

*Insurance (Motor Vehicle) Act*

**NOTICE TO MEDIATE REGULATION**

[includes amendments up to B.C. Reg. 3/2001]

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**FORMS 1 – 5**

**SCHEDULE – Repealed**

**Definitions**

**1** In this regulation:

“**deliver**” has the same meaning as in the Rules of Court;

“**designated action**” means a motor vehicle action in respect of which action a Notice to Mediate has been delivered under section 2;

“**government body**” has the same meaning as in the *Financial Administration Act* and

(a) includes the government of British Columbia or of any other province, the government of Canada, the government of any municipality or regional district in Canada and any body created or controlled by any of those governments, and

(b) does not include an insurer or a third party insurer;

“**insurer**” means the Insurance Corporation of British Columbia or any other insurer as defined in the *Insurance Act* who has a duty to do one or both of the following:

(a) indemnify a defendant or third party for liability imposed on the defendant or third party by law for injury or death of another, or for loss of or damage to property of another, that arises out of the subject matter of a

motor vehicle action;

- (b) defend in the name of a defendant or third party any claims for damages brought against the defendant or third party in a motor vehicle action;

**“mediation”** means a collaborative process in which 2 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 2 or more parties to a designated action during which they are engaged in mediation for a period of

- (a) 3 hours,
- (b) any shorter period that the mediator may direct, or
- (c) any shorter or longer period that the parties may agree;

**“motor vehicle action”** means a motor vehicle action commenced in the Supreme Court;

**“party”**, in respect of a designated action, includes an insurer of a party of record to the action;

**“participant”** means a party to a designated action who has not been exempted, under section 4 (2) (c), from attending the mediation session;

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

**“third party”** means a person who is named as a third party in a designated action under Rule 22 of the Rules of Court, but does not include a third party insurer;

**“third party insurer”** means, in relation to a designated action,

- (a) the Insurance Corporation of British Columbia if it has been made a third party in the action under section 21 of the *Insurance (Motor Vehicle) Act*, or
- (b) an insurer if it has been made a third party in the action under section 161 (2) of the *Insurance Act*.

[am. B.C. Reg. 3/2001, s. (a).]

### **Delivery of Notice to Mediate**

- 2 (1) Any party to a motor vehicle 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.
- (2) A Notice to Mediate may be delivered under subsection (1) no earlier than 60 days after the close of pleadings and no later than 77 days before the date set for the commencement of the trial.

- (3) Subject to section 5 (2) (b) (ii), not more than one mediation may occur under this regulation in relation to any motor vehicle action.

[am. B.C. Reg. 3/2001, s. (a).]

### **Attendance at mediation**

- 3** (1) Unless exempted under section 4, the following parties to a designated action must attend a mediation session in relation to the action:
- (a) the plaintiff;
  - (b) the defendant's insurer or, if the defendant does not have an insurer, the defendant;
  - (c) the third party's insurer or, if the third party does not have an insurer, the third party;
  - (d) the third party insurer.
- (2) Despite subsection (1), a party referred to in subsection (1) may attend by representative if
- (a) the party is under legal disability and the representative is that party's guardian ad litem,
  - (b) the party is not an individual,
  - (c) the party is suffering from a mental or physical injury or impairment sufficient to limit the party's effective participation in mediation, or
  - (d) the party is a resident of a jurisdiction other than British Columbia and will not be in British Columbia at the time of the mediation session.
- (3) A party who attends a mediation session under subsection (1) or (2) may be accompanied by counsel.
- (4) Any other person may attend a mediation session if that attendance is with the consent of all participants.
- (5) A person who attends a mediation session under subsection (1), (2) or (4) may attend 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 mediation session.
- (6) A representative who attends a mediation session in the place of a party referred to in subsection (2)
- (a) must be familiar with all relevant facts on which the party, on whose behalf the representative attends, intends to rely, and
  - (b) must,
    - (i) if the party on whose behalf the representative attends is a government body, 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 party, or
    - (ii) in any other case, have full authority to settle, or have immediate access to a person who has full authority to settle, on behalf of the

party on whose behalf the representative attends.

#### **Exemption from mediation**

- 4** (1) Section 3 (1) does not apply
  - (a) to the parties to a designated action if all of those parties have already been involved in a session of mediation, comparable to a mediation session, in relation to the matters in issue in that action, or
  - (b) to any party who, on application, is exempted by the court from participating in mediation under this regulation.
- (2) On an application under subsection (1) (b), the court may direct that
  - (a) the mediation proceed on the terms and conditions, if any, that the court considers appropriate,
  - (b) the mediation be adjourned for the period or on the terms and conditions that the court considers appropriate, or
  - (c) one or more of the parties is exempt from attending at mediation if, in the court's opinion, it is materially impracticable or unfair to require the party to attend at mediation.

#### **Scheduling of mediation session**

- 5** (1) Unless a later specified date is agreed on in writing by all participants or is ordered by the court, a mediation session must occur within 60 days after the appointment of a mediator but not later than 7 days before the date of trial.
- (2) On an application under subsection (1) to adjourn a mediation session, the court may
  - (a) adjourn the mediation session if
    - (i) the claim is for damages for bodily injury and the court considers that the mediation is premature by reason that the extent of injury to the plaintiff cannot be adequately known when the mediation session is scheduled to commence,
    - (ii) the court considers that it would be appropriate for some or all of the examinations for discovery to be conducted before the mediation session, or
    - (iii) the court otherwise considers it just, and
  - (b) make any of the following orders:
    - (i) an order referred to in section 4 (2) (a) or (b);
    - (ii) if the designated action has more than one plaintiff, an order that there be different mediation sessions for different plaintiffs occurring at different times.

#### **Appointment of mediator**

- 6** Within 10 days after the Notice to Mediate has been delivered to all participants, the participants must, directly or with the assistance of an independent, neutral person or

organization, jointly appoint a mutually acceptable mediator.

**Selection of mediator if participants are unable to agree**

- 7** (1) 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 under this section.
- (2) The following procedure applies if an application to a roster organization is made under subsection (1):
- (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 must, within 10 days after receipt of the list referred to in paragraph (a),
    - (i) delete from the list any names, to a maximum of 2, to which the participant objects,
    - (ii) number the remaining names on the list in order of preference, and
    - (iii) 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 10 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, and
    - (vi) any other consideration likely to result in the selection of an impartial, competent and effective mediator.
- (3) Promptly after a roster organization selects the mediator under this section, the roster organization must notify the participants in writing of that selection.
- (4) The mediator selected by a roster organization is deemed to be appointed by the participants effective the date of the notice sent under subsection (3).

**Pre-mediation disclosure of information**

- 8** (1) At least 7 days before the first mediation session is to be held in relation to a designated action, each participant must deliver to the mediator a Statement of Facts and Issues in Form 2 setting out

- (a) the facts on which the participant intends to rely, and
  - (b) the matters in issue in the action.
- (2) Promptly after receipt of all of the Statements of Facts and Issues required to be delivered under subsection (1), the mediator must send each participant's statement to each of the other participants in the designated action.

#### **Fee declaration**

- 9**
- (1) Before or at the first mediation session to be held in relation to a designated action, the participants must complete a fee declaration in accordance with subsection (2).
  - (2) A fee declaration under subsection (1) must be in Form 3 and must
    - (a) disclose the cost of the mediation services, and
    - (b) contain a declaration by the participants that the cost of the mediation will be paid
      - (i) equally by the participants, or
      - (ii) on any other specified basis agreed by the parties.
  - (3) A fee declaration completed under this section is binding on the parties.
  - (4) Despite subsection (3), nothing in subsection (2) or in the fee declaration under this section precludes there being included in the costs awarded to a party in the designated action an amount to compensate the party for the share of the cost of the mediation that that party paid under the declaration.

#### **Conduct of a mediation**

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

#### **Declaration of Default**

- 11** Any participant may file with the court a Declaration of Default in Form 4 respecting any other participant who fails to comply with a provision of this regulation.

#### **Effect of a Declaration of Default**

- 12**
- (1) If a Declaration of Default is filed, the court may, on application made on notice to the participant in respect of whom the Declaration of Default is filed, do any one or more of the following unless that participant 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 that a mediation session occur, on any terms the court considers appropriate;
    - (b) adjourn the application and order that a participant attend a mediation session;
    - (c) adjourn the application and order that a participant file a Statement of

Facts and Issues;

- (d) stay the action until the defaulting participant attends mediation;
- (e) dismiss the proceeding or strike out the statement of defence and grant judgment;
- (f) make any order it considers appropriate with respect to costs.

- (2) The court may consider the existence of a Declaration of Default in making any order about costs, whether following final disposition of an action, or otherwise.

#### **Confidentiality and compellability**

- 13** (1) A person must not disclose, or be compelled to disclose, in any civil, criminal, quasi-criminal, administrative or regulatory action or proceeding, oral or written information acquired or an opinion formed, including, without limitation, any offer or admission made, in anticipation of or during a mediation session.
- (2) Nothing in this section 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**

- 14** (1) A mediation is concluded when
  - (a) all issues are resolved,
  - (b) the mediator determines that the process will not be productive and so advises the participants, or
  - (c) the first mediation session is completed and there is no agreement to continue.
- (2) When a mediation is concluded, the mediator must deliver a Certificate of Completed Mediation in Form 5 to each of the participants who requests one or to their counsel.

FORM 1 (SECTION 2 (1) )

No. ....

..... Registry

In the Supreme Court of British Columbia

Between

, Plaintiff(s)

and

, Defendant(s)

**NOTICE TO MEDIATE**

*TO:*

*AND TO:* The Dispute Resolution Office  
Ministry of Attorney General  
P.O. Box 9280, Stn. Provincial Government  
Victoria, B.C. V8W 9J7 (facsimile: (250) 387-1189)

TAKE NOTICE that this claim is to be mediated in accordance with the Notice to Mediate Regulation (B.C. Reg. 127/98).

WITHIN 10 DAYS after delivery of this Notice to all parties, the parties must jointly appoint a mutually acceptable mediator; otherwise, any party may apply to a designated roster organization for appointment of a mediator.

Dated at ....., British Columbia, ..... [date].

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

*Party delivering this Notice:*



FORM 2 (SECTION 8 (1) )

No. ....

..... Registry

In the Supreme Court of British Columbia

Between

, Plaintiff(s)

and

, Defendant(s)

**STATEMENT OF FACTS AND ISSUES**

THESE ARE THE FACTS on which I intend to rely in this mediation:

*[Set out a brief summary of the facts in numbered paragraphs]*

- 1.
- 2.

THESE ARE THE MATTERS IN ISSUE in this mediation:

*[Set out a brief summary of the issues in numbered paragraphs]*

- 1.
- 2.

This mediation takes place under the Notice to Mediate Regulation (B.C. Reg. 127/98).

Dated at ....., British Columbia, ..... [date].

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

FORM 3 (SECTION 9)

No. ....

..... Registry

In the Supreme Court of British Columbia

Between

, Plaintiff(s)

and

, Defendant(s)

**MEDIATION FEE DECLARATION**

**WHEREAS:**

- (a) the parties or their representatives are participating in a mediation under the Notice to Mediate Regulation (B.C. Reg. 127/98);
- (b) the mediator will be ..... of ....., BC.
- (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  as follows:

WE MAKE THIS DECLARATION under section 9 of the Notice to Mediate Regulation (B.C. Reg. 127/98).

Dated at ....., British Columbia, ..... [date].

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

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

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

FORM 4 (SECTION 11)

No. ....

..... Registry

In the Supreme Court of British Columbia

Between

, Plaintiff(s)

and

, Defendant(s)

**DECLARATION OF DEFAULT**

I DECLARE THAT ..... has failed to comply with section ..... of the Notice to Mediate Regulation (B.C. Reg. 127/98).

THE CIRCUMSTANCES OF THE DEFAULT are as follows:

*[Set out the circumstances in numbered paragraphs]*

Dated at ....., British Columbia, ..... [date].

.....

Party [*or party's solicitor*]

FORM 5 (SECTION 14 (2) )

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 session in this matter in accordance with the Notice to Mediate Regulation (B.C. Reg. 127/98) and that

- 1.  all issues are resolved
- 2.  some issues are resolved
- 3.  the process will not be productive and I have so advised the parties
- 4.  the first mediation session is completed and there is no agreement to continue.

Dated at ....., British Columbia, ..... [date].

.....

Mediator

Name:.....

Address:.....

**SCHEDULE**

Repealed. [B.C. Reg. 3/2001, s. (b).]

[Provisions of the *Insurance (Motor Vehicle) Act*, R.S.B.C. 1996, c. 231, relevant to the enactment of this regulation: section 44.1]