



A Walk through Yukon's Small Claims Court

#4 Mediation and Pre-Trial Conferences



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Mediation and Pre-Trial Conferences



MEDIATION

What should I do if the defendant disagrees with my claim?

If you and the defendant are willing to get help from a third party to sort out the claim, you can take your claim to a mediator appointed by the court. If either party does not agree to mediation, or if mediation does not work, you can take the next step in the trial process, which is to have the clerk set up a pre-trial conference. (For information on pre-trial conferences, see the second part of this booklet.)

What is mediation?

Mediation is a process which allows the two parties to sit down with a neutral third party. Its goal is to reach a solution which both parties can accept without going through the stress and expense of a court trial. The person who mediates a dispute is trained in mediation and is paid by the court.

Why should I use mediation?

Mediation has a number of advantages over the trial process. You should consider these facts when you are looking at mediation:

- 1) Mediation sessions set up by the clerk are free. If you choose to take your claim to court, there is a cost of \$50 to schedule a trial.
- 2) Mediation takes up less time than going to court. A mediation session usually lasts one hour. If you go to court, you will have to attend a pre-trial conference with a Justice of the Peace before a date can be set for a court hearing. A mediation session can be set up as soon as both parties agree to mediation and sign a Notice of Election for Mediation (Form #13), and the parties and the mediator are available to meet. A trial may have to be delayed for one to two months until there is room in the court schedule to hear the case.

You can expect to spend at least three hours each time you appear in court. You will often have to wait until your case is heard, and the actual hearing can be lengthy. You may also have to appear in court more than once. If you have to take time off

work to attend court, it could also cost you money in lost wages.

- 3) Mediation sessions can be set up at a time that is convenient for both parties. Court appearances are set up for the court's convenience, not for yours.
- 4) Mediation can result in a solution which both parties are more likely to honour because they have taken part in finding that solution. This can mean that the parties may still be able to be on fairly good terms after the matter is settled.
- 5) Mediation is an informal process which can be less stressful than the court process. Mediation is not public and you will not have to go through the experience of cross-examining or being cross-examined.

How can a mediation session be arranged?

Both parties must fill out a Notice of Election for Mediation (Form #13). Usually the plaintiff picks up the form from the clerk, but it does not matter which party picks up the form, as long as everyone involved in the claim signs it and it is filed with the clerk. Keep a copy of the form after you have signed it. There is no charge for filing this form. The clerk will then appoint a mediator, and contact both parties by regular mail to advise them of the date, time and place for the mediation session.

What happens in a mediation session?

The mediator meets with both parties at the same time and tries to find a reasonable solution to the problem. You are not allowed to bring a lawyer or other person to represent you to the meeting, but you should bring all the documents you have to support your case. The mediator will ask you to tell your story without interruption from the other party. When both parties have told their story, they may comment on the other party's information. The mediator may ask questions to make sure they understand the issue. The mediator summarizes both points of view and works towards finding an agreement which is acceptable to both parties.



What happens if we reach an agreement?

If mediation results in an agreement, the agreement is written down by the mediator and signed by both parties. The mediator files the agreement, called a "consent order," in court. This order has the same legal effect as a judge's order after a trial. The plaintiff can then use any means allowed by the court to collect on the debt if the defendant does not pay.

If the agreement is not filed in court, it cannot be enforced as an order of the court.

What happens if one party doesn't show up for mediation, or if mediation doesn't work?

If the defendant doesn't show up, or if mediation doesn't work, the plaintiff can ask the clerk to set a date for a pre-trial conference. If the plaintiff doesn't show up for mediation, there is usually no further action on the file until the plaintiff contacts the clerk.

For information on pre-trial conferences, see the second part of this booklet.

PRE-TRIAL CONFERENCES

What is a pre-trial conference?

The issues involved in the claim and the evidence the parties will provide to the court to support their cases are set out at a pre-trial conference. The conference should also give each side a good understanding of the other's point of view. By establishing the issues and the evidence involved in the trial before the case goes to court, the cost of the trial and the time required to hear the case is reduced. In some cases, the parties are able to settle the claim in a pre-trial conference.

When is a pre-trial conference held?

A pre-trial conference can be held when there appears to be no hope of resolving the claim other than by going to court. A trial date is not set until a pre-trial conference has been held, unless there are unusual circumstances or unless you live in a community where pre-trial conferences are not held. You can ask the clerk to set up a pre-trial conference if pre-trial conferences are available in your community and if any of the following situations apply to you:

- if there are no mediation services in your community;
- if the parties do not agree to attend a mediation session;
- if the defendant does not show up for a mediation session;
- if the parties do not reach an agreement after going through mediation.

What happens at a pre-trial conference?

A Justice of the Peace (J.P.) will ask both parties to give the full details of the dispute from their point of view. If you have hired a lawyer to deal with the claim, your lawyer can attend the conference. The J.P. will try to find out if the parties agree on any points of the case so that the case can either be settled at the conference or so that there will be fewer issues to sort out at the trial.

How should I prepare for the pre-trial conference if I am the plaintiff?

You should be prepared to prove two parts to your case. First you must prove the defendant's liability; that is, that the defendant did something wrong to you. Secondly, you must prove the amount that you are claiming. If you are claiming that the defendant wrote you an NSF cheque, or failed to repay a loan, you should produce the NSF cheque, and/or proof that to date the defendant has not paid you. If you are claiming that the defendant caused damage to your belongings, you should provide an estimate for repairs or a repair bill, or a bill for the cost of a similar item or items you had to buy to replace the damaged property.

You must be well-prepared and bring all your documents relating to the case. The J.P. will ask questions about your case and the evidence you will use to support your case. Evidence includes such things as bills or receipts, and the oral statements that you and your witnesses will make in court. The J.P. can help by pointing out what kind of evidence you will need to do a good job of presenting your case in court.



To help you organize your case, you may want to prepare a worksheet which states the facts you want to prove on one side of the page, and the evidence you will present to support those facts. If you want more information about what is considered evidence, refer to Booklet #5, Getting Ready for Court.

How should I prepare for the pre-trial conference if I am the defendant?

Look over both the claim form which was served on you and your reply to the claim. If you disagree with the plaintiff's version of what happened, be prepared to explain why. Also be prepared to tell the J.P. if you agree with any parts of the claim. (You may find it useful to prepare a worksheet similar to the one described above for the plaintiff.)

If you disagree with the amount the claimant says you owe, you must show the J.P. the amount you think is correct and how you arrived at that amount. If you agree with the amount but you can't pay it all at once, you should bring evidence of your financial situation such as recent pay stubs or last year's income tax return. Tell the J.P. what kind of payment terms you can manage.

You should also think about a few other points. For example, has the plaintiff named the correct defendant? If the plaintiff had a contract with your corporation, and you own the corporation and did the work, the claim must be filed against the business and not against you personally. Even if the plaintiff has suffered the damage described in the claim, has it been proven that it was your fault? Is the amount claimed by the plaintiff reasonable, or was the damaged property old and worn before it was damaged, and not worth as much as a similar item in brand new condition?

Can claims that go to pre-trial conferences still be referred to mediation?

In some cases, the J.P. may suggest to the parties that the matter should be referred to mediation instead of going directly to court. If the parties agree, a mediation session can begin immediately if the J.P. is a qualified mediator or if a mediator is available. Otherwise, mediation may be scheduled for a later date.

What happens if we reach an agreement at the pre-trial conference?

If the conference results in an agreement, the J.P. will fill out a "consent order" for both parties to sign. Once it is signed, the J.P. will file it in court. This order has the same legal effect as if a judge made the order as a result of a trial. (The plaintiff can then use any means allowed by the court to collect on the debt if the defendant does not pay.)

What happens if we can't agree?

If the conference ends without resolving the problem, a trial date will be set before the parties leave the conference. The J.P. will ask the parties to choose a date from among a number of dates that the court has set aside to hear small claims matters. The plaintiff must then go to the Court Registry to complete a Notice of Trial (Form #17) and to pay a \$50 fee to set a trial for the date the parties have chosen. *If the trial fee is not paid, the trial date will be assigned to someone else and the case will not be heard.*

The clerk will stamp the completed Notice of Trial and return copies of it to the plaintiff to serve on the other parties involved in the claim. Service can be in person, by regular (first class) mail, or by fax.

No matter how the conference turns out, notes made by the J.P. will stay on the court file. This pre-trial package summarizes the issues for the judge if there is a trial.



What happens if one of the parties doesn't show up at the pre-trial conference?

If the defendant doesn't show up, the plaintiff can complete a Default Judgment form and have the clerk sign it. If the amount of the claim is clear (e.g. the amount of an NSF cheque or unpaid bill), the judgment will be on Form #9 and will be for a "liquidated" amount. If the amount is unknown (in cases of personal injury or property damage), the judgment will be on Form #10. The clerk will fill in the section of this form which sets out the date of a court hearing to decide on the amount of the claim. The defendant does not have to be told of the date of this hearing. (For further information on default judgments, see Booklet #6, Judgments and How to Collect a Small Claim.)

If the plaintiff doesn't come to the pre-trial conference, no further action is taken on the file until the plaintiff contacts the clerk.

If a third party files a reply after the pre-trial conference, another pre-trial conference must be held unless a judge orders otherwise.

Need more information about Small Claims Court? Call:

Whitehorse: 667-5441

Dawson City: 993-5070

Watson Lake: 536-7551

Or toll-free from within the Yukon 1-800-661-0408, local 5441

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