

## RULE 7.3 – MEDIATION FOR CLAIMS BETWEEN \$10 000 AND \$25 000

### Definitions

(1) In this rule:

“**insurer**” has the same meaning as in the *Insurance Act*, and includes the Insurance Corporation of British Columbia;

“**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;

“**mediation session**” means a meeting between 2 or more parties during which they are engaged in mediation for a period of

- (a) 2 hours,
- (b) any shorter period that the mediator may direct, or
- (c) any shorter or longer period on which the parties may agree;

“**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;

“**motor vehicle action**” means a proceeding in which damages are claimed for injury or death, or loss of or damage to property, that arises out of the use or operation of a motor vehicle or trailer as those terms are defined in the *Motor Vehicle Act*;

“**party**”, in relation to a proceeding, includes an insurer of a claimant, defendant or third party if that insurer has a duty to do one or both of the following in relation to the claimant, defendant or third party:

- (a) indemnify that party for liability arising out of a claim in the proceeding;
- (b) defend any claims made against that party in the proceeding;

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

“**third party**” means a person who is named as a third party under Rule 5, but does not include an insurer who has been made a third party under

- (a) section 21 of the *Insurance (Motor Vehicle) Act*, or
- (b) section 161 (2) of the *Insurance Act*;

“**third party insurer**” means, in relation to a motor vehicle 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*.

[en. B.C. Reg. 251/2005, s. 3; am. B.C. Reg. 286/2005, s. 2 (a).]

See Small Claims Rules at:

[http://www.qp.gov.bc.ca/statreg/reg/C/CourtRules/CourtRules261\\_93/261\\_93.htm](http://www.qp.gov.bc.ca/statreg/reg/C/CourtRules/CourtRules261_93/261_93.htm)

## GENERAL INFORMATION

### Proceedings to which this rule applies

- (2) Subject to subrule (3), a party to a proceeding may initiate mediation in that proceeding under subrule (5) if
- (a) the notice of claim that started the proceeding was filed after August 31, 2005, and
  - (b) a claim in the proceeding amounts to more than \$10 000 and not more than \$25 000, without taking into account interest or claim-related expenses.
- [en. B.C. Reg. 251/2005, s. 3.]

### Claims to which this rule does not apply

- (3) A party to a proceeding may not initiate mediation in that proceeding under subrule (5) if
- (a) the proceeding involves a party who has obtained one of the following against another party:
    - (i) a restraining order under section 37 or 38 of the *Family Relations Act*;
    - (ii) a peace bond under section 810 of the *Criminal Code*, or
  - (b) the claimant, defendant and cause of action in the proceeding are the same as the plaintiff, defendant and cause of action in an action brought in the Supreme Court.
- [en. B.C. Reg. 251/2005, s. 3.]

### When this rule ceases to apply

- (4) This rule ceases to apply to a proceeding if the proceeding is transferred to the Supreme Court under Rule 7.1.
- [en. B.C. Reg. 251/2005, s. 3.]

## HOW MEDIATION IS BEGUN

### Initiating mediation

- (5) Subject to subrule (7), any party to a proceeding may initiate mediation by
- (a) filing a Notice to Mediate for Claims Between \$10 000 and \$25 000 (Form 29), and
  - (b) delivering a copy of that filed notice to every other party named on a notice of claim, reply or third party notice that has been filed in the proceeding.
- [en. B.C. Reg. 251/2005, s. 3.]

### When Notice to Mediate for Claims Between \$10 000 and \$25 000 must be delivered

- (6) Unless the court orders otherwise, a Notice to Mediate for Claims Between \$10 000 and \$25 000 must not be filed and delivered under subrule (5) until a reply has been filed in the proceeding.
- [en. B.C. Reg. 251/2005, s. 3.]

See Small Claims Rules at:

[http://www.qp.gov.bc.ca/statreg/reg/C/CourtRules/CourtRules261\\_93/261\\_93.htm](http://www.qp.gov.bc.ca/statreg/reg/C/CourtRules/CourtRules261_93/261_93.htm)

**Not more than one mediation under this rule in any proceeding**

- (7) Unless the court otherwise orders, not more than one mediation may be initiated under this rule in relation to any proceeding.

[en. B.C. Reg. 251/2005, s. 3.]

**Rule does not apply unless mediation is initiated under subrules (5) and (6)**

- (8) Subrules (9) to (53) do not apply to a proceeding unless mediation is initiated in that proceeding under subrule (5).

[en. B.C. Reg. 251/2005, s. 3.]

## **APPOINTING THE MEDIATOR**

**Appointment of mediator**

- (9) The parties must jointly appoint a mutually acceptable mediator within 14 days after the Notice to Mediate for Claims Between \$10 000 and \$25 000 has been delivered to all parties.

[en. B.C. Reg. 251/2005, s. 3.]

**Application to roster organization**

- (10) If the parties do not jointly appoint a mutually acceptable mediator within the time required by subrule (9), any party may apply to the British Columbia Mediator Roster Society or a roster organization for an appointment of a mediator.

[en. B.C. Reg. 251/2005, s. 3.]

**Roster organization's appointment procedure**

- (11) If an application to the British Columbia Mediator Roster Society or a roster organization is made under subrule (10), the British Columbia Mediator Roster Society or roster organization must select a mediator after taking into account
- (a) the need for the mediator to be neutral and independent,
  - (b) the qualifications of the mediator,
  - (c) the mediator's fees,
  - (d) the mediator's availability,
  - (e) the nature of the dispute, and
  - (f) any other consideration likely to result in the selection of an impartial, competent and effective mediator.

[en. B.C. Reg. 251/2005, s. 3.]

**Notification of selection of mediator**

- (12) Promptly after selecting a mediator under subrule (11), the British Columbia Mediator Roster Society or the roster organization must notify the parties in writing of that selection.

[en. B.C. Reg. 251/2005, s. 3.]

See Small Claims Rules at:

[http://www.qp.gov.bc.ca/statreg/reg/C/CourtRules/CourtRules261\\_93/261\\_93.htm](http://www.qp.gov.bc.ca/statreg/reg/C/CourtRules/CourtRules261_93/261_93.htm)

#### **Deemed date of appointment of mediator**

- (13) The mediator selected under subrule (11) is deemed to be appointed by the parties on the date that notice of that selection is sent under subrule (12).

[en. B.C. Reg. 251/2005, s. 3.]

#### **Replacement of appointed mediator**

- (14) If the mediator selected by the British Columbia Mediator Roster Society or the roster organization under subrule (11) is unable or unwilling to act as mediator,

- (a) the selected mediator or any party may notify the British Columbia Mediator Roster Society or the roster organization of that inability or unwillingness, and
- (b) the British Columbia Mediator Roster Society or the roster organization must, within 7 days after receiving that notice, select a new mediator in accordance with subrule (11).

[en. B.C. Reg. 251/2005, s. 3.]

#### **Mediator's role**

- (15) The mediator may conduct the mediation session at the location and in any manner he or she considers appropriate to assist the parties to reach a resolution that is fair, timely and cost-effective.

[en. B.C. Reg. 251/2005, s. 3.]

## **MEDIATION SESSIONS**

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

- (16) A mediation session must occur within 60 days after the appointment of the mediator, and at least 7 days before the date set under Rule 7 for the settlement conference unless a later specified date

- (a) is agreed on by all parties and that agreement is confirmed by the mediator in writing, or
- (b) is ordered by the court.

[en. B.C. Reg. 251/2005, s. 3.]

#### **Attending the mediation session**

- (17) In the case of a claim that is not a motor vehicle action,
- (a) the party who delivers a Notice to Mediate for Claims Between \$10 000 and \$25 000 under subrule (5) and each of the following parties must attend the mediation session unless exempted from attending under subrule (29):
    - (i) the claimant;
    - (ii) the defendant;
    - (iii) the third party, and
  - (b) each insurer of a claimant, defendant or third party may attend the mediation session.

See Small Claims Rules at:

[http://www.qp.gov.bc.ca/statreg/reg/C/CourtRules/CourtRules261\\_93/261\\_93.htm](http://www.qp.gov.bc.ca/statreg/reg/C/CourtRules/CourtRules261_93/261_93.htm)

[en. B.C. Reg. 286/2005, s. 2 (b).]

#### **Attending the mediation session in a motor vehicle action**

(18) In the case of a motor vehicle action, the party who delivers a Notice to Mediate for Claims Between \$10 000 and \$25 000 under subrule (5) and each of the following parties must attend the mediation session unless exempted from attending under subrule (29):

- (a) the claimant;
- (b) the insurer of the defendant or, if the defendant is not insured, the defendant;
- (c) the insurer of the third party or, if the third party is not insured, the third party;
- (d) each third party insurer to the action.

[en. B.C. Reg. 251/2005, s. 3; am. B.C. Reg. 286/2005, s. 2 (c).]

#### **Requirements on parties who attend mediation**

(19) Each person who attends a mediation session must

- (a) have authority to settle, and
- (b) bring to the mediation session all documents and reports that are relevant to the dispute.

[en. B.C. Reg. 251/2005, s. 3.]

#### **Representative may attend for any party who is not an individual**

(20) A party may attend a mediation session by representative if the party is not an individual.

[en. B.C. Reg. 251/2005, s. 3.]

#### **Authority of representative**

(21) A representative who attends a mediation session under subrule (20) in the place of a party must

- (a) be familiar with all facts relevant to the dispute, 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 the party.

[en. B.C. Reg. 251/2005, s. 3.]

#### **Party or representative may be accompanied by a lawyer**

(22) A person or representative who attends a mediation session may be accompanied by a lawyer or articulated student.

[en. B.C. Reg. 251/2005, s. 3.]

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

(23) Any other person may attend a mediation session if that attendance is permitted by the mediator and consented to by the parties.

[en. B.C. Reg. 251/2005, s. 3.]

See Small Claims Rules at:

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### **Mediation by telephone**

- (24) One or more of the persons who are required or permitted to attend a mediation session under subrule (17), (18) or (23) may attend the mediation session by telephone if
- (a) all of the other persons attending the mediation session consent, or
  - (b) subject to subrule (26), the registrar authorizes that attendance under subrule (25).

[en. B.C. Reg. 251/2005, s. 3.]

### **Application for mediation by telephone**

- (25) The registrar may authorize one or more of the persons who are required or permitted to attend a mediation session under subrule (17), (18) or (23) to attend the mediation session by telephone if an application for that authorization is made to the registrar under Rule 16 (3) at least 7 days before the date set for the mediation session and if
- (a) the person does not reside or carry on business within a reasonable distance from the location where the mediation session is to be conducted, or
  - (b) exceptional circumstances exist.

[en. B.C. Reg. 251/2005, s. 3.]

### **Late application for mediation by telephone**

- (26) If an application for an authorization under subrule (25) is made to the registrar under Rule 16 (3) within 7 days before the date set for the mediation session, the registrar may make that authorization if
- (a) the person in relation to whom the authorization is given does not reside or carry on business within a reasonable distance from the location where the mediation session is to be conducted and it was not reasonably practicable for that person to bring an application under subrule (25) at least 7 days before the date set for the mediation session, or
  - (b) exceptional circumstances exist.

[en. B.C. Reg. 251/2005, s. 3.]

### **If application is granted**

- (27) If an application under subrule (25) or (26) is granted, the registrar
- (a) may order that the persons who are required or permitted to attend the mediation session under subrule (17), (18) or (23) send to the mediator, before the mediation session, all documents and reports that are relevant to the dispute, and
  - (b) may order that the telephone call be made at the expense of the person requesting mediation by telephone.

[en. B.C. Reg. 251/2005, s. 3.]

### **How to apply for exemption**

- (28) At least 14 days before the date set for the mediation session, a party may apply to a judge under Rule 16 (7) to exempt a claim from the application of this rule.

[en. B.C. Reg. 251/2005, s. 3.]

See Small Claims Rules at:

[http://www.qp.gov.bc.ca/statreg/reg/C/CourtRules/CourtRules261\\_93/261\\_93.htm](http://www.qp.gov.bc.ca/statreg/reg/C/CourtRules/CourtRules261_93/261_93.htm)

#### **When a judge may grant an exemption**

- (29) On an application under subrule (28), a judge may
- (a) exempt a claim from the application of this rule if
    - (i) all of the parties have previously engaged in a mediation of the matters in issue, or
    - (ii) it is unfair or impractical to require mediation, or
  - (b) exempt one or more of the parties from attending the mediation session if, in the judge's opinion, it is unfair or impractical to require the party to attend.
- [en. B.C. Reg. 251/2005, s. 3.]

#### **Adjourning a mediation session**

- (30) At least 7 days before the date set for the mediation session, a party may apply to the registrar to adjourn the mediation session and that party must give to the other parties whatever notice of the application the registrar may order.
- [en. B.C. Reg. 251/2005, s. 3.]

#### **Date may be changed to avoid hardship**

- (31) The registrar may adjourn a mediation session under subrule (30) if the party applying for that adjournment satisfies the registrar that the original date is unreasonably inconvenient to the party, and, without limiting this, the registrar may determine that a date is unreasonably inconvenient to a party if
- (a) a family emergency renders the party unable to attend on the day set for the mediation session, or
  - (b) the party is required to attend court on the day set for the mediation session.
- [en. B.C. Reg. 251/2005, s. 3.]

#### **Notice of change of date**

- (32) If the registrar adjourns a mediation session under subrule (31),
- (a) the party who applied for the adjournment must give to the other parties whatever notice of the adjournment the registrar may order, and
  - (b) the parties must jointly set a new date, satisfactory to the mediator, for the mediation session.
- [en. B.C. Reg. 251/2005, s. 3.]

## **COSTS OF MEDIATION**

#### **Fee declaration**

- (33) The parties who attend the mediation session must complete and sign a fee declaration (Form 30) before, or at the beginning of, the mediation session.
- [en. B.C. Reg. 251/2005, s. 3.]

#### **Corporation may sign by representative**

- (34) For the purposes of subrule (33), a party that is a corporation may sign the fee declaration by its representative.

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[en. B.C. Reg. 251/2005, s. 3.]

#### **Form of fee declaration**

- (35) A fee declaration under subrule (33) must
- (a) disclose the cost of the mediation services, and
  - (b) contain a declaration by the parties signing the fee declaration that the costs of the mediation will be paid
    - (i) equally by all of the following who attend the mediation session or their insurers:
      - (A) each claimant;
      - (B) each defendant;
      - (C) each third party, or
    - (ii) on any other basis that has been agreed to by those parties and is specified in the fee declaration.

[en. B.C. Reg. 251/2005, s. 3.]

#### **Costs may be paid on a different basis**

- (36) The cost of the mediation must be paid on the basis set out
- (a) in the fee declaration, or
  - (b) if the parties who signed the fee declaration agree to a different basis for sharing that cost and that basis is included in the mediation agreement referred to in subrule (48) (b), on the basis included in the mediation agreement.

[en. B.C. Reg. 251/2005, s. 3.]

## **DEFAULT**

#### **If a party does not attend**

- (37) If a party who is required to attend a mediation session does not attend the mediation session or does not sign a fee declaration before, or at the beginning of, the mediation session,
- (a) the mediator must
    - (i) complete a verification of default (Form 31) in accordance with the instructions on the form, and
    - (ii) give the completed form to the parties attending, and
  - (b) any one of the parties attending the mediation session may file the completed verification of default at the registry.

[en. B.C. Reg. 251/2005, s. 3; am. B.C. Reg. 286/2005, s. 2 (d).]

#### **What the registrar will do if a claimant does not attend**

- (38) If a verification of default is filed in relation to a claimant in a proceeding,



See Small Claims Rules at:

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- (a) the defendant in the proceeding may, by filing a request for judgment or for dismissal (Form 23) and paying the required fee, ask the registrar to make an order dismissing the claimant's claim, and
- (b) the registrar may make an order dismissing the claimant's claim.

[en. B.C. Reg. 251/2005, s. 3.]

**If a defendant or insurer does not attend**

(39) A verification of default may be filed in relation to a defendant, including, without limitation, a defendant to a counterclaim and a defendant to a third party notice, in the following circumstances:

- (a) in the case of a motor vehicle action in relation to which the defendant is insured, a verification of default may be filed in relation to the defendant if the insurer of the defendant did not
  - (i) attend the mediation session, or
  - (ii) sign the fee declaration before, or at the beginning of, the mediation session;
- (b) in the case of a motor vehicle action in relation to which the defendant is not insured, a verification of default may be filed in relation to the defendant if the defendant did not
  - (i) attend the mediation session, or
  - (ii) sign the fee declaration before, or at the beginning of, the mediation session;
- (c) in the case of a motor vehicle action in relation to which there is a third party insurer, a verification of default may be filed in relation to the defendant if the third party insurer did not
  - (i) attend the mediation session, or
  - (ii) sign the fee declaration before, or at the beginning of, the mediation session;
- (d) in any other case, a verification of default may be filed in relation to the defendant if the defendant did not
  - (i) attend the mediation session, or
  - (ii) sign the fee declaration before, or at the beginning of, the mediation session.

[en. B.C. Reg. 286/2005, s. 2 (e).]

**Application for default order**

(40) The following apply if a verification of default is filed under subrule (39):

- (a) if the verification of default is filed in relation to a defendant who is named as a defendant on the notice of claim,
  - (i) the claimant may, by filing a request for judgment or for dismissal and paying the required fee, ask the registrar to proceed under these rules as if the defendant had not filed a reply and the claimant had completed the steps in Rule 6 (3), and

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- (ii) the registrar must either make a default order under Rule 6 (4) or set a date under Rule 6 (5) for a hearing before a judge;
- (b) if the verification of default is filed in relation to a defendant to a counter-claim or a defendant to a third party notice, the party bringing the counter-claim or third party notice may apply under Rule 16 (7) for a default order under Rule 16 (6) (c).

[en. B.C. Reg. 286/2005, s. 2 (e).]

#### **If no party attends**

- (41) If no party attends a mediation session,
  - (a) the mediator must complete a verification of default in accordance with the instructions on the form, and file the completed form at the registry, and
  - (b) the registrar must make an order dismissing each disputed claim.

[en. B.C. Reg. 251/2005, s. 3; am. B.C. Reg. 286/2005, s. 2 (f).]

#### **Cancellation of a dismissal or default order**

- (42) A party against whom an order is made under subrule (38) (b), (39) (b) or (41) (b) for not attending a mediation session or for not signing a fee declaration before, or at the beginning of, the mediation session may apply under Rule 16 (7) to a judge to cancel the order, and the judge may cancel the order under Rule 16 (6) (j).

[en. B.C. Reg. 251/2005, s. 3.]

#### **What application must contain**

- (43) A party seeking an order under subrule (42) must attach to the application an affidavit containing the following:
  - (a) the reason for not attending the mediation session or for failing to sign the fee declaration;
  - (b) the reason for any delay, if there has been delay in filing the application;
  - (c) the facts that support the claim or defence.

[en. B.C. Reg. 251/2005, s. 3.]

#### **If a judge cancels a dismissal or default order**

- (44) A judge who cancels a dismissal order or default order made under this rule may also do one or more of the following:
  - (a) order that the disputed claims proceed to mediation on any terms the judge considers appropriate;
  - (b) order the payment of any expenses incurred by the party or parties who did attend;
  - (c) order that a settlement conference or trial be held;
  - (d) make any other order that the judge considers appropriate in the circumstances.

[en. B.C. Reg. 251/2005, s. 3.]

### **CONFIDENTIALITY OF MEDIATION INFORMATION**

See Small Claims Rules at:

[http://www.qp.gov.bc.ca/statreg/reg/C/CourtRules/CourtRules261\\_93/261\\_93.htm](http://www.qp.gov.bc.ca/statreg/reg/C/CourtRules/CourtRules261_93/261_93.htm)

**Disclosure and compellability**

- (45) Subject to subrules (46) and (47), a person must not disclose, or be compelled to disclose, in any proceeding oral or written information acquired in or in connection with a mediation session.

[en. B.C. Reg. 251/2005, s. 3.]

**Exceptions**

- (46) Subrule (45) does not apply

- (a) in respect of any information, opinion, document, offer or admission that all of the parties agree in writing may be disclosed,
- (b) to any mediation agreement or fee declaration made during or in connection with a mediation session,
- (c) to any threats of bodily harm made during or in connection with a mediation session, or
- (d) to any information that does not identify the parties and that is disclosed for research or statistical purposes only.

[en. B.C. Reg. 251/2005, s. 3.]

**No restriction on otherwise producible information**

- (47) Nothing in this rule precludes a party from introducing into evidence in any proceeding any information or records produced in the course of the mediation that are otherwise producible or compellable in those proceedings.

[en. B.C. Reg. 251/2005, s. 3.]

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## CONCLUDING MEDIATION

### If the parties reach agreement on all or some issues

- (48) If the parties reach an agreement at mediation on all or some issues,
- (a) the mediator must complete a result of mediation form (Form 24) and file the completed form at the registry, and
  - (b) the parties must complete and sign a mediation agreement (Form 25) and any one of those parties may file the agreement at the registry.
- [en. B.C. Reg. 251/2005, s. 3.]

### If payment terms are not complied with

- (49) If a party fails to comply with a provision of a filed mediation agreement, the party not in default may, if that provision required a payment of money,
- (a) file an affidavit of non-compliance at the registry, and
  - (b) after that, file a payment order at the registry for
    - (i) the amount specified in the mediation agreement less any amount already paid in compliance with the mediation agreement, or
    - (ii) if no amount was specified in the mediation agreement, for the amount of the claim less any amount already paid in compliance with the mediation agreement.
- [en. B.C. Reg. 251/2005, s. 3.]

### If other terms are not complied with

- (50) If a party fails to comply with a provision of a filed mediation agreement and that provision was not one requiring a payment of money, the party not in default may
- (a) if the mediation agreement establishes an amount of liquidated damages that is to be payable in the event of such a default, file at the registry an affidavit of non-compliance and a payment order for that amount, or
  - (b) if the mediation agreement does not establish a liquidated damages amount in relation to the breached provision, seek a mediation compensation order (Form 26) under Rule 16 (6) (f.2).
- [en. B.C. Reg. 251/2005, s. 3.]

### Mediation compensation order

- (51) A judge may make a mediation compensation order under subrule (50) (b) if a party applies for that order (see Rule 16 (7)) and attaches to the application an affidavit of non-compliance.
- [en. B.C. Reg. 251/2005, s. 3.]

### If a dispute is not resolved

- (52) If the parties do not reach agreement at mediation on all the issues,
- (a) the mediator must complete a result of mediation form and file the completed form at the registry, and

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- (b) after that, the registrar must set
  - (i) a settlement conference, if a settlement conference has not been completed, or
  - (ii) a trial, if a settlement conference has been completed.

[en. B.C. Reg. 251/2005, s. 3.]

**Concluding a mediation**

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

[en. B.C. Reg. 251/2005, s. 3.]