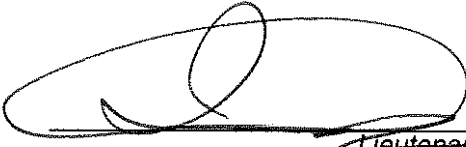


**PROVINCE OF BRITISH COLUMBIA**  
**ORDER OF THE LIEUTENANT GOVERNOR IN COUNCIL**

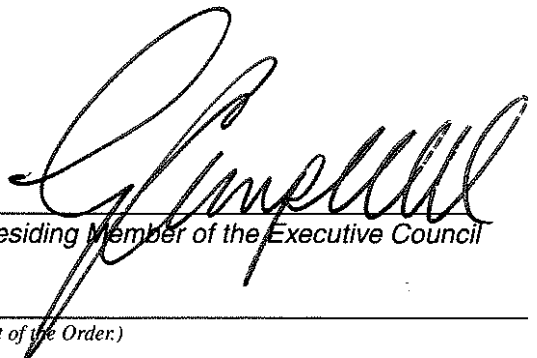
Order in Council No. 618, Approved and Ordered SEP 20 2007

  
\_\_\_\_\_  
Lieutenant Governor

**Executive Council Chambers, Victoria**

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and consent of the Executive Council, orders that, effective November 1, 2007, the attached Notice to Mediate (Family) Regulation is made.

  
\_\_\_\_\_  
Attorney General and Minister Responsible  
for Multiculturalism

  
\_\_\_\_\_  
Presiding Member of the Executive Council

*(This part is for administrative purposes only and is not part of the Order.)*

**Authority under which Order is made:**

Act and section:- Law and Equity Act, R.S.B.C. 1996, c. 253, s. 68

Other (specify):- \_\_\_\_\_

July 19, 2007

R/136/2007/7

# NOTICE TO MEDIATE (FAMILY) REGULATION

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## **FORMS 1 TO 5**

### **Definitions**

- 1 In this regulation:
  - “**agreement to mediate**” means an agreement referred to in section 14;
  - “**court**” means the Supreme Court of British Columbia;

- “**date of trial**” means the date set for trial in a notice of trial filed under the Rules of Court;
- “**family law proceeding**” means a proceeding in which relief is claimed under the *Family Relations Act* or the *Divorce Act* (Canada), and includes a proceeding for judicial separation or nullity;
- “**mediation**” means a collaborative process in which two or more parties meet and attempt, with the assistance of a mediator, to resolve issues in dispute between them;
- “**mediation session**” means a meeting between two or more parties to a family law proceeding during which they are engaged in mediation;
- “**mediator**” means a neutral and impartial facilitator with no decision making power who assists parties in negotiating a mutually acceptable settlement of issues in dispute between them;
- “**participant**” means a party to a family law proceeding who has not been exempted, under section 23 (c) or section 25 (c), from attending the mediation session;
- “**pre-mediation meeting**” means a meeting referred to in section 13;
- “**roster organization**” means any body designated by the Attorney General to select mediators for the purposes of this regulation.

#### **Application**

- 2 This regulation applies to family law proceedings commenced in the Nanaimo registry.

#### **Initiating mediation**

- 3 Subject to sections 2 and 4, any party to a family law proceeding may initiate mediation in that proceeding by delivering a Notice to Mediate (Family) in Form 1 to every other party to the proceeding and to the Dispute Resolution Office, Ministry of Attorney General.

#### **Not more than one mediation under this regulation in any proceeding**

- 4 Unless the court otherwise orders, not more than one mediation may be initiated under this regulation in relation to any family law proceeding.

#### **When notice to mediate must be delivered**

- 5 Unless the court otherwise orders, a Notice to Mediate may be delivered under section 3 no earlier than 90 days after the filing of the first statement of defence in the family law proceeding and no later than 90 days before the date of trial.

#### **Appointment of mediator**

- 6 The participants must jointly appoint a mutually acceptable mediator within 14 days after the Notice to Mediate has been delivered to all parties.

#### **Application to roster organization**

- 7 If the participants do not jointly appoint a mutually acceptable mediator within the time required by section 6, any participant may apply to a roster organization for an appointment of a mediator.

### **Roster organization's appointment procedure**

- 8** The following procedure applies if an application to a roster organization is made under section 7:
- (a) the roster organization must, within 7 days after receiving the application, communicate to all participants an identical list containing at least 6 names of possible mediators;
  - (b) each participant must, within 7 days after receipt of the list referred to in paragraph (a),
    - (i) delete from the list up to 2 names to which the participant objects,
    - (ii) number the remaining names on the list in order of preference, and
    - (iii) deliver the amended list to the roster organization;
  - (c) if a participant does not deliver the amended list within the time referred to in paragraph (b), the participant is deemed to have accepted all of the names;
  - (d) within 7 days after the expiry of the 7 day period referred to in paragraph (b), the roster organization must select the mediator from the remaining names on the list or, if no names remain on that list, from any available mediators, whether or not the selected mediator was included on the original list provided under paragraph (a), taking into account the following:
    - (i) the order of preference indicated by the participants on the returned lists;
    - (ii) the need for the mediator to be neutral and independent;
    - (iii) the qualifications of the mediator;
    - (iv) the mediator's fees;
    - (v) the mediator's availability;
    - (vi) any other consideration likely to result in the selection of an impartial, competent and effective mediator.

### **Notification of mediator**

- 9** Promptly after a roster organization selects the mediator, the roster organization must notify the participants in writing of that selection.

### **Deemed date of appointment of mediator**

- 10** The mediator selected by a roster organization is deemed to be appointed by the participants on the date that the notice is sent under section 9.

### **Replacement of appointed mediator**

- 11** If the mediator selected by the roster organization under section 8 (d) is unable or unwilling to act as mediator, the selected mediator or any participant may so notify the roster organization and the roster organization must, within 7 days after receiving that notice, select a new mediator in accordance with section 8 (d).

### **Separate pre-mediation meetings must be held**

- 12 The mediator must hold a pre-mediation meeting separately with each participant before a mediation session.

### **Pre-mediation meeting**

- 13 At a pre-mediation meeting with a participant, the mediator must
- (a) undertake a screening process for power imbalance, domestic violence and abuse, and assess whether mediation is appropriate in the circumstances determined from that process,
  - (b) discuss with the participant the importance of independent legal advice, and
  - (c) endeavour to have the participant consider all organizational matters relating to the mediation including the following:
    - (i) the issues that are to be dealt with during the mediation process;
    - (ii) pre-mediation disclosure of documents;
    - (iii) exchange of documents;
    - (iv) obtaining and exchanging expert reports;
    - (v) scheduling;
    - (vi) review and signing of an agreement to mediate.

### **Agreement to mediate**

- 14 An agreement to mediate referred to in section 13 (c) (vi) must include
- (a) information about the mediation process,
  - (b) information about the fees and disbursements the mediator will charge, and
  - (c) a statement that the mediator has discussed with the participants that it is important for them to obtain independent legal advice.

### **Power of mediator to end process**

- 15 Without limiting any other of the mediator's rights and powers in relation to the mediation process, at any time after the mediator has held a pre-mediation meeting, the mediator may end the mediation process if the mediator, in his or her sole discretion, concludes that
- (a) mediation is not appropriate, or
  - (b) the mediation process will not be productive
- and so advises the participants.

### **Participants must attend pre-mediation meeting and mediation session**

- 16 Unless relieved under section 23 or 25 of the obligation to attend, each participant must
- (a) attend a pre-mediation meeting,
  - (b) before the mediation session, sign an agreement to mediate, and
  - (c) attend a mediation session in relation to the proceeding.

### **Attendance by representative**

- 17 Despite section 16 but subject to section 18, a participant referred to in section 16 may attend one or both of a pre-mediation meeting and a mediation session by representative if
- (a) the participant is under legal disability and the representative is that participant's litigation guardian, or
  - (b) the participant is authorized to do so by the court on application.

### **Qualifications of representative**

- 18 A representative who attends a mediation session in the place of a participant must
- (a) be familiar with all of the relevant facts on which the participant, on whose behalf the representative attends, intends to rely, and
  - (b) have full authority to settle, or have access at the earliest practicable opportunity to a person who has full authority to settle, on behalf of that participant.

### **Participants and representatives may be accompanied by counsel**

- 19 A participant or representative who attends a pre-mediation meeting or a mediation session may be accompanied by counsel.

### **Other persons may attend with consent**

- 20 Any other person may,
- (a) with the consent of the participant with whom a pre-mediation meeting is held, attend the pre-mediation meeting, or
  - (b) with the consent of all the participants, attend a mediation session.

### **Attendance by communications medium**

- 21 A person required or entitled to attend a pre-mediation meeting or a mediation session may attend that meeting or mediation session by telephone or other communications medium if authorized to do so by the mediator.

### **Exemption if previous mediation**

- 22 (1) Parties to a family law proceeding need not attend a pre-mediation meeting or a mediation session if all of the parties to the proceeding have already been involved in a mediation session in relation to the matters in issue in that proceeding.
- (2) A judicial case conference is not a mediation session for the purposes of this section.

### **Other exemptions**

- 23 A party need not attend a pre-mediation meeting or a mediation session if
- (a) a party has obtained against another party a restraining order, including, without limitation, a restraining order under section 37 or 38 of the *Family Relations Act* or a peace bond under section 810 of the *Criminal Code*,

- (b) the mediator advises the participants under section 15 that mediation is not appropriate or that the mediation process will not be productive,
- (c) the party is exempted from participating in the mediation process under section 25, or
- (d) the participants agree that the party need not participate in the mediation process and that agreement is confirmed by the mediator in writing.

**Scheduling of mediation session**

- 24** A mediation session must occur within 60 days after the appointment of the mediator but not later than 14 days before the date of trial unless a later specified date
- (a) is agreed on by all participants and that agreement is confirmed by the mediator in writing, or
  - (b) is ordered by the court.

**Applications to court**

- 25** On an application, the court may order that
- (a) the mediation proceed on the terms and conditions, if any, and at the time or times, that the court considers appropriate,
  - (b) the mediation be adjourned to a later date on the terms and conditions that the court considers appropriate, or
  - (c) one or more of the parties is exempt from participating in the mediation process if, in the court's opinion, it is impracticable or materially unfair to require the party to attend.

**Court may defer mediation session**

- 26** On an application for an order referred to in section 24 (b), the court
- (a) must take into account all of the circumstances, including
    - (i) whether the mediation will be more likely to succeed if it is postponed to allow the participants to acquire more information, and
    - (ii) any other circumstances the court considers appropriate, and
  - (b) may make any order referred to in section 25.

**Pre-mediation exchange of information**

- 27** At least 14 days before the mediation session is to be held in relation to a proceeding, each participant must deliver to the mediator a Statement of Facts and Issues in Form 2 setting out the factual and legal basis for the participant's claim or opposition to the relief sought in the proceeding.

**Mediator must distribute statements**

- 28** Promptly after receipt of all the Statements of Facts and Issues required to be delivered under section 27, the mediator must deliver each participant's statement to each of the other participants.

**Fee declaration**

- 29 The participants must complete a fee declaration in accordance with section 30, before or at the mediation session.

**Form of fee declaration**

- 30 A fee declaration under section 29 must be in Form 3 and must
- (a) disclose the cost of the mediation services, and
  - (b) contain a declaration by the participants that the cost of the mediation will be paid
    - (i) equally by the participants, or
    - (ii) on any other specified basis agreed by the participants.

**Fee declaration binding**

- 31 A fee declaration completed under this rule is binding on the participants.

**Costs may include mediation cost component**

- 32 Despite section 31, nothing in section 30 or in the fee declaration completed under this regulation precludes there being included in the disbursements awarded to a party in the proceeding an amount to compensate the party for the share of the cost of the mediation that that party paid under the declaration.

**Conduct of a mediation**

- 33 Subject to section 13, the mediator may conduct a pre-mediation meeting and the mediation in any manner he or she considers appropriate to assist the participants to reach a resolution that is timely, fair and cost-effective.

**Allegation of default**

- 34 (1) Any participant who is of the opinion that any other participant has failed to comply with a provision of this regulation may make application to the court for an order under section 35.
- (2) A participant bringing an application under subsection (1) must do so in accordance with the Rules of Court and, without limiting this, must, before making that application, deliver to each of the other participants
- (a) an Allegation of Default in Form 4 respecting the participant who is alleged to have failed to comply with a provision of this regulation, and
  - (b) any affidavits in support of the application.

**Effect of a default**

- 35 (1) On an application referred to in section 34 (1), the court may do any one or more of the following unless the participant in respect of whom the Allegation of Default is filed satisfies the court that the default did not occur or that there is a reasonable excuse for the default:
- (a) adjourn the application and make an order, on any terms the court considers appropriate, that
    - (i) a pre-mediation meeting occur, or



- (ii) a mediation session occur;
  - (b) adjourn the application and make an order that a participant attend one or both of a pre-mediation meeting and a mediation session;
  - (c) adjourn the application and make an order that a participant deliver a Statement of Facts and Issues to the mediator;
  - (d) stay the action until the participant in respect of whom the allegation is filed attends one or both of a pre-mediation meeting and a mediation session;
  - (e) make any order it considers appropriate with respect to costs.
- (2) If the court considers that public disclosure of the Allegation of Default and related affidavits would be a hardship on a participant, the court may
- (a) order that the whole or any part of the Allegation of Default and related affidavits be sealed in an envelope and that no person may search the sealed documents without an order of the court, or
  - (b) make such other order respecting confidentiality of those documents as the court considers appropriate.

**Court may consider default in ordering costs**

- 36** The court may consider a default in making any order about costs, whether that order is made following final disposition of the proceeding or otherwise.

**Confidentiality and compellability**

- 37** (1) Subject to sections 38 and 40 and subsections (2) and (3) of this section, a person must not disclose, or be compelled to disclose, in any civil, criminal, quasi-criminal, administrative or regulatory action or proceeding,
- (a) any oral or written information acquired in anticipation of, during or in connection with a pre-mediation meeting or a mediation session,
  - (b) any opinion disclosed in anticipation of, during or in connection with a pre-mediation meeting or a mediation session, or
  - (c) any document, offer or admission made in anticipation of, during or in connection with a pre-mediation meeting or a mediation session.
- (2) Subsection (1) does not apply
- (a) in respect of any information, opinion, document, offer or admission that all of the participants agree in writing may be disclosed,
  - (b) to any fee declaration, agreement to mediate or settlement document made in anticipation of, during or in connection with a pre-mediation meeting or a mediation session, or
  - (c) to any information that does not identify the participants or the action and that is disclosed for research or statistical purposes only.
- (3) Despite subsection (1), if and only to the extent that it is necessary to do so for the purposes of section 34 or 35, a participant may disclose evidence of any act or failure to act of another participant that is alleged, for the purpose of section 34, to constitute a failure to comply with a provision of this regulation.

**No restriction on otherwise producible information**

- 38** Nothing in this regulation precludes a person from introducing into evidence in any civil, criminal, quasi-criminal, administrative or regulatory action or proceeding any information or records produced in the course of the mediation that are otherwise producible or compellable in those proceedings.

**Concluding a mediation**

- 39** A mediation is concluded when
- (a) all issues are resolved, or
  - (b) the mediation session is completed and there is no agreement to continue.

**Certificate of Conclusion of Mediation**

- 40** When a mediation is concluded, the mediator must deliver a Certificate of Conclusion of Mediation in Form 5 to each of the participants who requests one or to their counsel and to the Dispute Resolution Office, Ministry of Attorney General.

FORM 1

No. ....

..... Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between:

Plaintiff(s)

and

Defendant(s)

NOTICE TO MEDIATE

TO:

TAKE NOTICE that a mediation is to be conducted in this proceeding in accordance with the Notice to Mediate (Family) Regulation, B.C. Reg. XX/2007.

The parties who have not been exempted from attending the mediation session must jointly appoint a mutually acceptable mediator within 14 days after delivery of this Notice.

Otherwise, any of those parties may apply to a designated roster organization for appointment of a mediator.

Dated at ....., British Columbia, on ....., 20....

.....

Party [or party's solicitor]

Party delivering this Notice:

\* Information about separation and divorce, including information about the mediation process, is available at the Nanaimo Family Justice Services Centre, 302-65 Front Street, Nanaimo BC, V9R 5H9, and online at [www.nanaimo.familyjustice.bc.ca](http://www.nanaimo.familyjustice.bc.ca).

\* Information about the mediation process, including matters to consider when selecting a mediator, is available online at [http://www.mediator-roster.bc.ca/mediationinbc\\_process.html](http://www.mediator-roster.bc.ca/mediationinbc_process.html).

FORM 2

No. ....

..... Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between:

Plaintiff(s)

and

Defendant(s)

STATEMENT OF FACTS AND ISSUES

PART I

*[To be completed by plaintiff]*

The following relief is sought:

PART II

*[To be completed by plaintiff]*

Basis for seeking relief:

*[Set out briefly the factual and legal basis for the relief that is sought.]*

PART III

*[To be completed by defendant]*

Basis for opposing relief:

*[Set out briefly the factual and legal basis for opposing the relief that is sought.]*

This mediation takes place under the Notice to Mediate (Family) Regulation, B.C. Reg. XX/2007.

Dated at ....., British Columbia, on ....., 20....

.....

Party *[or party's solicitor]*

FORM 3

No. ....

..... Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between:

Plaintiff(s)

and

Defendant(s)

MEDIATION FEE DECLARATION

WHEREAS:

- (a) we, or our representatives, are participating in a mediation under the Notice to Mediate (Family) Regulation, B.C. Reg. XX/2007;
- (b) the mediator will be ..... of ....., B.C.
- (c) the cost of the mediation services will be \$..... for a completed mediation session, or will be calculated at \$..... per hour plus necessary disbursements, or will be calculated as follows:

WE WILL, subject to any agreement reached during mediation, pay the cost of the mediation services:

- 1. in equal shares
- or
- 2. as follows:

WE MAKE THIS DECLARATION under section 29 of the Notice to Mediate (Family) Regulation, B.C. Reg. XX/2007.

Dated at ....., British Columbia, on ....., 20....

.....  
Party [or party's solicitor]

.....  
Party [or party's solicitor]

FORM 4

No. ....

..... Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between:

Plaintiff(s)

and

Defendant(s)

ALLEGATION OF DEFAULT

I ALLEGE THAT ..... has failed to comply with section ..... of the Notice to Mediate (Family) Regulation, B.C. Reg. XX/2007.

THE CIRCUMSTANCES OF THE DEFAULT are as follows:

*[Set out the circumstances in numbered paragraphs]*

Dated at ....., British Columbia, on ....., 20....

.....  
Party [*or party's solicitor*]

FORM 5

No. ....

..... Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between:

Plaintiff(s)

and

Defendant(s)

CERTIFICATE OF CONCLUSION OF MEDIATION

I CERTIFY THAT I, ....., have concluded a mediation session or otherwise ended the mediation process in this matter in accordance with the Notice to Mediate (Family) Regulation, B.C. Reg. XX/2007, and that

- all issues are resolved,
- some issues are resolved,
- mediation is not appropriate and I have so advised the parties who have not been exempted from attending the mediation session,
- the process will not be productive and I have so advised the parties who have not been exempted from attending the mediation session,
- the mediation session is completed and there is no agreement to continue.

Dated at ....., British Columbia, on ....., 20....

.....  
Mediator

Name: .....

Address: .....

.....