



## Mandatory Mediation: Rules 24.1 and 75.1

**Civil Case Management and Mandatory Mediation provide early opportunities to settle lawsuits.**

### Description

Rule 24.1 of the Rules of Civil Procedure establishes mandatory mediation for civil, non-family, case managed actions. Rule 75.1 establishes mandatory mediation for contested estates, trusts and substitute decisions matters.

The mandatory mediation program initially came into effect in 1999 as a pilot project in Toronto and Ottawa-Carleton.

Following a positive evaluation, Rule 24.1 was made permanent as of July 3, 2001. Rule 75.1 has been extended until July 3, 2004 to permit further evaluation of that rule. Currently in effect in Toronto and Ottawa-Carleton, the mandatory mediation program is expected to expand over the next several years.

The mandatory mediation program is a key component of Ontario's Civil Justice Reform strategy, which was recommended by the Civil Justice Review. The program is designed to help parties resolve disputes outside of court early in the litigation process, thereby saving them both time and money.

Approximately 95 percent of all lawsuits settle. However, many of them settle late in the process, and after parties have incurred substantial legal costs.

### The Mediation Process

In mediation, a neutral third party – the mediator – helps the disputing parties look for a solution that works for them.

Mediators, unlike judges, do not decide cases or impose settlements. The mediator helps the parties communicate and negotiate with each other in a constructive manner, gain a better understanding of the interests of all parties, and find a resolution based on common understanding and mutual agreement.

Under the mandatory mediation program, cases are referred to mediation early in the process, giving parties an opportunity to discuss the issues in dispute. The parties, with the assistance of a trained mediator, explore settlement options and may be able to avoid the pretrial and trial process.

### Benefits of Mediation

- ✓ **Mediation can help parties resolve disputes faster, saving them time & money.**
- ✓ **Mediation is an accessible & affordable alternative to court for individuals & businesses.**
- ✓ **The mediation process is informal, neutral and completely confidential.**
- ✓ **Mediation offers the parties an opportunity to craft a solution that meets their needs.**
- ✓ **Mediation promotes cooperative problem-solving and improved communications.**

## Summary of Rule 24.1

- ❑ Rule 24.1 applies to most civil, case-managed actions. Case management, which is governed by Rule 77, gives the court primary responsibility for managing the flow of cases and guides the pace of litigation by establishing time frames for specific events.
- ❑ The mediation must take place within 90 days after the first defence is filed, unless the parties obtain a court order abridging or extending the time.
- ❑ For standard track cases, parties may consent to a postponement of up to 60 days.
- ❑ Parties may opt out of mediation only by obtaining a court order exempting them.
- ❑ Parties may agree to select a mediator from the program's roster of mediators or one who is not on the roster.
- ❑ If the parties do not select a mediator within 30 days after the first defence is filed, one will be appointed for them by the local mediation coordinator.
- ❑ At least 7 days before the mediation, parties must provide the mediator and the other parties to the lawsuit with a Statement of Issues, which identifies the issues in dispute and the parties' positions and interests. The pleadings and any documents of central importance to the case must be included.
- ❑ After the session, the mediator must complete and file a report on the outcome of the mediation.

**Note: Case management timelines continue to run.**

## Summary of Rule 75.1

- ❑ Under Rule 75.1, estates, trusts and substitute decisions cases are referred to mediation, unless there is a court order exempting them.
- ❑ Within 30 days after the last day for serving a notice of appearance, applicants must bring a motion for directions regarding the conduct of the mediation.
- ❑ The court may give directions on such matters as: the issues to be mediated; the party who has carriage of the mediation; the timeframe for conducting the mediation; the parties designated to attend the mediation; how these parties are to be notified of the mediation; and how the cost of mediation is to be shared among the parties.
- ❑ Parties may agree to select a mediator from the program's roster of mediators or one who is not on the roster.
- ❑ If parties do not select a mediator within 30 days of the court order giving directions, the party with carriage of the mediation must file with the local mediation coordinator a request to assign a mediator.
- ❑ The mediator, whether assigned or selected, must immediately fix a date for the mediation and, at least 20 days before that date, serve on every designated party a notice of the place, date and time of the mediation.
- ❑ At least 7 days before the mediation, the designated parties must provide a Statement of Issues to the mediator and the other designated parties.
- ❑ After the session, the mediator must complete and file a report on the outcome of the mediation.

## Compliance with Rules 24.1 & 75.1

If any party fails to submit a Statement of Issues or to attend within the first 30 minutes of the mediation session, the mediator may cancel the mediation and file a Certificate of Non-Compliance. The party responsible for the cancellation will be required to pay any cancellation fees charged by the mediator and may be subject to sanctions imposed by the court.

## Attendance at Mediation

The mediation may be held anywhere that is acceptable to the parties, such as the mediator's office, the office of any party or their lawyer, or at the court facilities.

All parties and (if they are represented) their lawyers must attend the mediation. A lawyer may not attend in the place of a party. Parties must have authority to settle the case or have ready telephone access to anyone whose approval is needed to settle. If a corporation, partnership or other organization is a claimant or a defendant, it should be represented by an individual who is authorized to make a decision on its behalf.

## Length of Mediation

The mandatory mediation program provides for a mediation session of up to three hours. Of course, the mediator may end the mediation before that time if the case settles or if he or she concludes that the process is not constructive for the parties.

If the mediation is not concluded within three hours, the mediator may, with the consent of all parties, continue the session or arrange for additional sessions.

## Agreements Reached at Mediation

Agreements resolving some or all of the issues in dispute must be in writing and signed by the parties or their lawyers.

If the parties settle the case, the defendant must file a notice with the court advising of the settlement within 10 days of the agreement being signed (or in the case of a conditional agreement within 10 days of the condition being satisfied).

Agreements reached at mediation are legally binding. If a party fails to comply with a signed agreement, any other party to the agreement may bring a motion for judgment under the terms of the agreement or continue the legal proceedings as if there had been no agreement.

## Cases that do not Settle at Mediation

Mediation can be a success even if the case is not settled. A mediation is considered successful where the parties gain a better understanding of the other side's position, if they have narrowed the issues or settled some of the issues, or if they have agreed on a process to resolve issues later in the proceeding. Lawsuits that do not settle at mediation continue through the court process.

## Mediator Fees

Mediators' fees are set by government and cover one hour of preparation time and a mediation session of up to three hours. The fee cannot exceed the amount shown below. (Note: These fees do not include the cost of a party's lawyer.)

<u>Number of Parties</u>	<u>Maximum fees for Mandatory Session</u>
2	\$600 plus GST
3	\$675 plus GST
4	\$750 plus GST
5 or more	\$825 plus GST

The fee is divided equally among the parties. Under Rule 75.1, the court may order a different allocation of the fee.

If the session is not concluded within three hours, the mediation may continue, with the consent of all parties, at a rate agreed upon by the parties and the mediator in advance of the session.

## Pro Bono Services

Under Rule 24.1, mediation services will be provided at no cost to individuals who either have a legal aid certificate or meet the Ministry of the Attorney General's financial eligibility requirements.

## Mediator Expenses

In addition to fees, a mediator who is selected by the parties may charge expenses, such as room rental costs. However, the mediator must ensure that before the mediation begins, the parties agree to any expenses.

According to a court ruling, assigned mediators who reside outside the county where the litigation was initiated cannot charge expenses.

## Program Administration

Local mediation coordinators in Toronto and Ottawa operate the mandatory mediation program.

In addition, local mediation committees have been appointed in Toronto and Ottawa. These committees are made up of volunteers from the judiciary, bar, mediation community, the public and Ministry of the Attorney General staff. The committees select mediators for the program's mediator roster, monitor mediator performance and respond to complaints about mediators.

## The Mediator Roster

Rosters of private-sector mediators have been established for Toronto and Ottawa.

Mediators are selected for the roster based on Ministry of the Attorney General guidelines relating to experience, training, educational background and familiarity with the civil justice system.

Roster mediators must comply with Rules 24.1 and 75.1 and the fee regulations, maintain a minimum of \$1 million liability insurance, and attend an orientation session. They must also abide by the program's administrative policies and code of conduct.

The mediator roster may be obtained from:

- The Mandatory Mediation Program
- Superior Court of Justice Offices in Toronto and Ottawa
- The Ministry of the Attorney General Web Site

**More information is available on the Ministry of the Attorney General web site at:**

***<http://www.attorneygeneral.jus.gov.on.ca/sermed.htm>***

**or**

**by calling the Ontario Mandatory Mediation Program at:**

***416-326-1886***