

DIVORCE SUPPORT TOOL BOX

# Communication & Negotiation



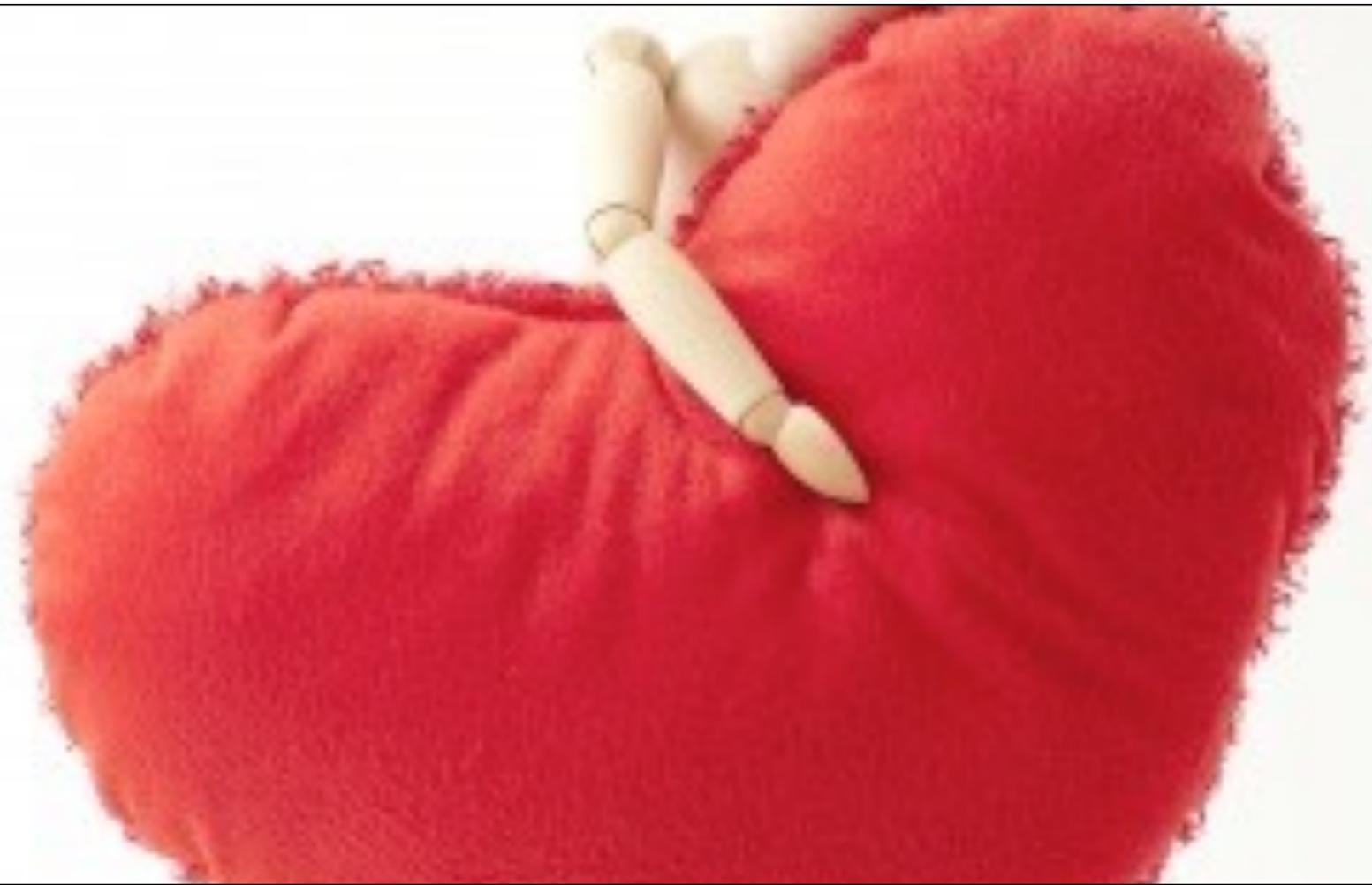
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# Introduction

**There is never a time of life when communication and negotiation skills can have a more life changing impact than during separation and divorce. We will look at the whens, hows and whats of communication. We will get on top of the emotional drivers of poor and even destructive communication, and then outline the skills of effective negotiation.**

## CHAPTER 1

# Communication



There is nothing more emotionally charged and upsetting than a marriage break down. When a person is overwhelmed by emotions, whether those are hurt, anger or fear, they will struggle to communicate reasonably. If you are at this stage of your breakup, you will want to work out some temporary solutions to keep you stable until you are ready to progress with more mental clarity.

**There are many different types of breakups, different stages of breakups and different types of exes.**

The question is how much conflict is there and is the conflict going to escalate or decrease over time.

Separated couples range from having a lot of communication, interaction and cooperation, to having a lot of arguments and tension, to not communicating at all.

**Spectrum of Interaction**



Cooperation, friendly interaction

Arguments or no communication

Where ever you fall on the spectrum, you need to have clear goals that inform when, how and what you communicate to your ex.

**No communication:** In cases where there is no communication, or communication only through lawyers, you need to consider carefully how to stop or slow down a cycle of escalating conflict. If communication is already only through lawyers, I urge you to follow the Divorce Support Team model and make sure you have a specialist financial advisor and divorce coach on your team. There are a lot of potential pitfalls in these types of divorces which can be extremely costly far into the future.

**Arguments:** If a lot of your communication with you ex is filled with emotion, hostility, anger or tears, I urge you to work with a divorce coach or specialist counselor.

If you are in a quagmire of conflict, it is unlikely that you will have good results and you could find yourself in a lot of difficulty because of it.

Marriage is for working through emotions and interpersonal challenges; divorce is for taking care of business and building a new life. Carrying on with arguments and emotional interactions with your ex is a messy strategy which could undermine you from accomplishing all the necessary and important steps needed to get your life back on solid ground.

*Note: You can still work on emotions and interpersonal challenges- but not with your ex. Do that with a professional.*

**Cooperation and friendly interaction:** This of course is the best scenario. Do not take it for granted and do not assume it is going to last. Many couples who think they are the last people to escalate conflict end up in court. Divorce is a minefield and you are surrounded by explosives. What you want to do is take actions that will reinforce the positive attitudes present, and maximise your potential to settle your affairs and build an excellent co-parenting relationship (if you have children).

*(See our Parenting & Co-Parenting Tool from the Divorce Support Tool Box).*

If you are in the early stages of separation, no matter what level of conflict you are experiencing, the best way to keep conflict to a minimum is to put into place temporary arrangements that both parties are comfortable with.

*(See our First Steps Tool from the Divorce Support Tool Box).*

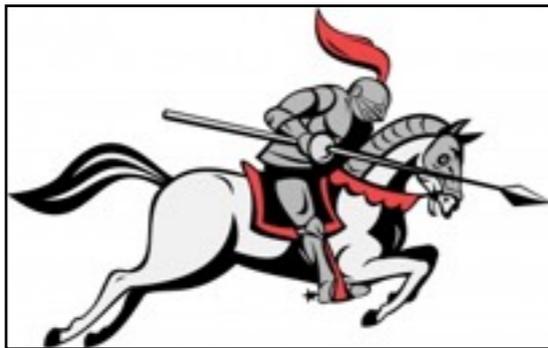
## Why should I care how my ex is feeling?

A common mistake during a marriage breakdown is to allow your hurt, anger and resentment to determine your behaviour towards your ex. When you do everything you can to make their lives a nightmare, you are actually increasing the danger that *you* are in. If your ex is desperate, they will take desperate actions and this could land you in an expensive and adversarial legal battle. If your ex is very upset, they will not be reasonable when it comes to negotiations.

It is tempting, as soon as a marriage fails, to rush headlong into a newfound sense of autonomy, independence and a 'I am the only one who matters' attitude. You are better off saving that exulted state for *after the settlement!* In order to have a chance of having a reasonable settlement and a legal bill that does not cripple you for life, you need to do whatever it takes to keep your ex feeling stable, respected and understood.



If you feel like you are riding a wild stallion of unchecked emotions, go get professional help!



## Defining your goals

### Destructive goals

Making my ex as miserable as possible

Making my ex pay for what he/she has done

Getting it all my way

Giving in on everything just to escape from him/her

### Productive goals

Achieving a fair settlement without a prolonged legal battle

Creating good temporary agreements that stabilise all family members

Getting all the facts and figures in order before making big decisions

Establishing a good working relationship with your co-parent



At this point, hopefully, you understand that it benefits everyone- especially you- to be proactive at establishing peaceful cooperation.



**Make a clear distinction between what is business and what is personal and do not mix the two!**

The most common time for people to mix business with personal during separation is when making changeovers with the children.

**Red  
Alert**

**This is the worst possible time to make that mistake!**

It is harmful to your children! (*please see the Parenting & CoParenting Tool for more information*).

Dropping off and picking up children is *business*. Arguing is *personal*- even if it is about business!



**Schedule times to discuss your matters.** Do not do this in front of children. When you do meet to discuss business, i.e. property or children's matters, etc., behave in a business like fashion. Do not bring emotions into it. Resist the urge to make snide remarks. If

you have personal matters that you wish to discuss, such as how hurt you are feeling, that you do not want the marriage to end, that you have realised how cruel he/she was during the marriage, or anything else that involves your relationship or your feelings, you must address these issues *separately* from business matters. You ought to give careful consideration to whether these topics are appropriate to be sharing with your ex. If they are, you need to discern whether the two of you are strong enough to communicate

about sensitive or emotionally charged topics without the assistance of a professional. If it is not appropriate for you to be sharing your feelings with your ex, the best thing to do is turn to a trusted professional and work this out for yourself.

## The Hows of Communication

**Face to Face:** As discussed, it is important to maintain clear boundaries as to when and what you are communicating. This is most essential when it comes to face to face communication, because that is when it is easiest to blur the lines. However, face to face communication can be a good thing, especially when conflict levels are low. It is positive to feel comfortable speaking face to face, and there are fewer misunderstandings with face to face communication. On the negative side, face to face communication means that as nothing is in writing, you do not have a record of what has been said.

**Email:** Emails are an excellent form of communication during divorce. They provide a clear record of your interaction. You can take time when writing an email to be sure of what you are saying. I often help my clients write their emails to make sure that they are heading in the best possible direction. Emails are respectful, because the recipient can read them at a time that suits them. Although that is true of a text message, a text message can feel somewhat more intrusive than an email, particularly if you are writing early in the morning or late at night. Although you can (and should) keep a record of your text messages, emails are easier to store. Make a folder for emails to and from your ex, another to and from your lawyer, and another to and from anyone else with relevant content.

**Red  
Alert!**

**Be careful what you write in your emails. They can be used against you in court!**

**Text Messages:** Text messages are handy and useful, but be careful how you use them. Text messages convey a sense of immediacy, so use them for matters of urgency. (Example: Traffic is bad, we will be 15 minutes late).

**Red  
Alert!**

Do not text while driving- that is dangerous! For that matter, do not take phone calls while driving that could upset you, and certainly do not expose your children to these conversations.

Always be careful what you text. Your texts can also be used against you in court. Additionally keep in mind that all forms of communication are either an opportunity to increase positivity, well being and the possibility of a successful divorce, or increase tension, hurt, conflict and the possibility of a very costly divorce.

**Phone:** Phone conversations might be recorded and you need to be aware of that, however, they are not an easy source of record keeping for you. It is best to limit phone calls to low conflict situations and low conflict topics.

**Facebook and other forms of social media:** Do not post any references to your divorce or personal affairs during a divorce on social media. These public displays can be used against you in court and they can backfire in your personal life.

## Good Communication Practices

### Good manners:

Good manners go a long way to diffusing conflict and rebuilding trust. Make an effort to be polite. Say please and thank you. Be respectful. It may not be how you feel but it is the high road and more dignified. More importantly it is a pathway for achieving a better outcome for you and your family.

### Separate business from personal matters:

Make clearly defined times to discuss business matters and when you do, keep the personal and emotional issues out of it. When you find that the personal and business matters are so blurred together that there is no way to separate them, it is best to get the help of a counselor or mediator to help you to address these issues.

### Listen when the other person is speaking:

It is likely that there will be times when your ex says something that immediately triggers a reaction in you, and you cannot wait to interject. Practice letting them have their say. Try to take an interest in what they are saying even when you think it is wrong, and even when you have heard it before.

### Communicate calmly:

If either of you are not able to stay calm while communicating, that is a clear sign that there are too many emotions involved to conduct an effective conversation. You can make adjustments by suggesting an email exchange or scheduling a mediation or counseling

session to help you work through the complexity of thoughts and feelings that are involved.

### Movie 1.1 Recovery and Divorce



*It is important to know when to take a stand and what to take a stand for  
Choosing the wrong battle is an easy and costly trap to fall into.*

## CHAPTER 2

# Negotiation



Negotiation is a skill that some people have and many people do not. When it comes to family law matters, even skilled negotiators are up against a myriad of complex emotions and motivations. Negotiation is a key skill to acquire, because if you and your ex are able to come up with agreements, you will not be in a position of leaving important decisions in the hands of a judge.

# Why negotiate?



Many people are convinced that their goals are so watertight, that all they need to do is get to court and a judge will rule in their favour.

There are some problems with this strategy. First of all, there are no black and whites in the family court. While it is true that there are some clearly defined guidelines that inform a judge's decision, the process of getting that ruling is a murky one and anything can happen along the way. You cannot count on anything when it comes to family court. What you can count on is a person who you do not know (the judge) will have the power to impose major decisions about your family and your life.

You should also take into consideration that the road to a court ruling is a long and arduous one that is horrifyingly expensive both financially and emotionally. You need to take into account both the financial and the emotional expense and consider how both of those could impact your life and your future.

If you have children, then it is crucial that you consider the impact that an adversarial legal process will have on them. Not only is there the potential for a long period of escalating conflict and bitterness, but there is also the potential for long term damage and erosion of your co-parenting relationship.

Carefully consider what battles you are willing to fight. Many people get embroiled in a battle that is not worth fighting, but it seems worth fighting at the time, because it has become a metaphor for the emotional wound that they are carrying.

# What is mediation for?



Mediation is a process to facilitate a husband and wife to come to agreements about property and children without giving their decision making power away to the judicial system.

The only thing that stands in the way of having the power to determine what is best for you and your family is the ability to agree with the other party. Of course, that can be a substantial roadblock. However, you need to be realistic about the alternatives before giving up on the opportunity to reach agreement.

Being able to successfully mediate your decisions requires an entirely different approach and set of skills than what is asked of you when you become embroiled in the legal system.

In mediation you are not adversaries. You are two people who have different viewpoints about a particular

problem or set of problems. In mediation you are not meant to shoot each other down to see who is the 'last man standing'. In mediation you are meant to strive to understand each other so that you can figure out solutions that you can both agree to and can both live with.

Because mediation, when done well, invites parties to address the issues that impact them personally and reduce their capacity to cooperate, because mediation encourages parties to gain greater insight into the other person's needs, hopes and fears, and because mediation asks parties to find a way to communicate their own needs, hopes and fears more clearly and more effectively, mediation is often a powerful catalyst for healing or improving the relationship. Mediation can be an important component of successfully moving out of the break up and into a new phase of life.

# The nuts and bolts of mediation



## What not to do

### 1. Overpower:

The legal system is an adversarial system designed to pit people against each other to create a winner and a loser. People are either right or wrong. Tactics, manipulation and lies are encouraged and effective in this system.

**Q-** What is wrong with this picture?

**A-** It is exactly how human relationships should not be handled.

Sometimes people want to approach mediation with this same adversarial mindset. They have become fixed on a position and their intent is to make sure they win at all costs. This is not a good strategy. It will block the possibility of finding creative solutions, to rebuilding trust and cooperation and it may fast track you to an expensive and emotionally devastating legal battle.

**Note:**

There are circumstances when you need to pursue a court decision. In those cases gather your team and do it wisely!

## 2. Surrender:

Sometimes people who do not want to fight feel that their only option is to do what ever their ex spouse wants them to do. They are overwhelmed by the desire to escape the conflict, the interaction and the pressure. They will make concessions at any cost in order to be free. This approach is problematic also. When things settle down and emotions are not so heightened, a person can find themselves with a deal that does not work for them, that they have to live with for the rest of their life, along with a bitterness and resentment that is difficult to be free from.

# What to do

## 1. Separate the people from the problem

The biggest difference between mediation and court is that in court it is *me against you* and in mediation it is the *two of us and the problem*. In court he or she is the problem. In mediation, we separate the people from the problem and we understand that both parties have a problem that *they need to solve together*. Why do they need to solve the problem together? Because agreement is the only path to success in mediation and this comes when people figure out a solution that adequately resolves the problem for both parties.

## 2. Get off your position

Positions are fixed and rigid. He wants the children to attend school A and she wants them to attend school B. There is no compromise here, and no solution here because there is only school A and school B and there is only an option of winning or losing. In

mediation, we put aside positions and look at the drivers. What is each party passionate about? What are their deepest desires and values? In what way does school A represent those things for party A and in what way does school B represent those things to party B. When we look at core valuation and understand what is motivating each person, rather than what their position is, the door opens for new ideas, new perspective and new understandings.

## 3. Hear what the other person has to say

The biggest shift that a person needs to make going in to mediation is to understand the value of listening and really paying attention to what the other person has to say. Remember, the person is not the problem. In order to solve the problem you need to understand what is driving the other party and what their stumbling blocks are. If you do not understand these things you cannot come up with a solution that they will agree to.

## 4. Discern what their motivations are

If the other party is presenting a fixed position, it is your job to discover what their motivations are. You may think you already know what they are, however in mediation it is critical that these motivations are discussed openly so that new insights can be had by both parties.

## 5. Pinpoint what their stumbling blocks are

In family matters, there are usually complex emotional blocks that come from the past. If there is a boulder the size of a house in the way of moving things along, it needs to be addressed. The best time to address it is during mediation, if you have chosen a profes-

sional to work with that has the skills to guide you effectively in communication and conflict resolution.

## **6. Communicate your motivations**

Rather than communicating your position, communicate what motivates you, what your greatest values are and the priorities that inform any decision that you make.

## **7. Communicate your stumbling blocks**

If there are grievances that make it difficult for you to move forward, it is important to communicate those. When you do this in the context of mediation under the guidance of your (hopefully) skilled and expert professional, there is potential to move forward and beyond the constraints of the past.

## **8. Look for solutions that satisfy both person's values and beliefs**

If you are trying to force agreement on a solution that goes against the other person's values and deepest beliefs you are not going to get very far. You need to understand the two people involved (you and him/her) and figure out what can work for both of you. This is not something you can do prior to mediation. Do not arrive with a resolution firmly planted in your mind. Mediation is a process and both parties will advance to new ground in that process. The solutions need to come from the new ground, not the ground that you have trampled endlessly in the past.