

The BC Law Institute is carrying out a research project about Elder Law Mediation/ Guardianship Mediation. This project is being carried out in light of Bill 29, which once implemented will make mediation mandatory for all guardianship applications that fall under specific criteria in BC. The project will also examine mediations that involve older persons more broadly. We value your input provided through this questionnaire.

General Overview Questions

1. Do you think mediation for / with older adults is appropriate and useful to resolve issues? (circle one)

Always Usually Sometimes Usually not Never Do not know
 Prefer not to say

2. Do you think guardianship mediation for / with older adults is appropriate and useful to resolve issues? (circle one)

Always Usually Sometimes Usually not Never Do not know
 Prefer not to say

3. If yes, what should be able to be mediated? (check all that apply)

Appointment of Financial / Health Guardian
 Guardianship Plan details
 Visitation of older adult with family
 Inter-generational transfers of wealth
 Abuse & Neglect issues
 Whether the older adult is mentally capable
 Whether the older adult’s effects should be sold / stored / moved
 Admission into nursing home
 Risk to safety agreements (e.g. living alone, smoking, wearing hip protectors)
 Do not know
 Other _____

Financial and Health Care Decisions

4. Do you think that a “guardianship plan” detailing financial arrangements for the older adult / adult under guardianship can be mediated? (circle one)

Always Usually Sometimes Usually not Never Do not know
 Prefer not to say

5. Do you think that a “guardianship plan” detailing financial arrangements for the older adult / adult under guardianship should be mediated? (circle one)

Always Usually Sometimes Usually not Never Do not know
 Prefer not to say

6. Do you think that a “guardianship plan” detailing health care decisions for the older adult / adult under guardianship can be mediated? (circle one)

Always Usually Sometimes Usually not Never Do not know
 Prefer not to say

7. Do you think that a “guardianship plan” detailing health care decisions for the older adult / adult under guardianship should be mediated? (circle one)

Always Usually Sometimes Usually not Never Do not know
 Prefer not to say

8. Rank in preferred order who you think are the best financial guardians.

___ Spouse ___ Family member ___ Friends
 ___ Private Banking / Financial Advisor ___ Public Trustee
 ___ Private Trustee / advisor
 ___ Other (please explain) _____
 (rank with 1 being the most preferred, and 7 being the least preferred)

9. Rank in preferred order who you think are the best health guardians.

___ Spouse ___ Family member ___ Friends
 ___ Health Care provider ___ Public Guardian
 ___ Proxy health care decision maker (appointed pursuant to advance care plan doc)
 ___ Other (please explain) _____
 (rank with 1 being the most preferred, and 7 being the least preferred)

Location & Context of Mediation

10. Rank in preferred order what you think are the best places to hold an EGM? (check box)

___ Home/residence of older adult ___ Neutral office site
 ___ Home of other mediation participants ___ Court / Tribunal
 ___ Community services offices ___ Other _____
 (rank with 1 being the most preferred, and 6 being the least preferred)

11. Rank in preferred order in what contexts EGMs are best performed. If two answers are equally desirable, feel free to give the same rank to more than one

___ Tribunal ___ Private legal practice – mediation or other
 ___ Public legal practice ___ Court based / annexed mediation program
 ___ Community agency or services
 ___ Other: _____
 (rank with 1 being the most preferred, and 5 being the least preferred)

12. Rank the contexts in which EGMs are most often performed in your community:

___ Tribunal ___ Private legal practice ___ Public/non-profit legal practice
 ___ Court ___ Community based services
 ___ Other: _____
 (rank with 1 being the most often, and 5 being least often)

13. Do you think mediation is appropriate in nursing home type institutional care setting
 Always Usually Sometimes Usually not Never Do not know
 Prefer not to say

Comment:

Capacity of Older Adult EGM Participants

14. Whose role is it to determine capacity in your jurisdiction? (check all that apply)
 Doctor Special assessor Social Worker Lawyer other _____

15. What type of definition of capacity do you use in your jurisdiction? (check one)
 Legal Medical Mixed Prefer not to Say Do not know
 Other _____

In your view is this effective? (circle one) Y / N

Why or why not?

16. Do you think mediation with older adults is appropriate when there is a suspicion of incapacity? (circle one)

Always Usually Sometimes Usually not Never Do not know
 Prefer not to say

17. Do you think a person with fluctuating ability / capacity can participate in an EGM pertaining to them? (circle one)

Always Usually Sometimes Usually not Never Do not know
 Prefer not to say

18. Do you think a person with fluctuating ability / capacity should participate in an EGM pertaining to them? (circle one)

Always Usually Sometimes Usually not Never Do not know
 Prefer not to say

19. Do you think that the details of a “guardianship plan” can be mediated before or without determining issues of capability or incapability? (circle one)

Always Usually Sometimes Usually not Never Do not know
 Prefer not to say

20. Do you think that the details of a “guardianship plan” should be mediated before or without determining issues of capability or incapability? (circle one)

Always Usually Sometimes Usually not Never Do not know
 Prefer not to say

Process

21. What style of mediation is best suited for older adults? (check all that apply)

Facilitative (mediator acts as neutral facilitator)

Transformative (mediator attempts to empower and recognize each parties interests)

Evaluative (mediator assess each party’s case and provides suggestions for settlement)

Other _____

Do not know Prefer not to say

22. What format of mediation is best suited for older adults? (check box)

Joint session (all parties participate at a table)

Caucus and shuttle (separate rooms with the mediator passing back and forth)

Other _____

Do not know Prefer not to say

23. What role should a substitute decision maker have in a mediation involving an incapable adult:

Decision Maker Advisor Partial /co- decision maker Passive support

None Do not know Prefer not to answer

EGM and Abuse

24. Do you think older adult mediation is appropriate when there is a suspicion of abuse? (circle one)

Always Usually Sometimes Usually not Never Do not know

Prefer not to say

25. If yes, when there are suspicions of abuse who should decide if the mediation should go forward? (check all that apply)

Mediator Advocate Participants Do not know

Prefer not to say Other _____

26. If you think older adult mediation is appropriate when there is a suspicion of abuse, what modifications, if any, should be made to the mediation to ensure safety? (check all that apply)

Shuttle Mediation Use of Mediator techniques to balance power

None Pre-mediation meetings with participants

Do not know Prefer not to answer

27. Rank in order who you think are the people most likely to abuse / mistreat / take advantage of older and incapable adults:

___ Spouse ___ Family member ___ Friends

___ Health Care provider ___ Financial Advisor / Trust Advisor

___ Proxy health care decision maker ___ Strangers

___ Lawyers / notaries / other legal professionals ___ New “best friends”

___ Other (please explain) _____

(rank with 1 being the most likely, and 10 being the least likely)

The Mediator

28. Should specialized training be required for guardianship mediation.

Yes No Do not know Prefer not to say

Comments:

29. Should specialized training be required for elder mediation.

Yes No Do not know Prefer not to say

Comments:

30. If in BC: If you believe that people should have specialized mediation training / certificate to do elder or guardianship mediation please select the minimum level of training required:

Family Mediation Canada Certification
 Mediation Roster - Family
 Mediation Roster - Civil
 Certificate in Dispute Resolution (Justice Institute)
 Post-Graduate Diploma / Degree in Mediation / Conflict Resolution
 Courses in alternate dispute resolution

how many courses: (check one) 1 - 4 5 - 10 >10

Do not know

(rank with 1 being the most preferred, and 5 being the least preferred)

31. If in other Canadian Province / Territory:

If you believe that people should have specialized mediation training / certificate to do elder mediation please select the minimum level of training required:

Family Mediation Canada Certification
 Ontario Association for Family Mediators / or equivalent local body
 Qualifications necessary for Provincial Rosters
 Certificate in Dispute Resolution
 Post-Graduate Diploma / Degree in Mediation / Conflict Resolution
 Courses in alternate dispute resolution

how many courses: (check one) 1 - 4 5 - 10 >10

Do not know

(rank with 1 being the most preferred, and 5 being the least preferred)

Guardianship Mediation

32. Should mediation in guardianship proceedings be mandatory? (check one)

Yes No Do not know Prefer not to say

If yes should it be mandatory: attendance or participation (check box)

Should the mediation be binding? (check box)

Yes No Do not know Prefer not to say

33. In guardianship mediation who should be at the table and what should their roles be?
(Circle the desirable role for each of the following people, if unsure, or unable to answer please leave blank):

Lawyers: active / passive / absent / depends

Spouse: active / passive / absent / depends

Family: active / passive / absent / depends

Experts: active / passive / absent / depends

Friends: active / passive / absent / depends

Social Worker: active / passive / absent / depends

Financial advisor:

active / passive / absent / depends

Public Guardian and/or Trustee:

active / passive / absent / depends

Community services resources person: active / passive / absent / depends

34. Should the older adult always be present in a guardianship mediation?

Always

Usually

Sometimes

Usually not

Never

Do not know

Prefer not to say

Comment:

Demography

Age:

Gender: M / F / Other (circle one)

In which Province / Territory do you primarily practice?

If in BC, in which region do you primarily practice? (check one)

Lower Mainland

Vancouver Island & Coast

Thompson Okanagan

Kootenay

Cariboo

North Coast

Nechako

Northeast

On a First Nations' Reserve _____

Which of the following are available in your community / region? (check all that apply)

Community-based mediation service for older adults

Student-based mediation service for older adults

Mediator in private practice who does elder mediation

Lawyer in private practice who does elder mediation

Do not know

Other _____

What is your highest level of education:

High School / Equivalency

Diploma

Undergraduate Degree

Law Degree

Graduate Degree

Prefer not to Say

Other _____

Field: (check all that apply)

Mediator Law Academia

Gerontology Social Work Other _____

If you are a mediator of any type would you benefit from any of the following: (check all that apply)

Training on guardianship issues

Training on elder mediation

Training on elder specific issues

Other _____

Do you provide Elder Mediation services? (circle one) Y / N

If yes, in what areas? (check all that apply)

Guardianship Estate Planning

Intergenerational transfers of wealth Caregiver Issues

Long Term Care issues Private Care Agreements

Loans and Guarantees Later Life Marriages / Divorces

Pension Issues Supports and Services for Older Adult

Powers of Attorney / Substitute Decision making documents (personal/finance/health)

Other _____

Have you ever been a participant in an EGM? (circle one) Y / N

If yes how many: (check one) 1 - 4 5 - 10 >10

Have you ever been a mediator in an EGM? (circle one) Y / N

If yes how many: (check one) 1 - 4 5 - 10 >10

Have any of your clients participated in an EGM? (circle one) Y / N

Have you referred any clients for EGM? (circle one) Y / N
If yes, what mediator qualities factored into your decision to choose the mediator? (check all that apply)

- Legal training of mediator
- Mediator’s practice experience in elder law
- Positive recommendation from colleague
- Training in Gerontology or related social science areas
- Mediator’s specialized mediation training
- Other _____

- I am willing to provide more information to the study team
 - I will contact the Centre
 - Please contact me:

Name:

Position:

Email:

Mailing address:

Please fax, scan & email, or mail the form to:

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