

*An **Evaluation** of the*

**NOTICE TO MEDIATE
REGULATION**

under the

Insurance (Motor Vehicle) Act

prepared for the

**Ministry of Attorney General
Dispute Resolution Office**

by

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Executive Summary

Background

The Notice to Mediate (NTM) Regulation has been in effect in British Columbia since April 14, 1998. To evaluate the regulation's effectiveness to date, the Dispute Resolution Office (DRO) of the Ministry of Attorney General contracted with Focus Consultants to undertake a survey of the views of solicitors who had sent and/or received NTMs up to February 8, 1999.

Methodology

The survey was conducted in March and April of 1999. Respondents were asked to complete a brief questionnaire either by facsimile or a telephone interview. An attempt was made to contact all solicitors who could be identified as having sent and/or received an NTM between April 14, 1998 and February 8, 1999 (N=224). Of these, 60% (134/224) completed the survey questionnaire. In terms of case coverage, a questionnaire was completed either by a sender¹ and/or recipient, for 45% of total cases (109/244).

Findings

The findings of this study are as follows:

- The two main objectives of senders of a NTM are to speed up the negotiation/settlement process and get both parties talking.
- 72% (71/98) of senders rated their achievement of these objectives at "4" or "5" on a 5 point scale. Their mean response was 4.1.
- There is room for more voluntary mediation of motor vehicle action cases. Sixty-six percent of recipients of NTMs (27/41) said they would likely have considered an offer to mediate voluntarily if they had not received the NTM. In these cases, the NTM appears to act as a catalyst for mediation.
- The mean length of time before trial that the NTM was sent is 7.3 months. Assuming that mediations are in fact held within 60 days of the appointment of a mediator, as required under the Regulation, the average mean time by which the NTM is helping to advance resolution would be approximately 5 months.

¹ In this study the term "sender" refers to the solicitor for one party in a motor vehicle action who sends the NTM to the other party or parties in the action. The "recipient" is the solicitor who receives the NTM for the other party. They are jointly referred to as "respondents."

- In the vast majority of cases the selection of a mediator has not been problematic.
- There is a high rate of satisfaction with the way the mediator conducted the mediation. Eighty-two percent of respondents (108/133) rated their satisfaction at a “4” or “5” on a 5 point scale. Their mean response was 4.1.
- In 71% (108/152) of the mediated cases, all issues were resolved, and in 75% (114/152) all or some issues were resolved.²
- In cases where there was not complete resolution of issues, 64% of respondents (25/39) still felt there were positive outcomes. Six respondents said the matter was settled soon after the mediation took place.
- The mean respondent rating of the NTM as a process to encourage earlier resolution of motor vehicle cases without litigation is 3.5 on a 5-point scale (1=very negative; 5=very positive). Senders rated the NTM significantly higher (3.7) than recipients (2.9).
- The two main areas of change to the NTM Regulation suggested by respondents were not to do with the fundamental utility of the NTM, but rather with changing time requirements (permitting mediation closer to the trial date), and putting more “teeth” into the Regulation to ensure that mediation is entered into in good faith.
- Eighty-eight percent of respondents (94/107) felt the NTM process could usefully be expanded to include other types of civil (non-family) matters. The response was significantly more positive among senders of the NTM (98%;60/61) than recipients (67%;22/23). Even though there was a higher proportion of senders than recipients in the sample, the overall rate of support in a more balanced sample would still likely exceed 80%.
- The NTM Regulation also has spin-off effects in terms of encouraging mediations without the formal issuing of an NTM. Twenty-eight percent of respondents (33/116) said they had told an opposing party that they would issue an NTM if the other party would not agree to a voluntary mediation. Of these respondents, 66% (19/29) said this tactic had either sometimes or always resulted in a mediation, without delivering a NTM.

² Information from the ADR Department of ICBC indicates that in approximately 10% of cases where an NTM is served, the action is settled prior to mediation. These cases would not appear in the NTM outcome data in this report.

1.0 Background and Methodology

On April 14, 1998, the Notice to Mediate Regulation was introduced in British Columbia. It allows any party to a motor vehicle action to initiate mediation in that action by delivery of a Notice to Mediate in a specified form, to every other party to the action (and to the Dispute Resolution Office of the Ministry of Attorney General). At the time the data for this study were collected, the Regulation applied to any motor vehicle action commenced in the province after January 1, 1998, and any one brought out of the Duncan, Kelowna, Nanaimo, New Westminster, Vancouver or Victoria Supreme Court registries after January 1, 1996.³

The Notice to Mediate (NTM) can be delivered no earlier than 60 days after close of pleadings and no later than 77 days before the date set for commencement of the trial. Within 10 days after the NTM has been delivered, the participants must appoint a mutually acceptable mediator. A mediation is considered concluded when:

- a) all issues are resolved, or
- b) the mediator determines that the process will not be productive and so advises the participants, or
- c) the first mediation session is completed and there is no agreement to continue.

The mediator is required to send a Certificate of Completed Mediation to each of the participants who requests one, or to their counsel. The form on which this is done outlines the above three outcomes, plus a fourth, i.e. that "some issues are resolved." The Regulation includes numerous other provisions such as attendance at the mediation, exemptions, scheduling, selection of the mediator, and pre-mediation disclosure of information.

1.1 Purpose of Evaluation

As of February 8, 1999, the Dispute Resolution Office (DRO) had received copies of 819 NTMs since the implementation of the Regulation. The Office had received Certificates of Completed Mediation related to 210 of these cases, and a further 34 certificates for NTMs that had thus far not been received. There was thus at that point a documented population of 244 completed cases.

The DRO was interested in a possible expansion of the use of NTMs in other types of civil (non-family) actions. It was concluded that prior to any significant expansion, it would be desirable to obtain feedback from counsel about their

³ In May 1999, the scope of the Regulation was widened to include motor vehicle actions commenced any time in the province after January 1, 1996, and any one brought out of the Duncan, Kelowna, Nanaimo, New Westminster, Vancouver or Victoria Supreme Court registries, regardless of when the action was commenced.

experiences as senders and/or recipients⁴ of NTMs, and their overall views about the NTM process. The DRO felt that there was a sufficient body of completed cases on which to base a study. Focus Consultants was retained to conduct a survey of counsel who had participated in the NTM process.

1.2 Methodology

Data for this study were gathered by means of the brief questionnaire shown in Appendix 1, either administered by a telephone interview or completed by the respondent and returned by fax or mail. The faxed version of the questionnaire contained identical questions, to the one shown in Appendix 1, but was adapted for ease of completion (e.g. coding columns were eliminated, and only those questions appropriate to the respondent either as a sender or recipient of the NTM were included).

Despite the simplicity of the instrument, there were numerous methodological complexities and limitations pertaining to sampling, contacting respondents and reporting. These are discussed in Appendix 2.

Overall, 60% (134/224) of the potential respondents who could be identified responded either to a telephone interview or the faxed questionnaire. A second way of reporting completion results is in terms of cases. A questionnaire was completed either by a sender or recipient for 45% of the total cases (109/244). A third method is in terms of the total number of questionnaires that could have been completed for all cases. Each of the 244 cases could be assessed by a sender of the NTM and a recipient, so a total of 488 questionnaires was possible for these cases. However, a recipient could not be identified in 155 (33%) of these cases. The number of completed questionnaires was 152, or 31% of the overall total of 488.

The sample sizes both of individuals and cases, taken in combination with the strong trends evident in the data which are presented in the following section, can be considered sufficiently representative of the population to support the conclusions drawn in this study.

⁴ In this study the term "sender" refers to the solicitor for one party in a motor vehicle action who sends the NTM to the other party or parties in the action. The "recipient" is the solicitor who receives the NTM for the other party. They are jointly referred to as "respondents."

2.0 Profile of Respondents and Cases

This section briefly profiles the respondents and case outcomes for both the population of documented cases as of February 8, 1999, and of the interviews completed in this study.

2.1 Registry

Table 1 shows the registry of the respondent for both senders and recipients in the study sample, and the corresponding figures for the overall population. Note that the actual population of cases was 244. However, the number was doubled to 488 in order to include both senders and recipients for each case, as in the figures for the sample.

Overall the table shows that the study sample slightly under-represents the proportion of Vancouver cases and commensurately over-represents the proportion of New Westminster cases, compared to the overall population of cases.

Table 1: Registry of Respondents in Sample, and of Cases in Population

Registry	Sample			Population
	Total	Sender	Recipient	Total
Vancouver	78 51%	58 56%	20 41%	304 62%
New Westminster	57 38%	38 37%	19 39%	148 30%
Victoria	11 7%	4 4%	7 14%	20 4%
Others	6 4%	3 3%	3 6%	16 3%
Total	152 100%	103 100%	49 100%	488* 99%

Notes:

*Population figures are doubled to include both senders and recipients (actual number of cases is 244). This allows comparison of the population proportions with those in the sample, which also includes both senders and recipients.

Percentages do not necessarily total 100% due to rounding.

2.2 Role of Respondent

The sample in this study exactly reflected the proportion of lawyers acting for plaintiffs and defendants. In the overall population, 50% of the lawyers would be acting for the plaintiff, and 50% for the defendant. In the sample in this study, 50% (76/152) of the respondents were acting for the plaintiff, and 50% (76/152) for the defendant.

There was a significantly larger proportion of senders of the NTM interviewed in the study than the 50% one would find in the population. Sixty-eight percent (103/152) of respondents had acted as the sender and only 32% (49/152) as the recipient of the NTM. As explained in the methodological notes in Appendix 2, the reason for this disproportion is that in many cases the recipient of the NTM was not identified in the NTM. The interviewer was therefore dependent on the sender to provide this information, and in many cases it was simply unavailable.

2.3 Outcome of Mediation

As shown in Table 2, the outcomes of the mediations in the sample cases exactly reflect the outcomes in the overall population of cases. In 71% (108/152) of the mediated cases in the sample, all issues were resolved, compared with 70% (344/488) in the overall population. In both the sample and population 75% of cases were either completely or partially resolved.⁵

Table 2: Outcome of Mediation

	Sample			Population
	Total	Sender	Recipient	Total
All issues resolved	108 71%	76 74%	32 65%	344 70%
Some issues resolved	6 4%	3 3%	3 8%	22 5%
Process will not be productive	10 7%	6 6%	4 8%	40 8%
First mediation completed, and no agreement to continue	28 18%	18 17%	10 20%	82 17%
Total	152 100%	103 100%	49 99%	488* 100%

Notes: *Population figures are doubled to include both senders and recipients. This allows comparison of the population proportions with those in the sample, which also includes both senders and recipients. Percentages do not necessarily total 100% due to rounding.

⁵ Information from the ADR Department of ICBC indicates that in approximately 10% of cases where an NTM is served, the action is settled prior to mediation. These cases would not appear in the NTM outcome data in this report.

3.0 Feedback About NTM Cases

This section provides information from respondents about their experience with the NTM in particular cases.

3.1 Purpose of Issuing NTMs

Table 3 shows that the benefits most senders of a NTM hoped to realize were to speed up the process and to get parties to the table and/or talking. These purposes are closely related, as are other, less frequently articulated responses, such as avoiding a trial, saving expense and achieving a settlement.

Table 3: Benefits Sender Hoped to Achieve by Issuing a NTM

	Frequency this item mentioned by respondents	Percentage of respondents who mentioned this category
Speed up process	57	61%
Get parties to table; get them talking	44	47%
Avoid trial	6	6%
Save expense	3	3%
Other	7	8%

Notes:

More than one reason could be given by each respondent. Percentages therefore do not add up to 100%. The total number of respondents who answered this question was 93. The number of non-responses was 10.

The category of “getting parties to the table” is put into perspective by the fact that 44% (40/90) of the senders said they had attempted to arrange a voluntary mediation prior to using the NTM in the case.

Sixty-six percent of recipients (27/41; NR=8) said they would likely have considered an offer to mediate voluntarily if they had not received the NTM. Their primary reasons were that they supported the concept of mediation and/or felt it would work given the case and parties involved. A further 20% (8/41) of recipients said their response would have depended on the client or the adjuster, but they were basically receptive to mediation themselves. Only 6 recipients (15%) said they would not have considered voluntary mediation, either because of the attitudes or earlier representations of the other party, or because of their own skepticism about mediation. In general, however, as a seed for action the NTM appears to be falling on fertile ground.

Table 4 shows the extent to which the sender felt the benefits he/she had anticipated were realized. Seventy-two percent (71/98) rated the realization of the benefits at “4” or “5” on a 5-point scale.

Table 4: Extent to Which Anticipated Benefits were Realized

Rating 1 = not at all 5 = completely	Frequency	Percent
1	9	9%
2	7	7%
3	11	11%
4	11	11%
5	60	61%
Total	98	99%

Notes:

Some respondents who did not identify an anticipated benefit in Table 3 nonetheless provided a rating to the achievement of benefits. The responses to this table thus exceed those in Table 3.

Percentages do not total 100% due to rounding.

The mean response was 4.1.

The number of non-respondents (NR) to this question was 5.

3.2 Timing of the NTM

The vast majority (82%, 111/136; NR=16) of respondents said they sent or received the NTM after discovery, but before trial. The remainder said they sent or received it before the examination for discovery.

The mean length of time before trial that the NTM was sent/received was 7.3 months. A mediation must occur within 60 days after the appointment of a mediator (section 5(1) of the Regulation) and a mediator must be appointed within 10 days of the NTM’s delivery to all parties (section 6). Assuming these requirements are being complied with, the average minimum amount of time saved would be approximately 5 months. Clearly, to the extent that one of the goals of senders was to speed up the settlement process, this type of result reflects an improvement.

3.3 Establishing the Mediation

Respondents almost unanimously agreed that there were no problems agreeing on the selection of a mediator (96%; 134/139; NR=13). The vast majority (88%; 121/137; NR=15) said they used a service provider to arrange the mediation. The average length of mediation was 4 hours.

3.4 Satisfaction with Aspects of Mediation

Table 5 shows that there is a high rate of satisfaction with the way the mediator conducted the mediation. Eighty-two percent (108/133;NR=19) rated their satisfaction at a “4” or “5” on a 5-point scale. Only 10% (13/133) indicated dissatisfaction.

There was virtually no difference in response between senders and recipients.

As was shown in Table 2, 44 of the 152 cases discussed by respondents did not end in complete resolution. Respondents in these cases were asked if there were any positive outcomes from having attempted a mediation. Sixty-four percent (25/39;NR=5) replied affirmatively, 36% (14/39) negatively. The percentage of positive responses was slightly higher among recipients.

There were four reasons respondents expressed for feeling the outcomes were positive. They form a continuum of progress. The first was that the respondent met and was able to assess or better understand the opposing party. The second was that there was a clearer focus on issues, issues were narrowed, and/or views considered. The third was that the respondent perceived some movement on one or other side. The final reason – mentioned by 6 respondents – was that the matter was settled soon after the mediation. This result can be seen as flowing from any or all of the above factors.

Table 5: Respondent satisfaction with the way the mediator conducted the mediation

Rating 1=completely dissatisfied 5=completely satisfied	Total	Role of Respondent	
		Sender	Recipient
1	4 3%	3 3%	1 3%
2	9 7%	7 8%	2 5%
3	12 9%	9 10%	3 8%
4	50 38%	34 37%	16 40%
5	58 44%	40 43%	18 45%
Total	133 101%	93 101%	40 101%
Mean Rating	4.1	4.1	4.2

Note: Percentages do not necessarily total 100% due to rounding.

4.0 Opinions About the NTM Process in General

This section describes opinions about the NTM process in general, and reports other respondent comments related to the use of the NTM. Data presented here is divided into three respondent categories: senders, recipients, and individuals who have been both senders and recipients. Since the comments are not case-specific, only one response per respondent is included.

4.1 Opinions About the NTM Process

Table 6 presents respondent ratings of the NTM as a process to encourage earlier resolution of motor vehicle cases without litigation. Several observations can be made about the table:

- The modal (largest single) rating category is a “3” for all respondents and the mean rating is 3.5. Compared to the ratings of the way the mediator handled the mediation (Table 5), these results are clearly less positive.
- The mean rating of senders is significantly higher than that of recipients, and is slightly lower than that of respondents who have been both senders and recipients. Clearly the NTM is more appreciated by those who have decided to instigate its use, and by those who have experience on both sides. This suggests that the element of compulsion experienced by recipients is at least a factor in their more negative ratings. If over time the actual mediation outcomes are positive, there may be a gradual positive shift of opinion.

Forty-nine respondents provided a total of 53 suggestions for change to the NTM Regulation. For the most part, these suggestions do not question the fundamental utility or value of the regulation, but rather seek to improve it. Only 4 respondents felt the regulation should be abolished. Other recommendations, together with the number of respondents advocating them, include:

- Change time requirements (13)
 - Primarily to allow for mediation closer to trial, but in some cases to remove time limits, to allow mediation earlier, or to shorten the permitted period between delivery of the NTM and the mediation
- Put more “teeth” in the regulation (11)
 - Allow for binding arbitration if mediation collapses; award costs or impose fines if one party does not appear or fails to negotiate

seriously; create a remedy if one counsel fails to provide mediation dates.

- Provide more flexibility (5)
 - E.g. setting mediation date by mutual agreement; adjournment of mediation in specific situations; allow sender to withdraw NTM under certain circumstances; allow for remedy if each counsel wants mediation in different city.
- Widen applicability of regulation (4)
- Require prior negotiation before mediation (3)
- Allow ICBC representative/counsel to negotiate without caps (3)
- Remove requirement to send copy of NTM to the DRO (3)
- Ensure adequate representation from ICBC (2)
- Other individual comments (5)

Table 6: Rating of the NTM as a process to encourage earlier resolution of motor vehicle cases

Rating 1=very negative 5=very positive	Total	Role of Respondent		
		Sender	Recipient	Both sender & recipient
1	8 7%	2 3%	6 17%	0 0%
2	13 11%	5 7%	8 23%	0 0%
3	39 33%	24 34%	10 29%	5 38%
4	28 24%	19 27%	5 14%	4 31%
5	31 26%	21 30%	6 17%	4 31%
Total	119 101%	71 101%	35 100%	13 100%
Mean	3.5	3.7	2.9	3.9

Notes:

Percentages applied to frequencies of less than 12 in a given cell cannot be seen as meaningful. They are presented here only for consistency within the table.

Percentages do not necessarily total 100% due to rounding.

This sense that dissatisfaction with the NTM is less a matter of fundamental opposition in principle than with a desire to improve the regulation is also reflected in Table 7. It shows that a significant majority (88%;94/107) of respondents feel the NTM process could usefully be expanded to other types of matters. Sender response is virtually unanimously in favour of such expansion, as is that of respondents who have been both senders and recipients. Although recipients were less in favour of expansion than senders, two-thirds still supported it. It should be noted that there is a higher proportion of senders in the sample than recipients. Nonetheless, even with a more balanced sample, support for a wider application of the NTM process would likely exceed 80%.

There were few suggestions for types of civil (non-family) actions that would not be appropriate for a NTM. Specific substantive areas of law that were suggested (all by single respondents) included fraud claims, libel and slander cases, claims that fall within the ICBC minimal no damage program, liquidated debt claims, and civil action for a child's sexual abuse. Other individual comments referred to the specific dynamics, stage, or composition of a case: when a formal offer has been filed and no other alternatives explored, when a claim involves more than three parties, where counsel recognizes that parties would benefit from court, or where a case has reached a particular stage of proceeding.

Table 7: Opinion on whether the NTM process could usefully be expanded to include other types of civil (non-family) matters

	Total	Role of Respondent		
		Sender	Recipient	Both sender & recipient
No	13 12%	1 2%	11 33%	1 8%
Yes	94 88%	60 98%	22 67%	12 92%
Total	107 100%	61 100%	33 100%	13 100%

4.1.1 Wider impacts of the NTM

Respondents were asked if they had ever told an opposing party that they would issue a NTM, if they would not agree to a voluntary mediation. Twenty-eight percent of respondents (33/116; NR=5) said they had. Of these, 66% (19/24; NR=4) said this tactic had either sometimes or always resulted in a mediation, without delivery of a NTM.

This suggests that the impact of the NTM goes beyond the actual mediations that are documented under the Regulation. It can also be surmised that this impact may increase over time, i.e. that the knowledge that mediation can be compelled will act as an incentive either to negotiate or mediate settlement.

4.2 General Comments

Closing comments by respondents centred on three broad themes. The first and largest (N=30) were essentially positive comments about the NTM process, emphasizing its advantages in creating settlements, encouraging its expansion, and/or clarifying the circumstances under which it is most useful. The second (N=21) involved expressions of concern about coercing a process which respondents feel works optimally under conditions of voluntary participation, and which is seen to be a waste of time or counter-productive if one party does not negotiate with good will. The third theme (N=9) consisted of more specific criticisms of ICBC representatives for entering mediation with a “closed mind” or “tied hands” because of caps on damage settlements.

5.0 Conclusions

The main conclusions of this study are:

- The two main objectives of senders of a NTM are to speed up the negotiation/settlement process and get parties talking.
- 72% (71/98) of senders rated their achievement of these objectives at “4” or “5” on a 5 point scale. Their mean response was 4.1.
- There is room for more voluntary mediation of motor vehicle action cases. Sixty-six percent of recipients of NTMs (27/41) said they would likely have considered an offer to mediate voluntarily if they had not received the NTM. In these cases the NTM appears to act as a catalyst for mediation.
- The mean length of time before trial that the NTM was sent is 7.3 months. The average mean time by which the process is helping to advance resolution is approximately 5-6 months.
- In the vast majority of cases the selection of a mediator has not been problematic.
- There is a high rate of satisfaction with the way the mediator conducted the mediation. Eighty-two percent of respondents (108/133) rated their satisfaction at a “4” or “5” on a 5 point scale. Their mean response was 4.1.
- In 71% (108/152) of the mediated cases, all issues were resolved, and in 75% (114/152) all or some issues were resolved.
- In cases where there was not complete resolution of issues, 64% of respondents (25/39) still felt there were positive outcomes. Six respondents said the matter was settled soon after the mediation took place.
- The mean rating by respondents of the NTM as a process to encourage earlier resolution of motor vehicle cases without litigation was 3.5 on a 5 point scale (1=very negative; 5=very positive). Senders rated the NTM significantly higher (3.7) than recipients (2.9). The two main areas of change suggested by respondents were not to do with the fundamental utility of the NTM, but rather with changing time requirements (permitting mediation closer to trial date), and putting more “teeth” into the Regulation to ensure that mediation is entered into in good faith.
- Eighty-eight percent of respondents (94/107) felt the NTM process could usefully be expanded to include other types of civil (non-family) matters. The

response was significantly more positive among senders of the NTM (98%;60/61) than recipients (67%;22/23). Even though there was a higher proportion of senders than recipients in the sample, the overall rate of support in a more balanced sample would still likely exceed 80%.

- The NTM Regulation also has spin-off effects in terms of encouraging mediation without formal use of the Regulation's procedures. Twenty-eight percent of respondents (33/116) said they had told an opposing party that they would issue an NTM if the other party would not agree to a voluntary mediation. Of these respondents, 66% (19/29) said this tactic had either sometimes or always resulted in a mediation without delivery of an NTM.

Appendix 1
Notice to Mediate Questionnaire

**Notice to Mediate Questionnaire
Interviewer Version**

A. <u>Case Data</u>	Col	Response
1. Respondent Code/Name _____ Survey # _____	1-4	_____
2. Registry 1. Van 2. NW 3. VIC 4. KAM 5. DUN 6. KEL 7. CHI	5	_____
3. Outcome of Mediation (as per certificate)	6	_____
4. Solicitors for: 1. Plaintiff 2. Defendant	7	_____
5. Role in NTM: 1. Sender 2. Recipient	8	_____
 B. <u>Questions Related to Case</u>		
1. (For Sender only) What benefit(s) did you hope to achieve by issuing a Notice to Mediate? (don't prompt; more than one answer possible):		
1. speed up process	9	_____
2. get parties to table/ get them talking		
3. more flexible process	10	_____
4. save money (defendant only)	11	_____
5. other/specify: _____		
1A. On a scale of 1 to 5, to what extent were these benefits realized? (1-not at all; 5=completely) _____	12	_____
2. (Sender only) Did you attempt to arrange a voluntary mediation prior to using the NTM in this case? 1. No 2. Yes	13	_____
3. At what stage in this case did you send/receive the NTM?	14	_____
1. After statement of claim/defence, but before exchange of documents/information.		
2. After exchange of documents/information but before examination for discovery.		
3. After discovery, but before trial.		

3A. How long before trial did you send/receive the NTM? 15-18 _____
 (If no trial date set, put "NA" _____ and score out response.)

____ days (if less than a week)

____ weeks (if less than a month)

____ months

(calculate answer to nearest tenth of month)

4. Did you have any problems agreeing on the selection of 19 _____
 a mediator? 1. No 2. Yes

4A. Did you use a service provider to arrange the mediation? 20 _____
 1. No 2. Yes

5. How long did the mediation session take? _____ hrs 21-24 _____
 (answer to nearest half hour)

6. On a scale of 1 to 5, how satisfied were you with the way the 25 _____
 mediator conducted the mediation?
 (1=completely dissatisfied; 5=completely satisfied) _____

7. (If didn't settle, ie. #2-4 in A-3) Even though the case was not 26 _____
 resolved, were there any positive outcomes from having 27 _____
 attempted a mediation? 1. No 2. Yes
 (If yes) Please specify: _____ 28 _____

8. **(For recipients only)** Would you likely have considered an offer 29 _____
 to mediate voluntarily if you had not received the NTM?
 1. No 2. Yes 3. Depends

8A. Reason for answer _____ 30 _____

C. General Questions about the NTM Process

1. Have you ever told an opposing party that you would issue a NTM, 31 _____
 if they would not agree to a voluntary mediation? 1. No 2. Yes

1A. (If yes) Has this approach generally resulted in a voluntary 32 _____
 mediation? 1. Never 2. Sometimes 3. Always

- 2. On a scale of 1 to 5, what is your opinion of the Notice to Mediate as a process to encourage earlier resolution of motor vehicle cases without litigation? (1=very negative; 5=very positive) _____ 33 _____

- 3. What changes, if any, would you make to the NTM regulation? _____ 34 _____
 _____ 35 _____

- 4. Do you feel that the NTM process could usefully be expanded to include some types of civil (non-family) matters? 1. No 2. Yes _____ 36 _____

- 4A. (If yes) Are there any types of action where you would like to recommend that it not be used? _____ 37-38 _____
 _____ 39-40 _____
 _____ 41-42 _____
 _____ 43-44 _____
 _____ 45-46 _____

- 5. Do you have any other comments about the NTM process?

Appendix 2
Discussion of Methodological Issues

Appendix 2: **Discussion of Methodological Issues**

Although the actual instrument used in the NTM survey was simple for the interviewer to administer by telephone or for a respondent to complete on his/her own by facsimile, there were a number of complexities and limitations related to identifying and drawing the sample, contacting respondents and reporting results. These are discussed below.

1. Sampling and Contacting Issues

As of February 4, 1999, the Dispute Resolution Office (DRO) had received 819 copies of NTMs issued by solicitors since the implementation of the NTM Regulation on April 14th, 1998. For these cases, the DRO had also received 210 corresponding Certificates of Completed Mediation. A further 34 certificates had been received without corresponding NTMs.

Thus, although there were a large number of cases that were pending as of mid-February, the documented population of completed cases was 244. Since it was important to obtain feedback from both the senders and recipients of NTMs, 244 cases represented a potential total of 488 questionnaires. The selection and contacting of a sample for the study was complicated by several factors:

- *Identification of respondents by cases or by individuals*

Some lawyers had been involved in as many as 6 mediations. Since many of the questions were case specific, it was decided to sample by case. Where questions were not case specific (i.e. concerned general opinions about the NTM Regulation or process as in Part C of the questionnaire), the respondent would answer that part of the questionnaire only once.

- *Inability to identify respondents*

For the 35 cases where the DRO had received only the Certificate of Completed Mediation and not the NTM, it was not possible to identify either the sender or recipient of the NTM without the cooperation of the mediator. Furthermore, of the 210 cases where the DRO had a copy of the NTM, in only 44 cases was the recipient of the NTM able to be identified. In the remaining cases, it was necessary to ask the sender of the NTM the name of the recipient. If the interviewer was unsuccessful in making contact with or obtaining a response from the sender, it meant that the recipient could also not be contacted. Thus, the recipient sample was automatically smaller than the sender sample.

- *Need to make sender and recipient contacts in two phases*

It was necessary to contact all the senders first before proceeding to the recipients for several reasons:

- Identification of recipients was largely dependent on the senders.
- Some lawyers were involved in more than one case. In order not to inconvenience them with repeat contacts, it was necessary to develop a complete list of recipients before initiating any contacts.
- It was necessary to determine if the total number of recipients identified was large enough to guarantee an adequate sample size.

Although initially a random sample of 50% of cases was drawn, it became evident that the number of recipient respondents identified by senders was inadequate. The target was thus enlarged to a 100% sample.

2. Contact Procedures and Results

All potential respondents were initially contacted by telephone, and if available, were usually interviewed immediately. If the respondent was not available, he/she was, depending on the receptionist's preference, either re-contacted or faxed an adapted version of the interview in Appendix 1.

The faxed version identified the parties in the mediation and included the questions from Part B for each case the respondent had been involved in, and the general questions from Part C (only one per respondent, regardless of the number of cases).

All respondents who did not reply were contacted a second time as a reminder, and re-sent the necessary documentation.

If a respondent had participated in more than three cases, he/she was asked only to complete questionnaires pertaining to the first four randomly chosen cases. This decision affected only a small number of cases, and was to ensure that no respondent was burdened with so much paperwork that he/she would be unlikely to respond. The exception to this rule was that if a respondent had already been contacted twice, he/she was not contacted a third time, even if he/she had been involved in more cases.

Contact and completion results can be shown in three ways:

- 60% (134/224) of potential respondents who could be identified (there were many recipients who could not be identified and many solicitors who were involved in more than one case) completed a questionnaire (Table A-1).

- A questionnaire was completed either by a sender or recipient for 45% of the 244 total cases (109/244).
- Each of the 244 cases had a sender and recipient, for a total of 488 potential questionnaires for case-related questions. Thirty-one percent of these questionnaires (152/488) were completed (Table A-2).

3. Reporting Issues

All of the questions in Part B of the questionnaire (Appendix 1) pertain to individual cases. The results are therefore presented in this report in terms of whether the respondent was a sender or recipient of the NTM, because for any given case, the lawyer was either one or the other.

The questions in Part C of the questionnaire explore the general opinions of the respondent based on his/her overall experience, rather than on a single case.

Some respondents were always senders of the NTM and others always recipients. However, a smaller group were both senders and recipients. The data for questions in Part C is therefore presented in these three categories rather than just two. Respondents completed only one questionnaire pertaining to these more general questions, and only one set of responses per respondent is presented.

Table A-1: Contact Results Based on Individual Respondents

	Senders		Recipients		Total	
	Frequency	Percent	Frequency	Percent	Frequency	Percent
Total number of potential respondents who could be identified	128	100%	96	100%	224	100%
Total who completed at least one questionnaire	86	67%	48	50%	134	60%

Table A-2: Contact Results Based on Completion of Questionnaires

	Senders		Recipients		Total	
	Frequency	Percent	Frequency	Percent	Frequency	Percent
Questionnaires Completed						
Phone Interviews	49	20%	21	9%	70	14%
Completed by facsimile	56	23%	26	11%	82	17%
<i>Total Completed</i>	<i>105</i>	<i>43%</i>	<i>47</i>	<i>20%</i>	<i>152</i>	<i>31%</i>
Questionnaires Not Completed						
Refusals	5	2%	2	1%	7	1%
Name not available	25	10%	130	53%	155	33%
Respondent not available (holidays, out of town, ill, moved)	7	3%	15	6%	22	5%
No response despite call-back	32	13%	44	18%	76	16%
Additional cases in above categories where questionnaire not completed*	70	29%	6*	2%	76	16%
<i>Total Not Completed</i>	<i>139</i>	<i>57%</i>	<i>197</i>	<i>80%</i>	<i>336</i>	<i>69%</i>
Overall Total	244	100%	244	100%	488	100%

Percentages do not necessarily total 100%, nor sub-totals necessarily equal totals, due to rounding.

*Some respondents had participated in up to 6 cases. If they refused, were unavailable or did not respond, it meant that no feedback was obtained on any of their cases. The figure for "multiples" of recipients is severely understated, as there was no way of determining how many of the unidentified 130 cases involved separate respondents.