

Law and Equity Act

NOTICE TO MEDIATE (GENERAL) REGULATION

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FORMS 1 TO 5

Definitions

1 In this regulation:

“**action**” has the same meaning as in Rule 1 (8) of the Supreme Court Rules;

“**court**” means the Supreme Court of British Columbia;

“**date of trial**” means the date set for trial in a notice of trial filed under the Supreme Court Rules;

“**insurer**” means an insurer, as defined in the *Financial Institutions Act*, that

(a) has provided a policy of insurance to a party in an action to which this regulation applies in relation to matters or property in issue in that action, and

(b) under that policy, is obligated to indemnify the party for liability imposed on the party in the action,

and includes a surety of such a party in circumstances in which a claim has been made on a surety bond related to the matters in issue in that action;

“**mediation**” means a collaborative process in which two or more parties meet and attempt, with the assistance of a mediator, to resolve issues in dispute between them;

“**mediator**” means a neutral and impartial facilitator with no decision making power who assists parties in negotiating a mutually acceptable settlement of issues in dispute between them;

“**mediation session**” means a meeting between two or more parties to an action during which they are engaged in mediation;

“**participant**” means a party to an action who has not been exempted, under section 23 (c), from attending the mediation session;

“**party**”, in respect of an action to which this regulation applies, includes an insurer of a party of record to the action;

“**roster organization**” means any body designated by the Attorney General to select mediators for the purposes of this regulation;

“**scheduled pre-mediation conference**” means a pre-mediation conference in relation to which the mediator has given notice under section 14.

Application

- 2 This regulation does not apply to
- (a) family law proceedings,
 - (b) any action brought under the *Judicial Review Procedure Act*,
 - (c) claims for compensation for physical or sexual abuse,
 - (d) any action to which the Notice to Mediate Regulation, B.C. Reg. 127/98, applies,
 - (e) any action to which the Notice to Mediate (Residential Construction) Regulation, B.C. Reg. 152/99, applies, and
 - (f) any action to which the Education Mediation Regulation, B.C. Reg. 250/2000, applies.

Initiating mediation

- 3** Subject to section 4, any party to an action may initiate mediation in that action by delivering a Notice to Mediate in Form 1 to
- (a) every other party to the action, and
 - (b) the Dispute Resolution Office in the Ministry of the Attorney General.

Not more than one mediation under this regulation in any action

- 4** Unless the court otherwise orders, not more than one mediation may be initiated under this regulation in relation to any action.

When notice to mediate must be delivered

- 5** Unless the court orders otherwise, a Notice to Mediate may be delivered under section 3 no earlier than 60 days after the filing of the first statement of defence in the action and no later than 120 days before the date of trial.

Appointment of mediator

- 6** The participants must jointly appoint a mutually acceptable mediator,
- (a) if there are 4 or fewer parties to the action, within 14 days after the Notice to Mediate has been delivered to all parties, or
 - (b) if there are 5 or more parties to the action, within 21 days after the Notice to Mediate has been delivered to all parties.

Application to roster organization

- 7** If the participants do not jointly appoint a mutually acceptable mediator within the time required by section 6, any participant may apply to a roster organization for an appointment of a mediator.

Roster organization's appointment procedure

- 8** The following procedure applies if an application to a roster organization is made under section 7:
- (a) the roster organization must, within 7 days after receiving the application, communicate to all participants an identical list of possible mediators containing at least 6 names;
 - (b) each participant, within 7 days after receipt of the list referred to in paragraph (a),
 - (i) may delete from the list up to 2 names to which the participant objects,
 - (ii) must number the remaining names on the list in order of preference, and
 - (iii) must deliver the amended list to the roster organization;
 - (c) if a participant does not deliver the amended list within the time referred to in paragraph (b), the participant is deemed to have accepted all of the names;
 - (d) within 7 days after the expiry of the 7 day period referred to in

paragraph (b), the roster organization must select the mediator from the remaining names on the list or, if no names remain on that list, from any available mediators, whether or not the selected mediator was included on the original list provided under paragraph (a), taking into account

- (i) the order of preference indicated by the participants on the returned lists,
- (ii) the need for the mediator to be neutral and independent,
- (iii) the qualifications of the mediator,
- (iv) the mediator's fees,
- (v) the mediator's availability,
- (vi) the nature of the dispute, and
- (vii) any other consideration likely to result in the selection of an impartial, competent and effective mediator.

Notification of mediator

- 9** Promptly after a roster organization selects the mediator, the roster organization must notify the participants in writing of that selection.

Deemed date of appointment of mediator

- 10** The mediator selected by a roster organization is deemed to be appointed by the participants on the date that the notice is sent under section 9.

Replacement of appointed mediator

- 11** If the mediator selected by the roster organization under section 8 (d) is unable or unwilling to act as mediator, the selected mediator or any participant may so notify the roster organization and the roster organization must, within 7 days after receiving that notice, select a new mediator in accordance with section 8 (d).

When pre-mediation conference must be held

- 12** The mediator must hold a pre-mediation conference if, in the mediator's opinion, the action is sufficiently complex to warrant it.

Pre-mediation conference

- 13** At a pre-mediation conference, the mediator must endeavour to have the participants consider all organizational matters including the following:
 - (a) whether the pleadings are final and complete;
 - (b) the issues that are to be dealt with during the mediation process;
 - (c) pre-mediation exchange of information;
 - (d) exchange of documents;
 - (e) obtaining and exchanging expert reports;
 - (f) scheduling;
 - (g) time limits.

Notice of pre-mediation conference

14 The mediator must give notice of the pre-mediation conference to all parties.

Participants must attend pre-mediation conference and mediation session

- 15** Unless relieved under section 22 or 23 (c) of the obligation to attend,
- (a) each party who receives a notice under section 14 must participate in the pre-mediation conference, and
 - (b) each party to the action must engage in mediation at a mediation session in relation to the action.

Attendance by lawyer or representative

- 16** Despite section 15 but subject to section 20, a party referred to in section 15 may
- (a) attend a pre-mediation conference by lawyer, or
 - (b) attend one or both of a pre-mediation conference and a mediation session by representative if
 - (i) the party is under legal disability and the representative is that party's litigation guardian,
 - (ii) the party is suffering from a mental or physical injury or impairment sufficient to limit the party's effective participation in mediation,
 - (iii) the party is not an individual, or
 - (iv) the party is a resident of a jurisdiction other than British Columbia and will not be in British Columbia at the time of the pre-mediation conference or the mediation session, as the case may be.

Representative may be accompanied by a lawyer

17 A party or representative who attends a pre-mediation conference or a mediation session may be accompanied by a lawyer.

Other persons may attend with consent

18 Any other person may attend a pre-mediation conference or a mediation session if that attendance is with the consent of all participants.

Attendance by communications medium

19 A person entitled or required to attend a pre-mediation conference may attend that conference by telephone or other communications medium if the person is a resident of a jurisdiction other than British Columbia and will not be in British Columbia at the time of the conference.

Qualifications of representative

- 20** A representative who attends a mediation session in the place of a party referred to in section 16 (b) must
- (a) be familiar with all relevant facts on which the participant, on whose behalf the representative attends, intends to rely, and

- (b) have full authority to settle, or have access at the earliest practicable opportunity to a person who has, or to a group of persons who collectively have, full authority to settle, on behalf of that participant.

Exemption if previous mediation

- 21** Parties to an action need not attend a pre-mediation conference or a mediation session if all of the parties to the action have already been involved in a mediation session in relation to the matters in issue in that action.

Other exemptions

- 22** A party need not attend a pre-mediation conference or a mediation session if
- (a) the party is exempted from attending the pre-mediation conference or the mediation session, as the case may be, under section 23 (c), or
 - (b) the participants agree that the party need not attend the pre-mediation conference or the mediation session, as the case may be, and that agreement is confirmed by the mediator in writing.

Applications to court

- 23** On an application, the court may direct that
- (a) the mediation proceed at the time or times and on the terms and conditions, if any, that the court considers appropriate,
 - (b) the mediation be postponed to a later date on the terms and conditions, if any, that the court considers appropriate, or
 - (c) one or more of the parties is exempt from attending one or both of a pre-mediation conference and a mediation session if in the court's opinion it is materially impracticable or unfair to require the party to attend.

Scheduling of mediation session

- 24** A mediation session must occur within 60 days after the appointment of the mediator but not later than 7 days before the date of trial unless a later specified date
- (a) is agreed on by all participants and that agreement is confirmed by the mediator in writing, or
 - (b) is ordered by the court.

Court may postpone mediation session

- 25** On an application for an order under section 24 (b), the court
- (a) must take into account all of the circumstances, including
 - (i) whether a party intends to bring a motion for summary judgment, summary trial or for a special case,
 - (ii) whether the mediation will be more likely to succeed if it is postponed to allow the participants to acquire more information, and
 - (iii) any other circumstances the court considers appropriate, and
 - (b) may make any order referred to in section 23.

Pre-mediation exchange of information

- 26** At least 14 days before the mediation session is to be held in relation to an action, each participant must deliver to the mediator a Statement of Facts and Issues in Form 2 setting out the factual and legal basis for the party's claim or opposition to the relief sought in the action.

Mediator must distribute statements

- 27** Promptly after receipt of all of the Statements of Facts and Issues required to be delivered under section 26, the mediator must send each participant's Statement to each of the other participants.

Fee declaration

- 28** The participants must complete and sign a fee declaration in accordance with section 29,
- (a) if a pre-mediation conference is held in relation to the action, before or at the pre-mediation conference, or
 - (b) in any other case, before or at the mediation session.

Form of fee declaration

- 29**
- (1) A fee declaration under section 28 must be in Form 3 and must
 - (a) disclose the cost of the mediation services, and
 - (b) contain a declaration by the participants as to how the cost of the mediation will be paid by them.
 - (2) The cost of the mediation must be paid equally by the participants.
 - (3) Despite subsection (2), if the fee declaration sets out a different basis on which the cost of the mediation is to be paid by the participants and is signed by all of those participants, the cost of the mediation must be paid on the basis set out in the fee declaration.

Fee declaration binding

- 30** A fee declaration completed under this regulation is binding on the participants.

Costs may include mediation cost component

- 31** Despite section 30, nothing in section 29 or in the fee declaration completed under this regulation precludes there being included in the disbursements awarded to a party an amount to compensate for the share of the cost of the mediation that that party paid under the declaration.

Conduct of a mediation

- 32** The mediator may conduct a pre-mediation conference and the mediation at the location and in any manner he or she considers appropriate to assist the participants to reach a resolution that is fair, timely and cost-effective.

Allegation of Default

- 33** (1) Any participant who is of the opinion that any other participant has failed to comply with a provision of this regulation may make application to the court for an order under section 34.
- (2) Before making application under subsection (1), the participant bringing the application must deliver to each of the other participants
- (a) an Allegation of Default in Form 4 respecting the participant who is alleged to have failed to comply with a provision of this regulation, and
 - (b) any affidavits in support of the application.

Effect of an Allegation of Default

- 34** (1) On an application referred to in section 33 (1), the court may do any one or more of the following unless the participant in respect of whom the Allegation of Default is filed satisfies the court that the default did not occur or that there is a reasonable excuse for the default:
- (a) adjourn the application and order, on any terms the court considers appropriate, that
 - (i) a scheduled pre-mediation conference occur, or
 - (ii) a mediation session occur;
 - (b) adjourn the application and order that a participant attend one or both of a scheduled pre-mediation conference and a mediation session;
 - (c) adjourn the application and order that a participant provide to the mediator and other participants a Statement of Facts and Issues;
 - (d) stay the action until the participant in respect of whom the allegation is filed attends one or both of a scheduled pre-mediation conference and a mediation session;
 - (e) dismiss the action or strike out the statement of defence and grant judgment;
 - (f) make any order it considers appropriate with respect to costs.
- (2) If the court considers that public disclosure of the Allegation of Default and related affidavits would be a hardship on a participant, the court may
- (a) order that the whole or any part of the Allegation of Default and related affidavits be sealed in an envelope and that no person may search the sealed documents without an order of the court, or
 - (b) make such other order respecting confidentiality of those documents as the court considers appropriate.

Court may consider allegation in ordering costs

- 35** The court may consider the existence of an Allegation of Default in making any order about costs, whether that order is made following final disposition of the action or otherwise.

Confidentiality and compellability

- 36** (1) Subject to sections 37 and 39 and subsections (2) and (3) of this section, a person must not disclose, or be compelled to disclose, in any civil, criminal, quasi-criminal, administrative or regulatory action or proceeding,
- (a) any oral or written information acquired in anticipation of, during or in connection with a mediation session,
 - (b) any opinion disclosed in anticipation of, during or in connection with a mediation session, or
 - (c) any document, offer or admission made in anticipation of, during or in connection with a mediation session.
- (2) Subsection (1) does not apply
- (a) in respect of any information, opinion, document, offer or admission that all of the participants agree in writing may be disclosed,
 - (b) to any fee declaration, agreement to mediate or settlement document made in anticipation of, during or in connection with a mediation session, or
 - (c) to any information that does not identify the participants or the action and that is disclosed for research or statistical purposes only.
- (3) Despite subsection (1), if and only to the extent that it is necessary to do so for the purposes of section 33 or 34, a party may disclose evidence of any act or failure to act of another party that is alleged, for the purposes of section 33, to constitute a failure to comply with a provision of this regulation.

No restriction on otherwise producible information

- 37** Nothing in this regulation precludes a party from introducing into evidence in any civil, criminal, quasi-criminal, administrative or regulatory action or proceeding any information or records produced in the course of the mediation that are otherwise producible or compellable in those proceedings.

Concluding a mediation

- 38** A mediation is concluded when
- (a) all issues are resolved, or
 - (b) the mediator terminates the mediation.

Certificate of Completed Mediation

- 39** When a mediation is concluded, the mediator must deliver a Certificate of Completed Mediation in Form 5 to
- (a) each of the participants who requests one or to their lawyer, and
 - (b) the Dispute Resolution Office in the Ministry of the Attorney General.

FORM 1

No.

..... Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between:

Plaintiff(s)

and

Defendant(s)

NOTICE TO MEDIATE

TO:

TAKE NOTICE that this claim is to be mediated in accordance with the Notice to Mediate (General) Regulation, B.C. Reg. 4/2001.

The parties who have not been exempted from attending the mediation session must jointly appoint a mutually acceptable mediator,

- (a) if there are 4 or fewer parties to the action, within 14 days after delivery of this Notice, or
- (b) if there are 5 or more parties to the action, within 21 days after delivery of this Notice.

Otherwise, any of those parties may apply to a designated roster organization for appointment of a mediator.

Dated at, British Columbia, on, 20....

.....

Party [*or party's solicitor*]

Party delivering this Notice:

FORM 2

No.

..... Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between:

Plaintiff(s)

and

Defendant(s)

STATEMENT OF FACTS AND ISSUES

PART I

[To be completed by plaintiff]

The following relief is sought:

PART II

[To be completed by plaintiff]

Basis for seeking relief:

[Set out briefly the factual and legal basis for the relief that is sought.]

PART III

[To be completed by defendant]

Basis for opposing relief:

[Set out briefly the factual and legal basis for opposing the relief that is sought.]

This mediation takes place under the Notice to Mediate (General) Regulation, B.C. Reg. 4/2001.

Dated at, British Columbia, on, 20.... .

.....

Party *[or party's solicitor]*

FORM 3

No.

..... Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between:

Plaintiff(s)

and

Defendant(s)

MEDIATION FEE DECLARATION

WHEREAS:

- (a) we, or our representatives, are participating in a mediation under the Notice to Mediate (General) Regulation, B.C. Reg. 4/2001;
- (b) the mediator will be of, B.C.
- (c) the cost of the mediation services will be \$..... for a completed mediation session, or will be calculated at \$..... per hour plus necessary disbursements, or will be calculated as follows:

WE WILL, subject to any agreement reached during mediation, pay the cost of the mediation services:

1. in equal shares

or

2. as follows:

WE MAKE THIS DECLARATION under the Notice to Mediate (General) Regulation, B.C. Reg. 4/2001.

Dated at, British Columbia, on, 20.... .

.....
Party [*or party's solicitor*]

.....
Party [*or party's solicitor*]

FORM 4

No.

..... Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between:

Plaintiff(s)

and

Defendant(s)

ALLEGATION OF DEFAULT

I ALLEGE THAT has failed to comply with section of the Notice to Mediate (General) Regulation, B.C. Reg. 4/2001.

THE CIRCUMSTANCES OF THE ALLEGED DEFAULT are as follows:

[Set out the circumstances in numbered paragraphs]

Dated at, British Columbia, on, 20.... .

.....
Party [*or party's solicitor*]

FORM 5

No.

..... Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between:

Plaintiff(s)

and

Defendant(s)

CERTIFICATE OF COMPLETED MEDIATION

THIS WILL CERTIFY THAT has concluded a mediation in this matter in accordance with the Notice to Mediate (General) Regulation, B.C. Reg. 4/2001, and that

- all issues have been resolved.
- the mediator has terminated the mediation, and
 - some issues have been resolved, or
 - no issues have been resolved.

Dated at, British Columbia, on, 20....

.....

Mediator

Name:

Address:

[Provisions of the *Law and Equity Act*, R.S.B.C. 1996, c. 253, relevant to the enactment of this regulation: section 68]