



Fact Sheet:

Mandatory Mediation

under rules 24.1 and 75.1 of the *Rules of Civil Procedure*

NOTE: This document contains general information about civil court processes. It does not cover every situation. This document does not explain the law. It does not tell you what you should do and why you should do it. For legal advice, talk to a lawyer.

For more information see the *Rules of Civil Procedure* and the guides and flowcharts on Mandatory Mediation in the Superior Court of Justice which are available on the [Ministry of the Attorney General](#) website.

Mandatory Mediation Program

under rule 24.1 and 75.1 of the *Rules of Civil Procedure*

What is mediation?

Mediation is a way for people to settle disputes or lawsuits outside of court. In mediation, a neutral third party - the mediator - helps the disputing parties look for a solution that works for them.

Mediators do not decide cases or impose settlements. The mediator's role is to help the people involved in a dispute to communicate and negotiate with each other in a constructive manner, to gain a better understanding of the interests of all parties, and to find a resolution based on common understanding and mutual agreement.

The purpose of mediation is not to determine who wins and who loses, but to develop creative solutions to disputes in a way that is not possible at a trial.

What are the benefits of mediation?

Mediation can help parties resolve disputes faster, saving them time and money.

Generally, the best solution to a problem is one worked out by the parties themselves. Mediation offers the parties a chance to craft a solution that meets their needs. Many people find mediation more satisfying than a trial because they play an active role in resolving their dispute, rather than having a solution determined by a judge.

The mediation process is informal and completely confidential. Parties in mediation may speak more openly than in court. Many people find mediation a more comfortable and constructive process than a trial.

In situations where the parties have an ongoing relationship, mediation is helpful because it promotes cooperative problem-solving and improved communications.

What is the Mandatory Mediation Program?

The Mandatory Mediation Program is a program designed to help parties involved in civil litigation and estates matters settle their cases early in the litigation process to save time and money.

The Mandatory Mediation Program applies in Toronto, Ottawa and Windsor to certain civil actions under [rule 24.1](#) of the *Rules of Civil Procedure* and to contested estates, trusts and substitute decision matters under [rule 75.1](#) of the *Rules of Civil Procedure*.

The Mandatory Mediation Program started on January 4, 1999 in Toronto and Ottawa, and in Windsor on December 31, 2002.

Under the Mandatory Mediation Program, cases are referred to a mediation session early in the litigation process to give parties an opportunity to discuss the issues in dispute. With the help of a trained mediator, the parties explore settlement options and may be able to avoid the pre-trial and trial process.

How does rule 24.1 work?

Under [rule 24.1](#), most civil actions in Toronto, Windsor and Ottawa are subject to mandatory mediation. Certain civil actions, such as family law cases, are excluded from mandatory mediation.

The types of cases which are NOT subject to rule 24.1 Mandatory Mediation are:

- Actions covered by [rule 75.1](#) (Estates, Trusts and Substitute Decisions)
- Actions that were the subject of mediation under the *Insurance Act* s. 258.6, if the mediation was conducted less than a year before the delivery of the first defence
- Toronto Commercial List actions
- *Mortgage Actions* under [rule 64](#)
- *Construction Lien Act* actions, except trust claims
- *Bankruptcy and Insolvency Act* actions
- Actions certified as a class proceeding under the *Class Proceedings Act*.
- Actions which are exempt pursuant to a court Order ([rule 24.1.05](#))

The mandatory mediation is conducted by a private-sector mediator. Parties may agree to select a mediator from the Mandatory Mediation Program's roster of mediators or may select a mediator who is not on the roster. This decision must be made within 180 days after the first defence is filed (see: [rule 24.1.08](#)).

If the parties cannot agree on a mediator, one will be appointed for them by the Local Mediation Coordinator, who is responsible for administering the Mandatory Mediation Program (see: [rule 24.1.09\(6\)\(6.1\)](#)).

The mediation must take place within 180 days after the first defence is filed, unless the parties agree otherwise or the court orders otherwise (see: [rule 24.1.09\(6\)](#)).

If the parties agree to postpone the mediation, the parties must file a Consent with the Local Mediation Coordinator within 180 days after the first defence is filed (see: [rule 24.1.09\(3\)](#)). There are no restrictions on the date that the parties can choose for the mediation.

Within 180 days of the filing of the first defence the Local Mediation Coordinator must receive from the mediator, a Mediator's Report which indicates that the mediation has been concluded. If a Mediator's Report is not filed within this timeline, the parties must file one of the following documents within 180 days of the filing of the first defence:

- a Consent to postpone the mediation date;
- a court Order postponing the date of the mediation;
- a Notice of Name of Mediator and Date of Session ([Form 24.1A](#)); or
- a notice of settlement

If one of these documents is not filed within the 180 day timeline, the Local Mediation Coordinator may assign a mediator to the case.

The parties might agree to a mediation date or the court may order the date of the mediation. If the mediation has not happened by the deadline agreed upon by the parties or ordered by the Court, a mediator may be assigned by the Local Mediation Coordinator at the time when the parties set the matter down for trial. The Local Mediation Coordinator will not assign a mediator in this situation if the parties file a Notice of Name of Mediator and Date of Session or a notice of settlement.

When a mediator is assigned by the Local Mediation Coordinator, the parties will receive a Notice by Assigned Mediator ([Form 24.1B](#)). This Notice will let the parties know which mediator has been assigned and the date and time of the mediation session.

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 supporting documents must be attached to the Statement of Issues. The Plaintiff must also provide the mediator with a copy of the pleadings ([Form 24.1C](#); [rule 24.1.10](#)).

How does Rule 75.1 work?

Proceedings relating to estates, trusts and substitute decisions are referred to mediation, unless there is a court order exempting them ([rule 75.1](#)).

Within 30 days after the last day for serving a notice of appearance, applicants are required to bring a motion for directions relating to the conduct of the mediation ([rule 75.1.05\(2\)](#))

At the motion for directions, the court may direct such matters as: the issues to be mediated, who has carriage of the mediation, the timeframe for conducting the mediation, which parties are designated to attend the mediation, how the designated parties are to be notified of the mediation, and how the cost of the mediation is to be shared among the parties. ([rule 75.1.05\(4\)](#))

Following the motion for directions, parties are required to select a mediator within 30 days of the court order giving directions ([rule 75.1.07\(1\)](#)).

The mediation is conducted by a private-sector mediator. Parties may agree to select a mediator from the Mandatory Mediation Program's roster of mediators or one who is not on the roster. The party with carriage of the mediation is required to give the selected mediator a copy of the order giving directions ([rule 75.1.07\(2\)](#)).

If the parties fail to select a mediator within 30 days, the party with carriage of the mediation must immediately file with the Local Mediation Coordinator a request to assign a mediator ([Form 75.1A](#), [rule 75.1.07\(3\)](#)).

The mediator, whether assigned or selected, is required to 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 ([rule 75.1.07\(7\)](#)).

At least 7 days before the mediation, designated parties must provide the mediator and the other designated parties with a Statement of Issues ([Form 75.1C](#), [rule 75.1.08\(1\)](#)).

Where is the mediation held?

The mediation may be held at any location that is convenient and acceptable to the parties, including the mediator's office, the office of one of the parties or one of the lawyers, or at the court facilities.

Who attends the mediation?

All parties must attend the mediation session. However, if a party's insurer may be liable, the party is not required to attend the mediation.

If a party is represented by a lawyer, the lawyer must also attend. A lawyer may not attend in the place of a party.

For the mediation to proceed, 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.

What happens during a mediation session?

The parties, their lawyers and the mediator are the only ones who have a right to be present in mediation. No one else may attend without the parties' consent. What is said remains private. Information arising from the mediation cannot be used outside the mediation for any court purpose.

Before the mediation session begins, the mediator explains the mediation process and reviews the terms of the mediation, which may be set out in a written "agreement to mediate". Although mediation is an informal process, the mediator structures the discussion. All parties have a chance to present their side of the story, to explain what is important to them and to ask questions. The mediator will help the parties to explore settlement options. The mediator may meet separately with each of the parties either before the session begins or during the session.

How long is the mediation session?

The length of a mediation session and the number of sessions required depend on a variety of factors, including the complexity of the case, how well the parties have prepared for the mediation, how far they have progressed in settlement discussions and whether the mediation process is working.

Under the Mandatory Mediation Program, parties are not required to continue mediation for more than three hours. It is possible that the mediator may end the mediation earlier than that time if the case is settled 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.

What if an agreement is reached at the 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 agreement settles the case, the defendant or the defendant's lawyer 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 make a motion for judgment under the terms of the agreement or continue the legal proceedings as if there had been no agreement.

What if the case does not settle at the mediation?

Mediation can be a success even if a case does not settle.

A mediation is considered successful even if the parties do not settle but 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 proceedings. Lawsuits that do not settle at mediation continue through the court process.

What is the mediator's responsibility after the mediation session?

After the mediation session, the mediator must give the Local Mediation Coordinator a written report on the outcome of the mediation. The report does not contain any information about what happened or what was said at the session.

What if parties do not comply with the mandatory mediation rules?

A mediator can cancel a mediation session if the parties fail to submit a Statement of Issues or fail to attend within the first 30 minutes of the mediation session. A mediator may file a Certificate of Non-Compliance to advise the court that the mediation was cancelled ([Form 24.1D](#)).

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.

If the Local Mediation Coordinator receives a Certificate of Non-Compliance, the matter will be referred to a case management master or judge.

Who pays for mediation?

All parties share the cost of the mediation session. Parties pay mediators directly for their services.

Each party is required to pay an equal share of the mediator's fees. Under rule 75.1, the court may order a different allocation of the fees.

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. Information about the financial eligibility test and a copy of an application form is available at:

<http://www.attorneygeneral.jus.gov.on.ca/english/courts/manmed/accessplan>.

How much does mediation cost?

If the mediator is on the Program's roster of mediators, the mediator's fees for one half hour of preparation time per party and a mediation session of up to three hours cannot exceed the amount shown below. (Note: These fees do not include the cost of a party's lawyer.)

| Number of Parties | Maximum fees |
|-------------------|----------------|
| 2 | \$600 plus GST |
| 3 | \$675 plus GST |
| 4 | \$750 plus GST |
| 5 or more | \$825 plus GST |

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.

In addition to fees, a mediator may charge expenses that the parties agree to before the mediation begins. However, according to a court ruling, assigned mediators who reside outside the county where the litigation was initiated cannot charge travel expenses.

What should parties consider in choosing a mediator?

Both lawyers and non-lawyers are qualified and trained to mediate disputes. It is important that all parties are comfortable with their mediator. Parties and/or their lawyers are strongly encouraged to contact potential mediators directly to obtain information about such matters as:

- the mediator's training, experience, knowledge about the court process, and familiarity with the kinds of issues involved in the lawsuit
- the mediator's approach to mediation
- the mediator's fees and expenses
- the mediator's references

Where is the roster of mediators available?

The roster of private-sector mediators in Toronto, Ottawa and Windsor is available at: the Ministry of the Attorney General web site: www.attorneygeneral.jus.gov.on.ca/english/courts/manmed. The roster is also available at the Office of the Local Mediation Coordinator and the Superior Court of Justice offices in Toronto, Ottawa and Windsor.

How are roster mediators selected?

If the parties fail to agree on a mediator, the Local Mediation Coordinator will randomly assign a mediator from the roster of mediators.

Mediators are selected for the roster by a Local Mediation Committee in each region. This Committee consists of lawyers, mediators, the general public and persons employed in the administration of the courts and a judge or case management master.

Mediators are added to the roster based on Ministry of the Attorney General guidelines relating to experience, training, educational background and familiarity with the civil justice system. More information is available at: <http://www.attorneygeneral.jus.gov.on.ca/english/courts/manmed/guidelines.asp>.

How can parties prepare for mediation?

To get the maximum benefit from mediation it is important to think about the case realistically and creatively. Before the mediation, parties who are represented should work with their lawyers to prepare for a session that will be cooperative and productive.

Parties might consider these questions in preparing for mediation:

- What is the best result each party can hope for in the lawsuit and what is the worst result that could happen?
- What is each party trying to accomplish by the lawsuit? What is really important to each of them?
- What are the main concerns of the other parties and how can they be addressed?
- Are there any solutions to the dispute that can reconcile the interests of all parties?
- Are there any limits on each party's ability to settle?
- What will happen if the case does not settle at mediation?

What is the lawyer's role in mediation?

The lawyer's role may include:

- advising the client about and ensuring compliance with the Mandatory Mediation Program
- advising the client about the selection of a mediator
- preparing and submitting the Statement of Issues
- preparing the client for effective participation in the mediation session
- providing legal and strategic advice during the mediation process
- participating in the mediation process in good faith
- protecting the client's legal interests in connection with any agreement reached

How will lawyers prepare their clients for mediation?

Lawyers are aware that the parties participate directly and actively in mediation. To prepare a party for mediation, the lawyer will:

- describe the mediation process and what will happen at the session
- explain what is expected of the client
- remind the client that the objective of the mediation is not to "win", but to reach a satisfactory resolution
- discuss mediation strategies
- ensure that the client or client's representative has authority to settle
- discuss the costs, risks and benefits of not reaching a settlement

- ensure that the client is conversant with the facts and issues of the case
- examine the strengths and weaknesses of each party's case, both on the facts and on the law
- explore the client's position, goals and interests
- attempt to understand the interests of the other parties
- advise the client on how to best put forward his or her interests
- advise the client about any confidential information which should not be disclosed
- work with the client to prepare an opening statement

How can lawyers assist clients during the mediation session?

Throughout the session, the lawyer can help the client by gauging the client's reactions and suggesting breaks where appropriate. During breaks in the session, the lawyer can discuss any observations about the progress of the session and advise the client on negotiation tactics and possible compromise solutions, where appropriate.

What happens after the mediation session?

Where the case settles completely or partially, the lawyer will review any agreement reached to ensure that it meets the client's interests and is legally binding.

Where the case does not settle, or certain issues remain outstanding, the lawyer will analyze the discussions that took place during the mediation and provide the client with advice concerning the next steps, which may include:

- consideration of the need for further mediation or other alternative dispute resolution processes
- requesting an early case conference for direction of the litigation
- preparation for trial
- compliance with any undertakings or agreements made at the mediation
- consideration of settlement options that were explored, but not adopted, at the session

For more information, visit the Ministry of the Attorney General web site at: www.attorneygeneral.jus.gov.on.ca/english/courts/manmed.