

ALBERTA REGULATION 271/97
Provincial Court Act
MEDIATION RULES OF THE
PROVINCIAL COURT- CIVIL DIVISION

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Definitions

- 1** In these Rules,
- (a) "Court" means the Civil Division of the Provincial Court;
 - (b) "mediated agreement" means any written agreement reflecting a consensus reached among the parties under these Rules as a result of a mediation session;
 - (c) "mediation co-ordinator" means a supervisor of the Court's mediation program in the office of the Clerk of the Court who holds the position of mediation co-ordinator;

- (d) “mediation session” means a negotiation session arranged by or under the auspices of the Court at which a mediator assists the parties to identify the issues and the parties’ interests, structures their discussions, facilitates communication among them and provides them with the opportunity to resolve their case in a mutually agreeable way with a view to settling the action and thereby obviating the need for a trial;
- (e) “mediator” means a person appointed by the Court or by a mediation co-ordinator as a result of the application of these Rules.

Referral to mediation

2(1) At any time after a dispute note is filed, the Court or a mediation co-ordinator may refer the action for mediation, on giving notice to the parties or, where they are represented, to their counsel.

(2) On the request of any party, the Court or a mediation co-ordinator may refer the action for a mediation session.

Counsel’s duty to notify client and to confirm

3 On receipt of a notice pursuant to Rule 2, counsel for a party shall immediately provide a copy to that party and confirm to a mediation co-ordinator in writing that this has been done.

Scheduling of mediation

4(1) Where only one defendant is named in the action, a mediation session may be scheduled after a dispute note is filed.

(2) Where 2 or more defendants are named, a mediation session may be scheduled after

- (a) a dispute note has been filed by one or more defendants, and
- (b) a period of 20 days has passed since the filing of the civil claim.

Attendance and representation

5(1) All the parties receiving notice under Rule 2(1) shall attend at a mediation session.

(2) If a party is incorporated, the corporation must be represented by an individual who has knowledge of the facts and authority to resolve the action

on the corporation's behalf.

(3) Counsel or an agent may attend with a party at a mediation session.

(4) Other persons may attend with the consent of all the parties and the mediation co-ordinator or the mediator.

Confidentiality

6(1) Whatever is said at a mediation session is confidential if the parties have agreed that it is to be kept confidential.

(2) Subrule (1) does not apply

- (a) to anything contained in a mediated agreement, or
- (b) to evidence that is admitted under Rule 8(6)(b).

Impartiality

7 A mediator must be impartial and shall act impartially.

Inadmissibility in other Court proceedings

8(1) Anything said at a mediation session is inadmissible in any proceeding before the Court.

(2) Any document or electronic record prepared or generated for the purposes of a mediation session is privileged in the hands of the person to whom it belongs.

(3) Neither the mediator nor any other person present at the mediation session may be subpoenaed or otherwise required to testify or to produce records or notes relating to the mediation in any proceeding before the Court.

(4) A mediation session may not be taped, nor transcripts of it kept.

(5) Any record of what took place at a mediation session is not admissible before the Court, unless the parties agree in writing.

(6) This Rule does not

- (a) apply to a mediated agreement, or
- (b) prevent the admission of factual evidence relating to the cause of

action that would be admissible apart from subrule (1) or (2).

Requirement as to good faith

9 All parties to a mediation session and, if applicable, their representatives must negotiate in good faith.

Mediator's immunity from suit

10(1) No proceedings lie against a mediator or Her Majesty the Queen in right of Alberta for anything done or not done while discharging or purporting to discharge responsibilities under these Rules.

(2) A mediator has the same immunity from civil suit as has a judge of the Court.

Exemption from mediation requirement

11 Notwithstanding anything in these Rules, any party may apply to the Court, on at least 2 days' notice being given to all the other parties, for an order exempting the parties from the application of these Rules, and the Court may, if it considers that there is good and sufficient reason to do so, make an order to that effect setting out that reason.

Need for notice of completion to fix trial date

12 In order to arrange the fixing of a trial date, the parties must obtain, and there must be produced to the Clerk of the Court, a notice of completion of mediation.

Failure to resolve, or termination

13 Where the parties have completed a mediation session or any party or the mediator has terminated the mediation session for a reason which, in the mediator's opinion, is valid, the parties are to receive a notice of completion of mediation.

Court's power in case of non-attendance

14(1) Where a party did not attend a scheduled mediation session or attended without the attendance of any person required by Rule 5, a mediation co-ordinator shall complete a certificate of non-attendance at mediation.

(2) Following the completion of the certificate and on application by any party on at least 2 days' notice to all the other parties, the Court may make any one or more of the following orders:

- (a) an order that further mediation occur, on any terms that the Court considers appropriate;
- (b) an order that the pleadings of the non-complying party be struck out, unless that party satisfies the Court there was a reasonable excuse for the non-attendance and that striking out the party's pleadings would be inequitable;
- (c) an order that the action proceed to trial;
- (d) such order as to costs as is appropriate in the circumstances;
- (e) such other order as is appropriate in the circumstances.

Time limit for mediation

15 A mediation session must occur within 3 months after the filing of the last dispute note filed in the action, unless the Court extends that period, which extension may be made before or after the end of that 3-month period.

Costs for further scheduling

16 If a mediation does not proceed because of the non-attendance of one or more of the parties or of a representative of a party, the Court may, on application to it or at trial, order each non-attending party to pay costs of \$50 to the other parties, with the \$50 costs being prorated among all the other parties if more than one.

Notice of completion of mediation

17 If a party seeks to have a trial date fixed, the party must, with the request, file with the Clerk of the Court a notice of completion of mediation and, if the party considers that a mediated agreement has been breached, a written statement to that effect.

Closure where agreement performed

18 If a mediated agreement has been fully performed, the parties shall ensure that

- (a) a notice of withdrawal of the action is or has been filed, or
- (b) consent judgment is or has been given.

Forms

19 All notices, certificates and other documents referred to in or used for the purposes of these Rules are to be in the form required by the Court.

Application

20 These Rules apply in respect of a judicial district or a particular court facility only if the chief judge of the Court has designated that district or facility for the purposes of these Rules.