



## BRITISH COLUMBIA MEDIATOR ROSTER SOCIETY

### MEDIATION RULES

#### Purpose

- 1 The purpose of these rules is to facilitate the settlement of disputes in a collaborative manner that is timely, fair and cost-effective for all parties.

#### Definitions

- 2 In these rules:

“**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 a dispute during which they are engaged in mediation;

“**party**” means a party to an agreement which provides that mediation of disputes will be conducted in accordance with these rules;

“**society**” means the British Columbia Mediator Roster Society.

#### Application of rules

- 3 (1) These rules apply whenever parties have, by agreement, provided for the mediation of their existing or future disputes in accordance with these rules.  
(2) The application of these rules to a mediation may be modified by agreement in writing of all parties.

#### Appointment of a mediator

- 4 The parties may appoint a mediator by
  - (a) agreeing in advance upon a person who will mediate any dispute which arises in the future, and naming that person in a mediation clause in an agreement,

- (b) agreeing in advance upon a process for appointment of a mediator, and setting out that process in a mediation clause in an agreement, or
- (c) directly, or with the assistance of the society, jointly appointing a mutually acceptable mediator.

**Appointment of a mediator where the parties are unable to agree**

- 5 (1) If the parties are unable to agree upon the appointment of a mediator, any party may apply to the society for appointment of a mediator;
- (2) If a party applies to the society for appointment of a mediator, the following procedure applies:
- (a) the society must, within 7 days after receiving the application, provide all parties with an identical list of possible mediators containing at least 6 names;
  - (b) each party, within 7 days after receiving the list referred to in paragraph (a),
    - (i) may delete from the list any names to which the party objects, to a maximum of 2 names,
    - (ii) must number the remaining names on the list in order of the party's preference, and
    - (iii) must deliver the amended list to the society;
  - (c) if a party does not deliver the amended list to the society within the time referred to in paragraph (b), the party is deemed to have accepted all of the names on the list;
  - (d) within 7 days after the time referred to in paragraph (b), the society 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 to the parties under paragraph (a), taking into account
    - (i) the order of preference indicated by the parties on the returned lists,
    - (ii) the need for the mediator to be 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 the society selects the mediator under this rule, the society must notify the parties and the mediator in writing of that selection.
- (4) The mediator selected by the society is deemed to be appointed by the parties effective on the date of the notice sent under subrule (3).
- (5) If the mediator selected by the society under paragraph (d) is unable or unwilling to act as mediator, the selected mediator or any party may so notify the society and the society must, within 7 days after receiving that notice, select a new mediator in accordance with paragraph (d).

### **Pre-mediation conference**

- 6 The mediator may convene a pre-mediation conference to consider organizational matters, including:
  - (a) the issues that are to be dealt with during the mediation;
  - (b) pre-mediation disclosure of information and documents;
  - (c) exchange of documents;
  - (d) obtaining and exchanging expert reports;
  - (e) scheduling.

### **Attendance by representative**

- 7 A party may participate in a pre-mediation conference or a mediation session by representative if
  - (a) the party is under legal disability and the representative is that party's litigation guardian,
  - (b) the party is suffering from a mental or physical injury or impairment sufficient to limit the party's effective participation in mediation,
  - (c) the party is not an individual, 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 pre-mediation conference or the mediation session.

### **Qualifications of representative**

- 8 A representative who attends a mediation session in the place of a party must
- (a) be familiar with all relevant facts on which the party, on whose behalf the representative attends, intends to rely, and
  - (b) have full authority to settle, or have immediate access, during the mediation, to a person who has full authority to settle, on behalf of the party on whose behalf the representative attends.

### **Attendance by counsel**

- 9 A party or representative may be accompanied by counsel.

### **Other persons may attend with consent**

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

### **Scheduling of mediation sessions**

- 11 The location, date and time of mediation sessions will be scheduled by the mediator in consultation with the parties.

### **Pre-mediation exchange of information and documents**

- 12 The parties will exchange information and documents prior to the first mediation session as directed by the mediator in consultation with the parties.

### **Fees and expenses**

- 13 Unless the parties otherwise agree, the mediator's fees and other expenses of the mediation, including travel and the rental of premises, will be paid equally by the parties.

### **Conduct of the mediation**

- 14 (1) The parties will
- (a) make a serious attempt to resolve the dispute by
    - (i) identifying underlying interests,
    - (ii) isolating points of agreement and disagreement,
    - (iii) exploring alternative solutions, and

- (iv) considering compromises or accommodations; and
  - (b) cooperate fully with the mediator and give prompt attention to, and respond to, all communications from the mediator.
- (2) The mediator may conduct a pre-mediation session, the mediation and separate meetings with one or more parties in any manner he or she considers appropriate to assist the parties to reach a resolution of their dispute that is timely, fair and cost-effective.

### **Confidentiality and compellability**

- 15 (1) The mediator, the parties and parties' representatives must not disclose, or be compelled to disclose, in any arbitration, judicial or quasi-judicial proceeding
- (a) any oral or written information acquired in anticipation of, during or in conjunction 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) Nothing in subrule (1) precludes a party from introducing into evidence in any arbitration, judicial or quasi-judicial proceeding any information or records produced in anticipation of, during or in connection with a mediation session that are otherwise producible or compellable in those proceedings.

### **Ending the mediation**

- 16 A mediation is concluded when
- (a) all issues in dispute are resolved,
  - (b) a mediation session is completed and the parties do not agree to continue, or
  - (c) the mediator determines that the process will not be productive and so advises the parties.

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