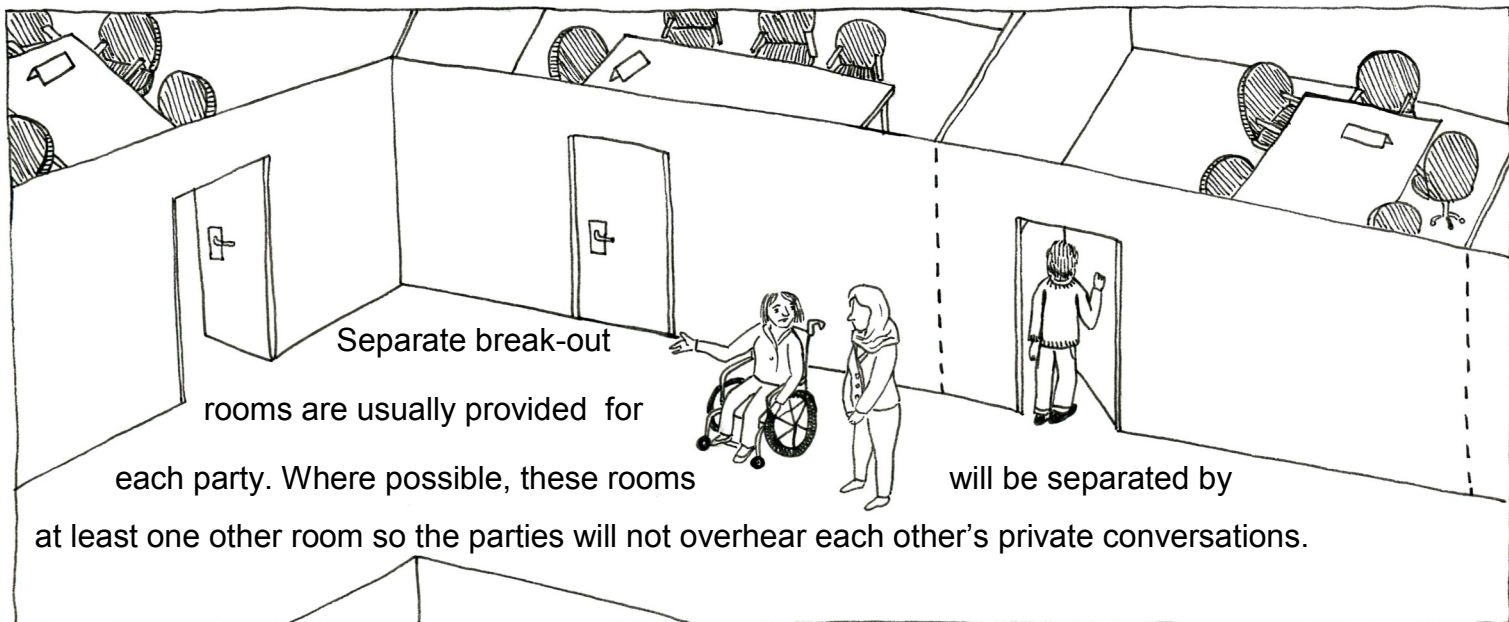


There are highly accessible washrooms down the hallway. Feel free to let the mediator know whenever you need to take a break during the mediation.

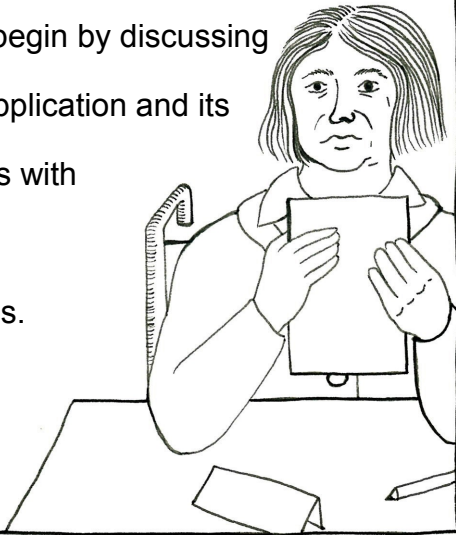


Mediators may start the mediation by meeting with the applicants and respondents in separate rooms, or in a joint meeting. If you begin the mediation together, the mediator will deliver a general introduction of the mediation process to both parties at once.





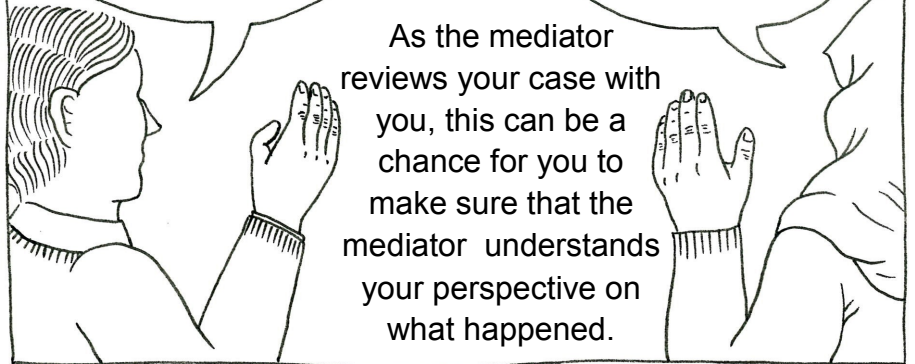
After the introductions, the mediator may begin by discussing the application and its issues with both parties.



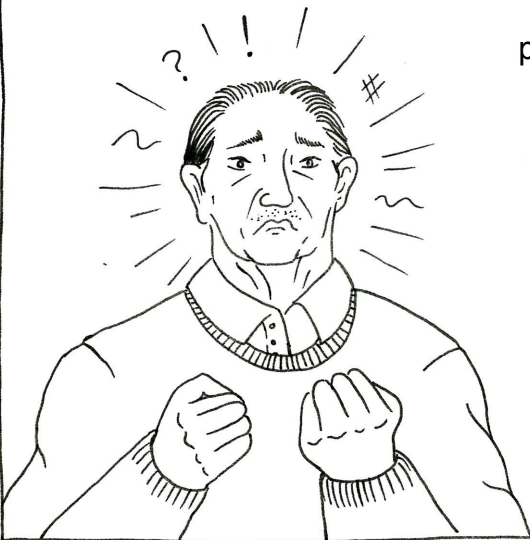
Yes—I wanted to add that...

And I wanted to make sure you knew that...

As the mediator reviews your case with you, this can be a chance for you to make sure that the mediator understands your perspective on what happened.



Sometimes, this may be a very emotional process.



Mediators make a sincere effort to understand the views of both the applicants and the respondents.

Yes, absolutely. I hear what you are saying...



However, while sympathetic, mediators do not take sides. They will remain neutral, objective and impartial—separate from the dispute.







From the time

they spend listening to both

parties, mediators know that there are often no clear-cut answers in a dispute.

Mediators also help bring perspective to both parties by explaining what the issues in your case will be, and what will be considered if it goes to a hearing.



Well, this is how I think an HRTO adjudicator might look at your case...

There is considerable risk involved for you in these areas of your case...

They can acknowledge the strengths in your case. More importantly, they may talk to you about the weaknesses they see for your case. No matter how confident you may be, there is almost never a sure case.

Based on the range of what the HRTO might award if the claim is allowed, what do I want to offer the other side?

This information can help you decide on what you would like to see in a settlement offer.

I don't want to have to go to a hearing that I might not win...

It also provides good reason to try to settle the application in a way that could have better results than at a hearing. In reaching a settlement, compromise is key.



After hearing from both parties, mediators may contribute their own ideas for possible settlements. They will also directly ask the parties what they are willing to give or accept to resolve their case.



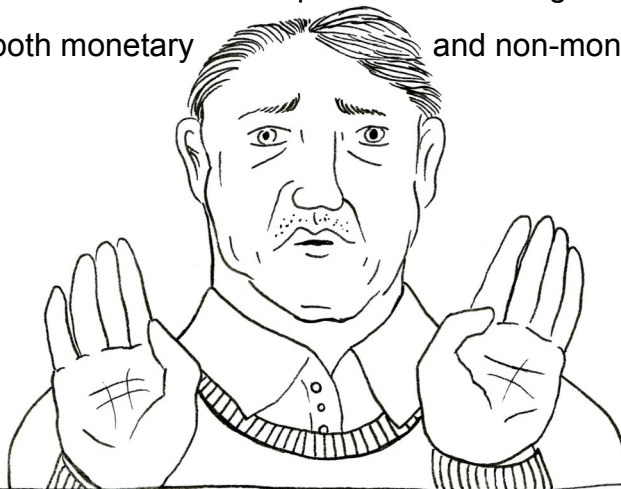
Do you have an offer that you would like to present to the other party?

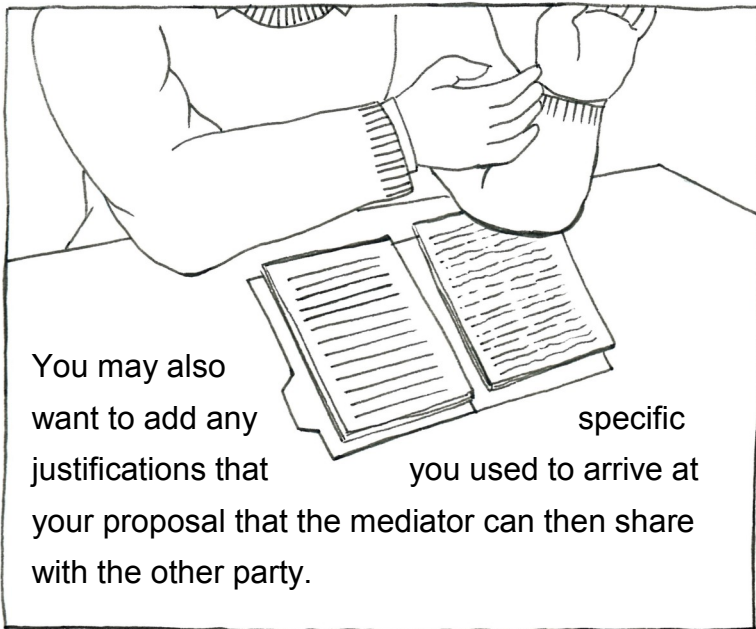
I don't think I want to continue with the mediation...



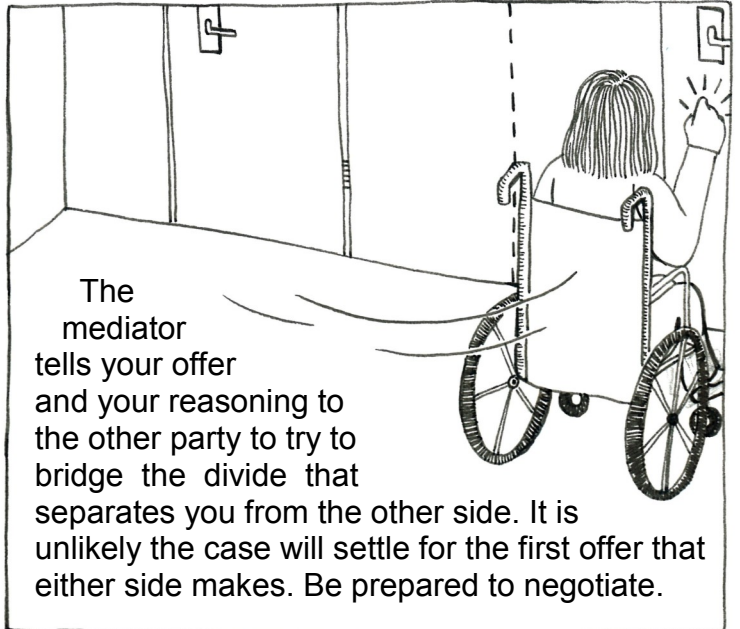
Either side may put forward the first offer. Alternatively, if you don't want to, you do not need to make any offers at all. As this voluntary process, you are free to end the mediation at any point and the HRTO will schedule a hearing

Not all cases are about money. Many parties want to find ways to prevent human rights problems in the future or to create a better process for dealing with them at an early stage. Offers can propose both monetary and non-monetary remedies.

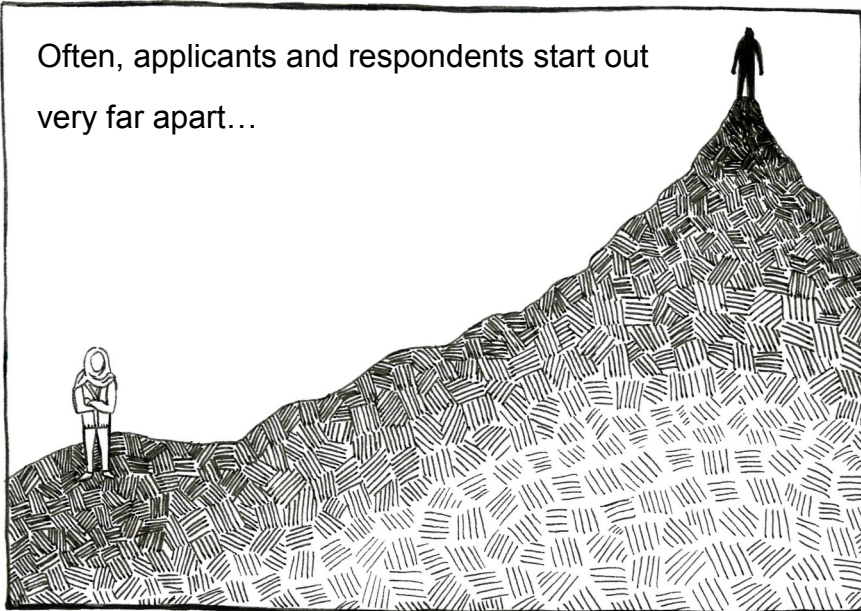




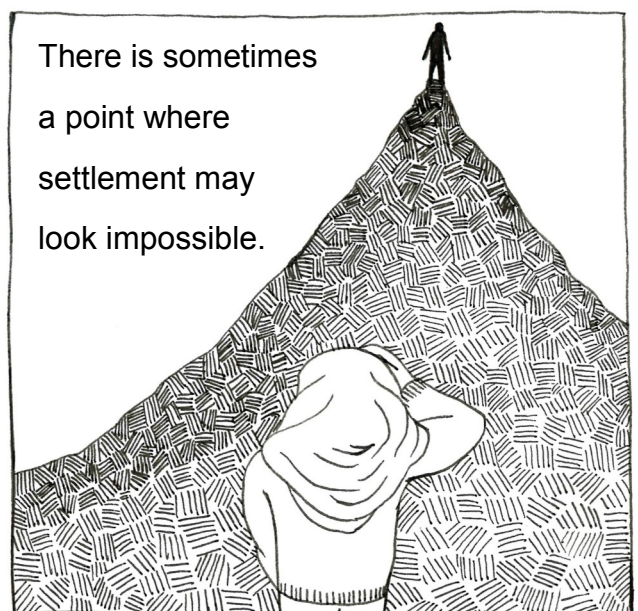
You may also want to add any specific justifications that you used to arrive at your proposal that the mediator can then share with the other party.



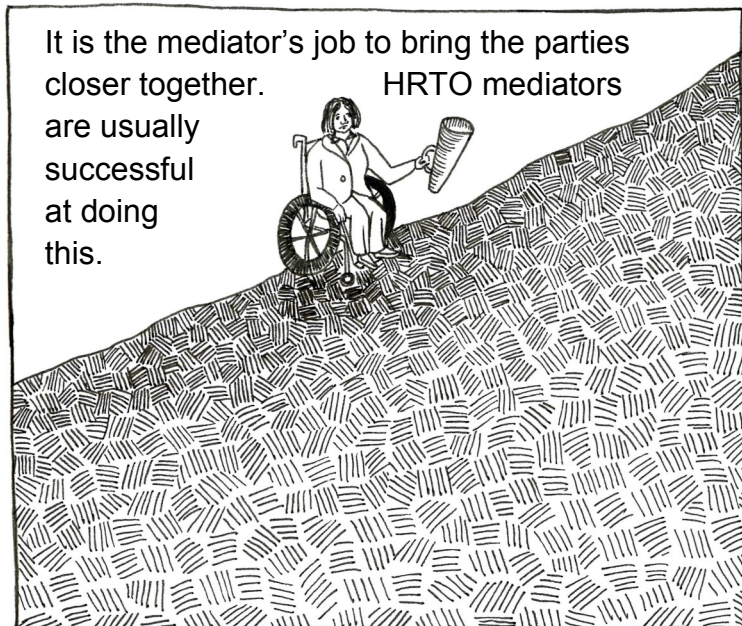
The mediator tells your offer and your reasoning to the other party to try to bridge the divide that separates you from the other side. It is unlikely the case will settle for the first offer that either side makes. Be prepared to negotiate.



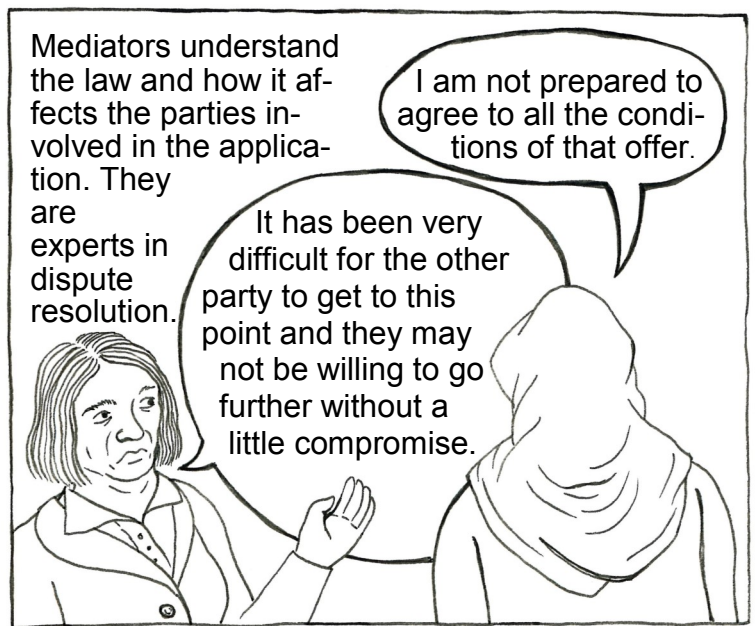
Often, applicants and respondents start out very far apart...



There is sometimes a point where settlement may look impossible.



It is the mediator's job to bring the parties closer together. HRTO mediators are usually successful at doing this.

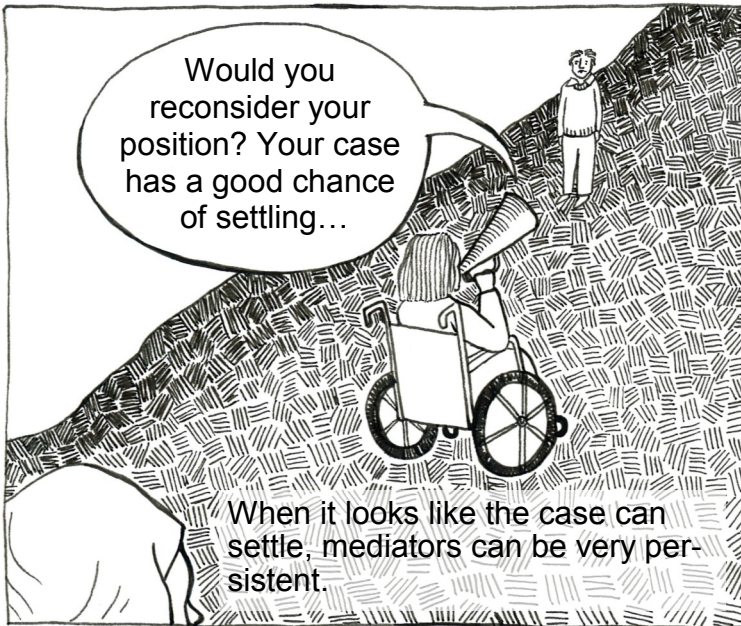


Mediators understand the law and how it affects the parties involved in the application. They are experts in dispute resolution.

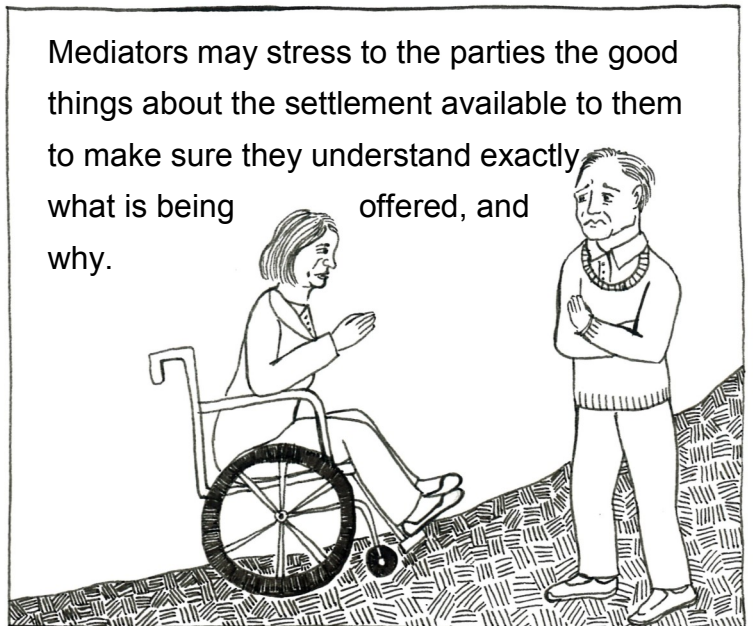
I am not prepared to agree to all the conditions of that offer.

It has been very difficult for the other party to get to this point and they may not be willing to go further without a little compromise.

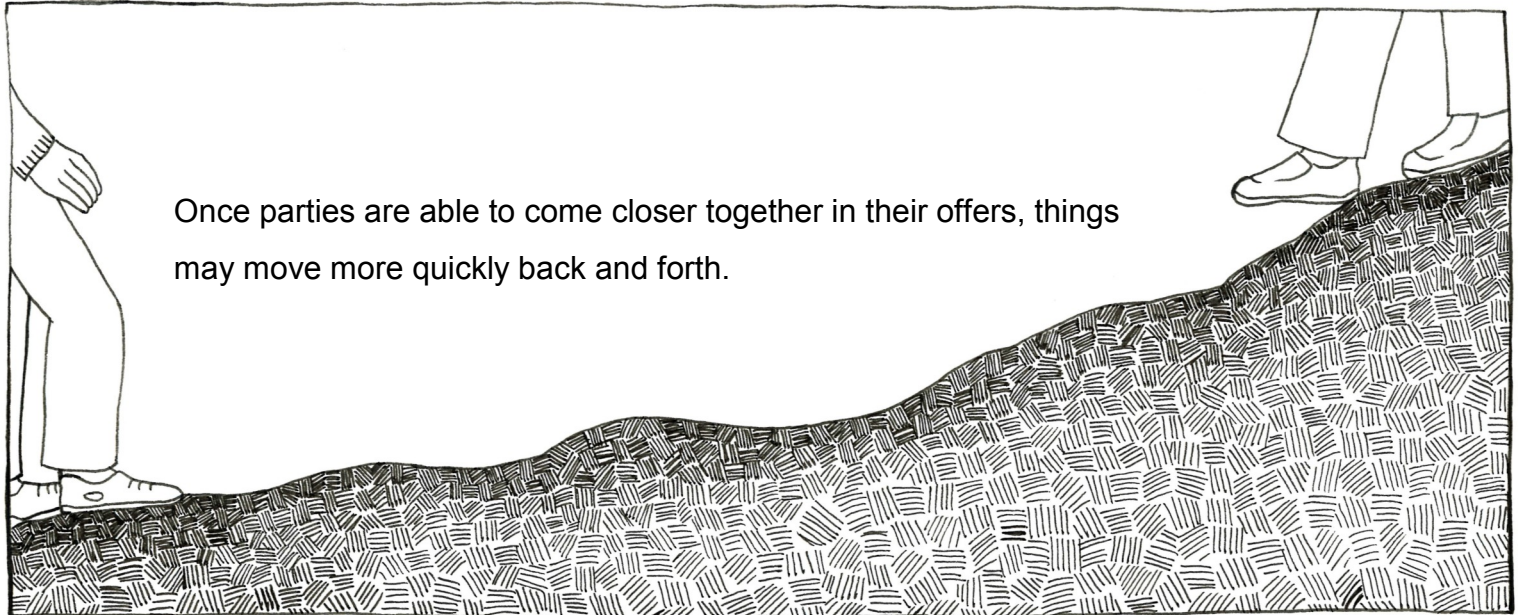




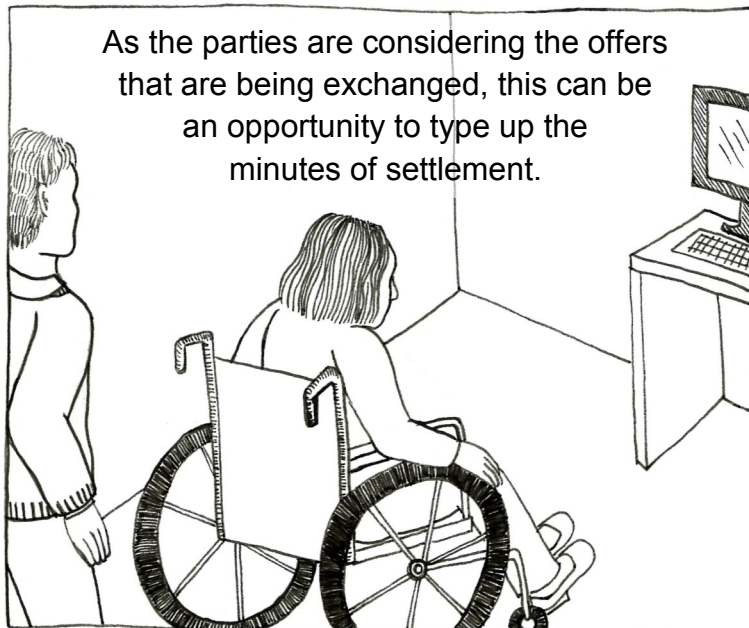
When it looks like the case can settle, mediators can be very persistent.



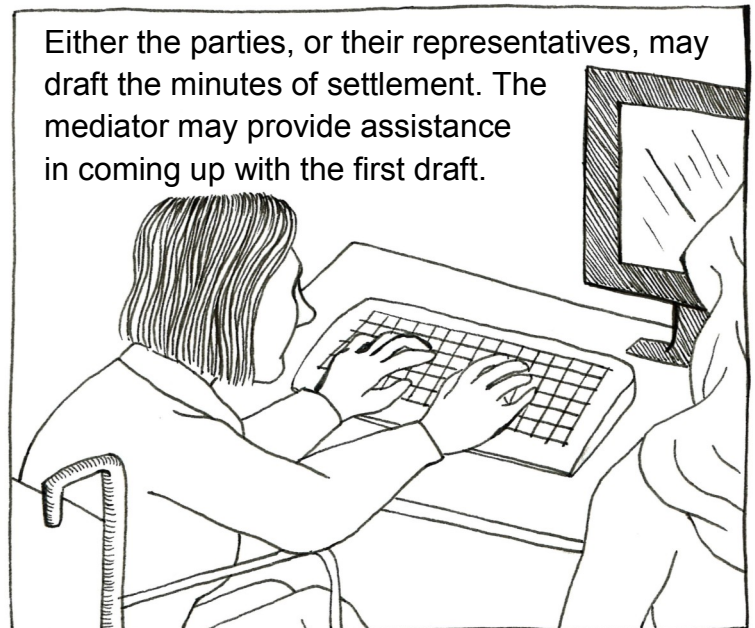
Mediators may stress to the parties the good things about the settlement available to them to make sure they understand exactly what is being offered, and why.



Once parties are able to come closer together in their offers, things may move more quickly back and forth.



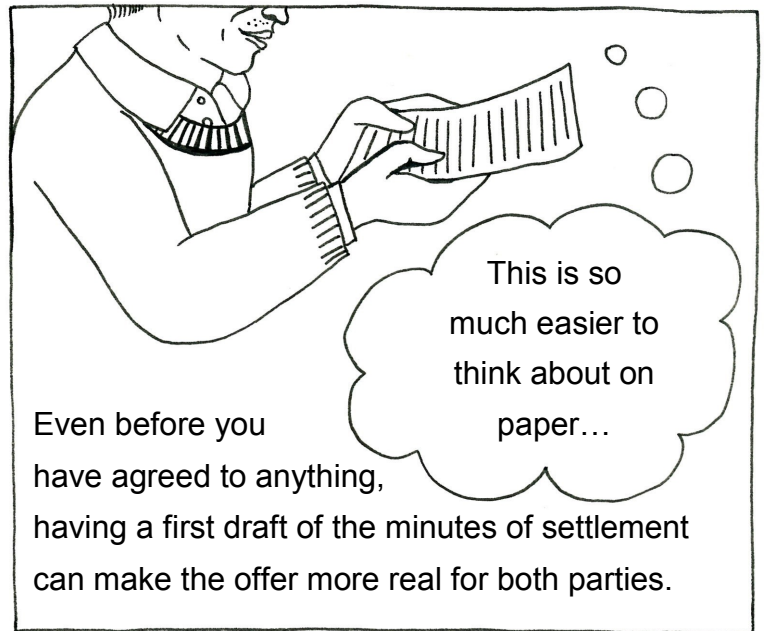
As the parties are considering the offers that are being exchanged, this can be an opportunity to type up the minutes of settlement.



Either the parties, or their representatives, may draft the minutes of settlement. The mediator may provide assistance in coming up with the first draft.



Minutes of settlement outline the agreement that the two parties have reached.



No one will force you to sign the minutes of settlement.

While you may be encouraged to agree to the offer, you can always decide to say no.

Any settlement that is signed is final.



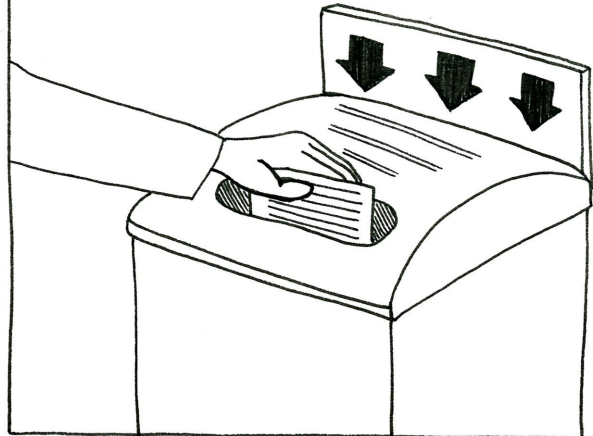
If both parties have read and agreed on all the terms of the minutes of settlement, copies of the final document are signed by all parties. Each party gets a signed original copy of the minutes of settlement.



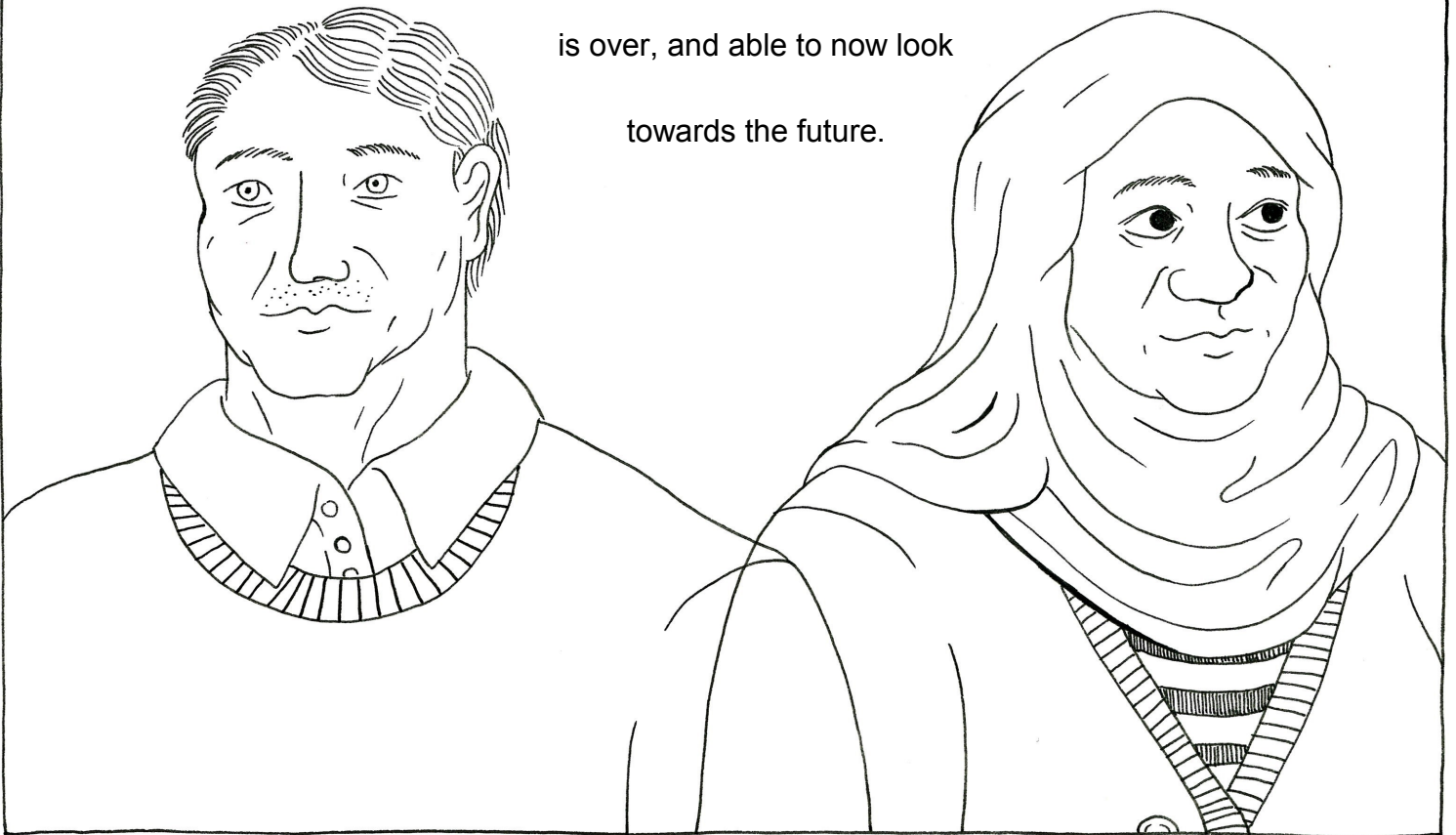
The HRTO does not keep a copy of the minutes of settlement. The HRTO only keeps the signed Form 25, which confirms that the application was settled, and tells the HRTO to close its file.



All other documents that the mediator may have from your case are shredded.



A successful settlement is often one where everyone is a bit unhappy, but still relieved that the process is over, and able to now look towards the future.






**THINGS TO  
KEEP IN MIND AT  
A MEDIATION**

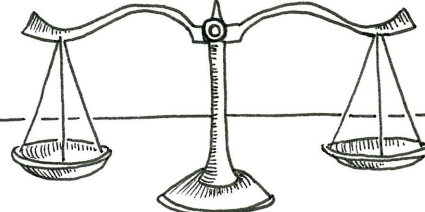


1.

Trust the  
Mediator

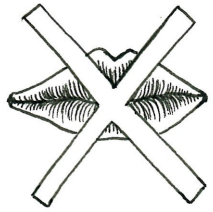


The mediator is a neutral party who




will listen equally to both sides.

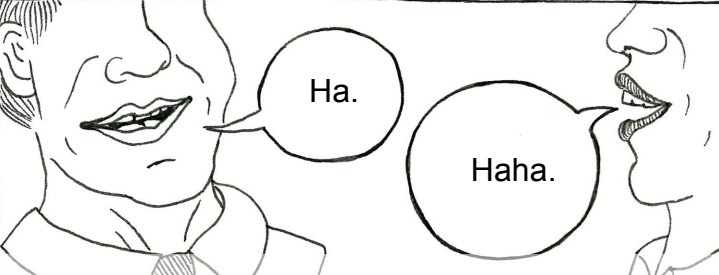
He or she cannot be called upon to testify for or against you in a



hearing, and is bound by confidentiality agreements.



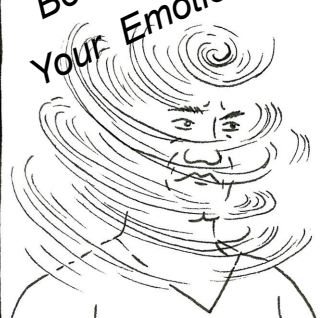
If there is information you tell the mediator, but wish to keep from the other party, you can ask the mediator not to disclose it.



Mediators are also human and can recognize how stressful it may be for you to be at a mediation. They may even tell a joke to help you relax.

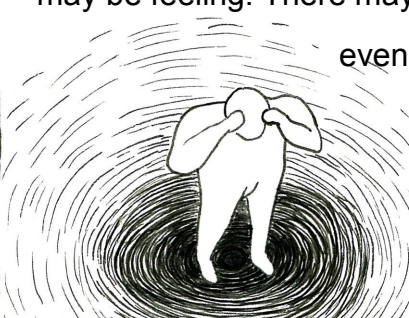
2.

Be Aware of  
Your Emotions



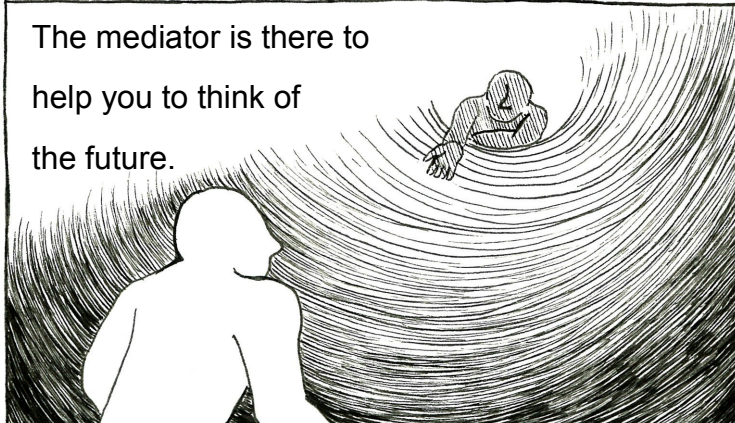

For many people, legal processes can be very stressful. It can be scary to deal with lawyers and opposition.

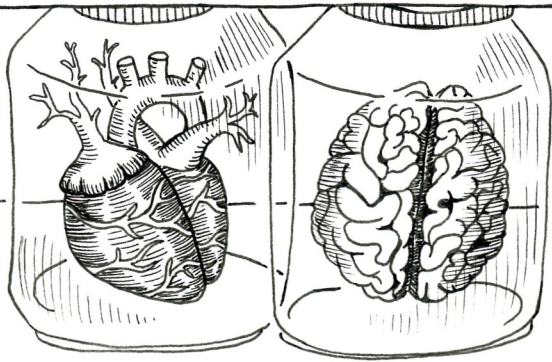
Anxiety is probably not the only emotion you may be feeling. There may be anger, hurt, and even feelings of betrayal.



It can be hard for parties to move past their disputes.

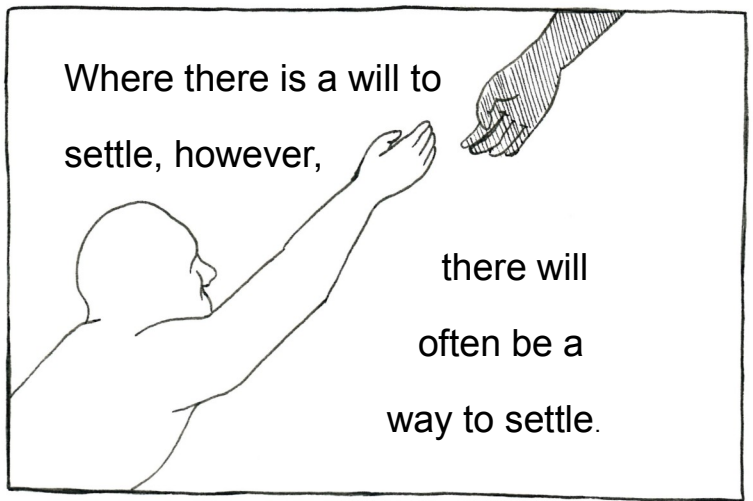
The mediator is there to help you to think of the future.





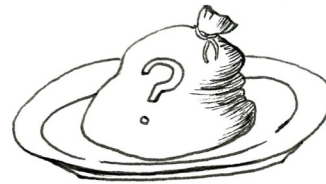
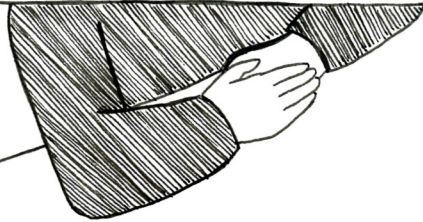
Emotions are important, but you also need to make decisions in light of how a hearing might go.

Where there is a will to settle, however,



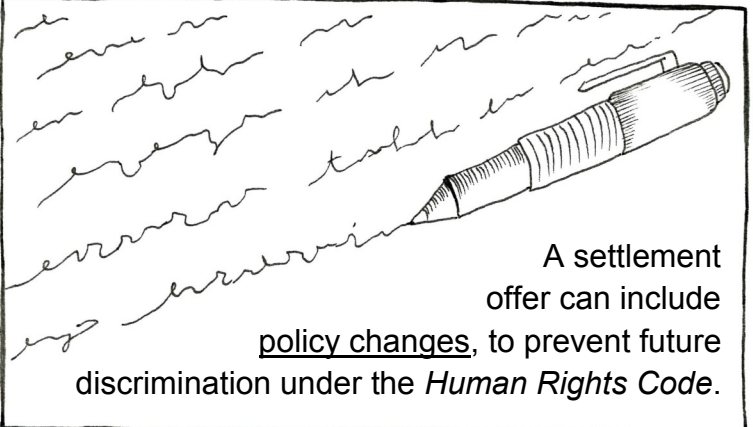
there will often be a way to settle.

3.  
It's Not  
Just the  
Money

An illustration of several coins of various denominations scattered around the text.

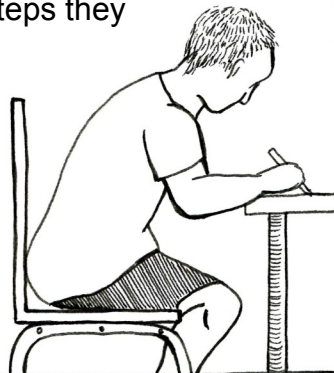
Money may not be the only thing on the bargaining table, or even the most important item. Cases may settle without any monetary remedy at all.

Remedies change depending on individual circumstances, but there are some general things that you may want to ask for, or offer...



A settlement offer can include policy changes, to prevent future discrimination under the *Human Rights Code*.

In this case, the respondent would agree to sit down and work out the steps they would take to prevent a situation such as the one they are currently in from happening again.



Another term that can be included in a settlement offer is a written or verbal apology from the respondent to the applicant—something that you would likely never get at a hearing.

I am sorry that...





4.  
The Mediator  
Is Not  
Your  
Lawyer

Well, I cannot tell you what to do...

Mediators cannot give the kind of legal advice that a lawyer gives.

Essentially, mediators provide you with information, while a lawyer provides advice and representation.

However, I can tell you that I think your case looks....

5.  
The Mediator Is  
Not the  
Adjudicator

Your mediator never decides your case, even if it proceeds to a hearing.

This is not part of mediation...

Since mediation is not about deciding which party is right, evidence is not considered. However, your perception of events is important.

I'd like to hear your version of the story.

While your story can help the mediator explain your position to the other party, the mediator will likely never say that they believe either version of events.

This is why the other party feels that way...

6.  
The Role of  
Confidentiality

Aside from the confidentiality agreement both parties sign before the mediation takes place, there is often a confidentiality clause in the minutes of settlement.

This clause may require that neither party talk openly about the terms of the settlement.

How did the mediation go for you?

Well, I can't tell you any details, but I can tell you that we were able to settle.