



**MCKENZIE LAKE**  
LAWYERS

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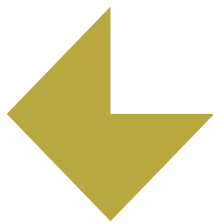
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## Tips on Drafting a Mediation Brief

A good Brief helps move along resolution

A mediation brief is not a pleading, factum or novel. Your clients have chosen mediation to reach a resolution, to avoid or end litigation and try to arrive at a solution that is acceptable to both parties. Here are some practical tips for writing your mediation brief which I hope will be helpful;

**1. Who is the main focus of your Brief? Who are you trying to influence?**

If you are trying to influence **the mediator**, then give the mediator what he/she needs to fulfill their role. Help the mediator understand the dispute.

What is the real issue? What is the impasse and what has caused or contributed to the stalemate? These are the keys the mediator needs to understand.

Only by uncovering and under-

*by*

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### SUGGESTED OUTLINE FOR A MEDIATION BRIEF

Although everyone has their own style and preferences, I generally see briefs organized as follows:

1. Issues for mediation.
2. Factual background of the parties and relationship.
3. History of the litigation.
4. Statement of each issue with facts, calculations, and reports to substantiate your position. Clear statement of your proposal or options for resolution of the issues, together with offers, and settlement discussions on each issue.
5. Summary.

### Documents and Briefs to provide to the Mediator

Depending on the issues, usually a mediator is assisted by having the following; **1.** An updated Financial Statement from both parties **2.** Income Brief, together with the most current income information, or any expert reports as to the party's income **3.** Updated Net Family Property statements with NFP worksheet showing what is agreed. Ask the mediator but a tabbed NFP is not always required **4.** Document Brief with all other relevant documents, expert reports that are relevant and required for the mediation. I also discuss this with counsel in advance of the mediation.

Early and complete disclosure helps resolution.



*Continued from pg. 1*

standing the parties' needs, wants, wishes, and goals - is the mediator able to help the parties create options for resolution.

If you are trying to influence **the other party**, state your position in a clear, concise, persuasive way without being overbearing, condescending, argumentative, or casting blame.

If you are trying to influence **other counsel**, due perhaps to their failure to respond to an offer or settlement proposal, tell the mediator what offers have been made and where you see the impasse.

If your focus is **the other party or their counsel**, serve your brief well ahead of the mediation date so that the other side will send it to their client to read and consider well before the mediation.

### 2. Your Brief should INCLUDE

If you have selected a mediator for their evaluative ability, you will need to make sure your brief provides the factual, legal, evidentiary basis (ie. expert reports), and any business aspects of the case so the mediator has the information to assess your position.

### 3. Your Brief should OMIT

Do not put in irrelevant facts, materials or information. Keep it relevant to the real issues and shorter is better.

### 4. What writing style should you use?

Write your brief in a fair and balanced way. This is going to have a greater influence on the mediator than a tirade about the other party or their lawyer. It will also show the other party and counsel that your client is serious about resolution.

### 5. Put forward options and solutions.

In addition to advising what offers or settlement discussions there have been, put forward possible solutions and options. This will assist the mediator and get the other party thinking about possible solutions and resolution even before the mediation.

### 6. Admit what should be admitted.

Do not take an unreasonable position hoping to bargain it off for something else. Your brief may read as unreasonable and the mediator will know it.

### 7. If there are legal issues, do not go on and on about the law.

The lawyers and mediator know the law, so unless it is a complex or uncertain issue in legal terms, state it as briefly as you can. If there may be a claim for compensatory support, we will most probably know it from the facts; there is no need to overstate it with argument and case law.

## 8. Remember the emotional issues.

Often clients are struggling with emotional and relationship issues that may arise from separation or events pre or post separation. There may be personal dynamics at play that are having a significant impact on allowing them to move forward.

It may be that these personal challenges are preventing the client from being able to move away from the past, let alone forward into considering settlement and closure.

Make sure the mediator is aware of these matters. It's not always about money and property. Remember, needs, wants, and wishes need to be considered and addressed.

## 9. Be realistic with your client.

Be realistic in your calculations, request for support, and equalization of net family property. Overreaching does not result in a better settlement, it just prolongs the process.

## 10. Backup your claims.

Provide all necessary backup documents, briefs, calculations, and expert reports to support your brief.

As a mediator, I conference with counsel in advance to review what they have and discuss what I will need. It also helps counsel to know what they will be receiving so there are no surprises.

# February is Heart & Stroke month

The following is from the Heart and Stroke Foundation of Canada [www.heartandstroke.com](http://www.heartandstroke.com)

## Heart attack warning signs

Thousands of Canadians die from heart attacks every year because they don't receive medical treatment quickly enough. Learn to recognize the signs of a heart attack so you can react quickly to save a life. It is important to understand that warning signs can vary from person to person and they may not always be sudden or severe. Although chest pain or discomfort is the most common symptom of a heart attack in both men and women, some people will not experience chest pain at all, while others will experience only mild chest pain or discomfort. Others may experience one symptom, while some experience a combination.

If you are experiencing any of these signs, you should:

- \* CALL 9-1-1 or your local emergency number immediately, or have someone call for you. Keep a list of emergency numbers near the phone at all times.

- \* Stop all activity and sit or lie down, in whatever position is most comfortable.

- \* If you take nitroglycerin, take your normal dosage.

- \* If the 9-1-1 operator advises it, chew and swallow one adult tablet or two 80 mg tablets of ASA (Aspirin®), as long as you are not allergic or intolerant. Do not take other pain medications such as acetaminophen (Tylenol®) or ibuprofen (Advil®) instead of Aspirin. Do not substitute Aspirin for medical care; call 9-1-1 or your local emergency number first.

- \* Rest and wait for emergency medical personnel to arrive.



\* Chest discomfort (uncomfortable chest pressure, squeezing, fullness or pain, burning or heaviness)



\* Discomfort in other areas of the upper body (neck, jaw, shoulder, arms, back)



\* Shortness of breath



\* Sweating



\* Nausea



\* Light-headedness



## Life Insurance in Divorce Settlements

Generally as part of the divorce settlement process the principal income earner is requested to purchase life insurance on his/her life as a method of guaranteeing the spousal or child support obligations.

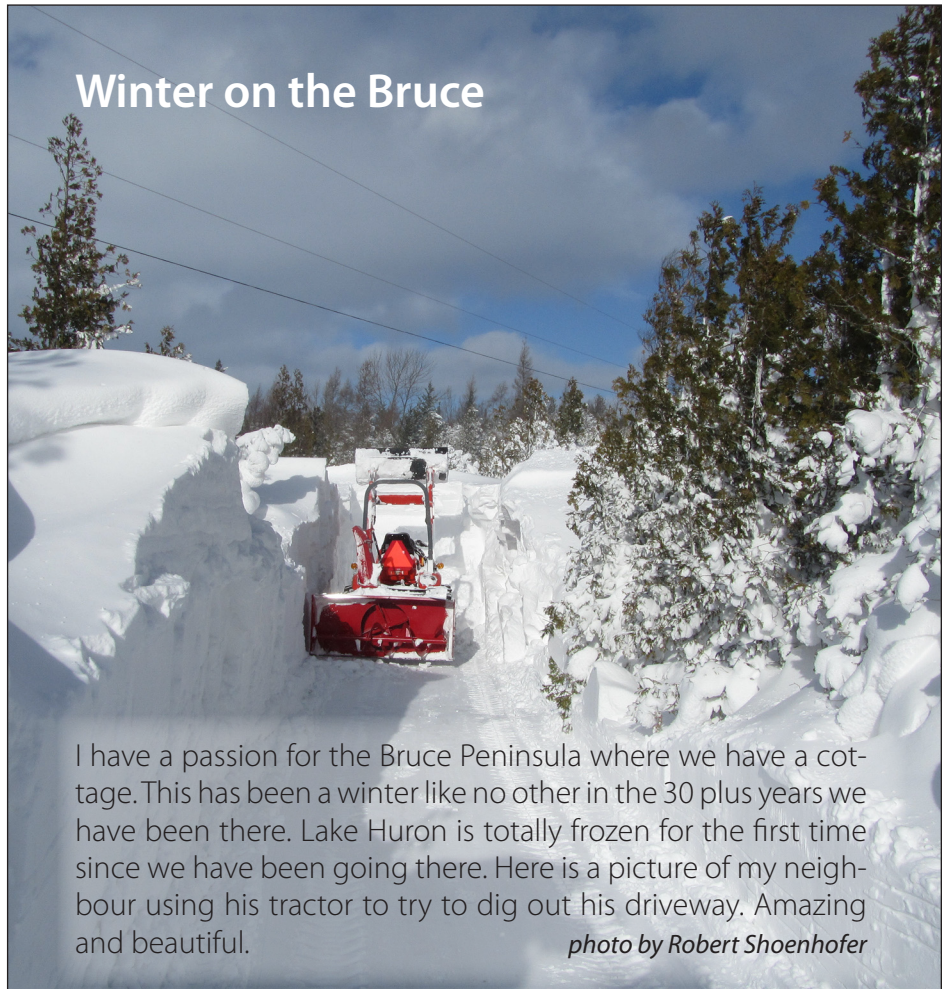
However, in reality, it may not be that straightforward. In many cases, health or age issues may cause the income earner to be highly rated or even uninsurable. This will necessitate exploring other approaches to satisfy the support obligation.

Sometimes an existing policy can be used by changing the owner to the ex-spouse who will be receiving payments and making him/her the irrevocable beneficiary. Joint first-to-die policies can usually be separated for this purpose but joint last-to-die seldom can. In the absence of insurance options deferred annuities can be set up to accumulate until the former spouse passes away, when income can be triggered.

Unquestionably insurance is the best solution if it is a viable option, however every situation is unique. A professional financial advisor should be consulted to discuss the available options and decide what course may be best for your situation.

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## Winter on the Bruce



I have a passion for the Bruce Peninsula where we have a cottage. This has been a winter like no other in the 30 plus years we have been there. Lake Huron is totally frozen for the first time since we have been going there. Here is a picture of my neighbour using his tractor to try to dig out his driveway. Amazing and beautiful.

*photo by Robert Shoenhofer*

## Malcolm Bennett Acc. FM

Malcolm Bennett graduated from the University of Western Ontario and was called to the Bar in 1975. With over 30 years of experience, he restricts his practice to family law, estate litigation, and mediation and arbitration for both family law and estate matters. Mr. Bennett is a member of the Law Society of Upper Canada, the Canadian Bar Association, the Ontario Bar Association, the Middlesex Family Law Association, the ADR Institute of Ontario, the Ontario Association of Family Mediators, the Academy of Professional Family Mediators (London), and the Collaborative Family Law Group of London.

