

Mediation for Claims Between \$10,000 and \$25,000

Small Claims Court Guide #8

Small Claims Rule 7.3

On Sept. 1, 2005, the monetary jurisdiction of the Provincial (small claims) Court was increased from \$10,000 to \$25,000. This guide describes a process which parties may use to require mediation of claims between \$10,000 and \$25,000. It is an optional process. However, when it is used, this process allows one party to compel the other parties to attend a mediation session to attempt to settle the case.

The process is started with a document called a notice to mediate for claims between \$10,000 and \$25,000. The parties to the claim choose a mediator and share the cost of the mediation. If an agreement to settle the case is reached, the agreement can be filed with the court.

There is also a procedure for mediating claims under \$10,000. For information on the Court Mediation Program that is available in certain registries, refer to guide [#7 Court Mediation Program for Claims Up to \\$10,000](#). Information about how to obtain a copy of that guide is included at the end of this document.

Note: From time to time, the Ministry of Justice and the Provincial Court run pilot projects to explore ways to improve small claims court. If the registry where your case is filed is running a pilot project, it might not follow the process in this guide. You can find more information on pilot project processes from your court registry or online at the Ministry of Justice website (www.gov.bc.ca/justice/) under “Court Services”.

1. What is mediation?

Mediation is a collaborative process in which two or more people meet with a mediator and attempt to resolve their dispute. Although mediation is an informal process, the mediator structures the discussion to help the parties reach an agreement.

Like judges, mediators are neutral and unbiased. Unlike judges, however, mediators do not have the power to decide the case. The purpose of mediation is not to determine who wins and who loses, but to find a solution that meet the needs of those involved in the dispute. The mediator’s job is to help the parties and a solution that satisfies everyone. The case settles only if all parties to the dispute agree to the settlement.

2. What can mediation do for me?

Mediation can help resolve the dispute that brought you to small claims court. The best resolution to any dispute is usually one worked out by the people involved. Mediation can be especially useful if you have a continuing relationship with the other person involved in the dispute, such as a neighbour or a business associate.

You can usually resolve your dispute more quickly and conveniently through mediation than by going to trial and having a judge decide your case.

Many people get personal satisfaction from using the mediation process. They prefer to take an active part in solving their own dispute, rather than waiting for a judge to impose a decision.

3. How does my case get to mediation?

The other party will be required to attend a mediation session if you follow this procedure:

STEP 1

Complete the notice to mediate for claims between \$10,000 and \$25,000 (SCR form #29), making sure that

the parties' names are the same as they appear on the notice of claim. You can find the form on the Ministry of Justice website at www.gov.bc.ca/justice/ "Court Services".

STEP 2

File the notice to mediate for claims between \$10,000 and \$25,000 at the court registry where the notice of claim was filed. The notice to mediate cannot be filed until at least one reply has been filed in the case.

STEP 3

Deliver a copy of the notice to mediate to every other party in the case. The notice may be mailed, faxed or left with a person or at the person's residence or place of business. Once the notice to mediate is filed, the court registry will not schedule a settlement conference until the registry is notified of the outcome of the mediation.

4. How do I find a mediator?

There is no professional licensing body in B.C. that determines who may be a mediator. However, there are a number of dispute resolution organizations that set standards of practice for mediators. You can look under "mediators" in the yellow pages of your local telephone directory for mediators who practice in your area.

The qualifications and styles of mediators vary, as do the fees they charge. You should contact a number of mediators to discuss their training and experience, their mediation styles, their fees, and other mediation-related charges (e.g., room rental for the mediation session).

5. How is the mediator appointed?

The parties must select a mediator within 14 days after the notice to mediate for claims between \$10,000 and \$25,000 has been delivered to all parties. You should discuss the names of possible mediators with the other parties.

If you and the other parties cannot agree on a mediator within the 14-day period, you or any other party may apply to Mediate BC, formerly known as BC Mediator Roster Society (or another roster organization as defined in Rule 7.3 of the Small Claims Rules), for appointment of a mediator. In this case, the society or other roster organization will appoint the mediator.

The organization that appoints the mediator will notify all parties in writing who has been appointed.

You can contact Mediate BC at:

Telephone (Vancouver): 604 684-1300

Toll Free (elsewhere in B.C.): 1-877-656-1300

Fax: 604 684-1306

Email: info@mediatebc.com

You can visit the Society's website at:

www.mediatebc.com

Or you can write to the Society at:

Mediate BC Society

Attention: Mediator Roster Program

Suite 177 – 800 Hornby St.

Vancouver, B.C. V6Z 2C5

6. Where will the mediation session be held?

The mediation session can be held at any location that the mediator considers appropriate. If you or another party are represented by a lawyer or articled student, it may be possible to hold the mediation session at their office. If it is necessary to rent space for the mediation session, that rental cost will be included in the cost of the mediation.

7. When will the mediation session be held, and how long will it last?

The mediation session must be held within 60 days after the appointment of the mediator and at least seven days before the date set for the settlement conference. A later date can be chosen if all the parties agree and the mediator confirms that agreement in writing. Or, the court may order a later date.

The mediation session will usually last two hours. If all parties agree, the mediation session can finish earlier or continue beyond two hours.

8. Who attends the mediation session?

The parties involved in the case attend the mediation session. The parties are the claimants, defendants, and third parties. Generally, witnesses do not attend. If a claimant, defendant, or third party is an individual, they must attend the mediation session in person. An individual cannot send a representative in their place.

If a claimant, defendant, or third party is an organization, a representative who knows the facts of the case and who can make binding decisions for the organization must attend the mediation session.

If a lawyer or articling student represents you, they may attend the mediation session with you.

You may be permitted to participate by telephone if you are unable to attend the mediation session in person, provided the other parties agree or the registrar authorizes it.

9. What happens at the mediation session?

You, the other parties, and the mediator sit around a table in the mediation room. All parties must complete and sign a fee declaration (SCR form #30) prior to or at the beginning of the mediation session. You can find the form on the Ministry of Justice website at www.gov.bc.ca under “Court Services”. The fee declaration sets out how the mediation costs will be paid. Mediation costs are shared equally, unless all parties agree upon some other payment arrangement.

The mediator will have you review and sign an agreement to mediate form. This form explains the mediation process. The mediator can answer other questions that you may have. Together you decide what issues need to be resolved. Each party has a chance to tell their story and to explain what is important to them.

You are encouraged to ask questions at any time during the mediation session to be sure that you understand what is being said.

Mediators sometimes meet separately with the parties. The mediator will explain this process at the beginning of the mediation session.

The mediator will help you and the other parties consider possible solutions. You are not required to reach a final agreement at mediation. But, if you do find a way to resolve your case, you can enter into a written agreement that can be filed with the court.

10. What should I bring to the mediation?

You should bring copies of all relevant documents to the mediation session – including the notice of claim, reply, third party notice, written contracts, invoices, reports, estimates or photographs. Having these documents available will support your claim and help the other party understand your concerns.

11. How do I prepare for mediation?

Besides getting your documents ready, there are some questions you can ask yourself to help you prepare for mediation. For your own use you may want to try writing down the answers to these questions:

- What is the best result I can hope for?
- What is the worst result that could happen?
- What is really important to me in this dispute?
- What are the other party’s main concerns?
- How can I answer those concerns?

12. What if one of the parties does not attend?

If the claimant does not attend the mediation session, the case may be dismissed. If the defendant does not attend the mediation session, the claimant can ask for a default judgment.

To obtain a dismissal or default judgment, a verification of default form (SCR form #31) must be completed by the mediator and given to the parties attending. Any party may file the verification of default at the registry. If neither party attends the mediation session, the registrar will make an order dismissing each disputed claim.

13. What happens if we reach an agreement through mediation?

If you reach agreement on some or all of the issues in dispute, the mediator will file a result of mediation form (SCR form #24) at the registry. You will also prepare and sign a mediation agreement, which may be filed at the registry and enforced through the court.

14. What happens if only some issues are settled?

If there is no resolution or only some issues are resolved in the mediation session, you will receive a notice to attend a settlement conference, where a judge will help you prepare your case for trial.

15. Will the judge be told what happened at the mediation?

No. The judge is told only what issues were settled at the mediation session, but nothing about what happened or what was said.

16. If the dispute is not settled, doesn't mediation just add more time to my court case?

Even if mediation does not resolve your case, it's unlikely that it will be a wasted effort. If you do have a trial, it may be shorter and easier than if you hadn't tried mediation first. Your settlement conference to prepare for trial will be shorter. See small claims court guide # 5 *Getting Ready for Court*.

17. How can I get more information about small claims court?

This is one in a series of guides available. The guides can be found online at www.ag.gov.bc.ca/courts/small_claims/index.htm. The other titles in the series are:

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| 1. What is Small Claims Court | 5. Getting Ready for Court |
| 2. Making a Claim | 6. Getting Results |
| 3. Replying to a Claim | 7. Court Mediation for Small Claims Up to \$10,000 |
| 4. Serving Documents | 8. Mediation for Claims between \$10,000 and \$25,000 |

The people behind the counter at any small claims registry are helpful. They cannot give legal advice and they cannot fill out your forms for you, but they will gladly answer many of your questions about small claims court procedures.

To contact a court registry, consult your telephone directory under "Court Services" in the provincial government blue pages or look for the information online at www.gov.bc.ca/justice

This guide provides an overview of the significant provisions of the *Small Claims Act* and the Small Claims Rules. It is not intended as a substitute for the act or the rules, which should be examined for specific information. You can find links to the *Small Claims Act* and rules at www.ag.gov.bc.ca/courts/small_claims/index.htm.

This information is not intended to be legal advice. If you have any legal questions, you should see a lawyer.

You may also wish to consult Clicklaw at www.clicklaw.bc.ca for additional legal information.