

Mediation

Mediation is now mandatory in all cases commenced in Toronto as of January 2002. Mediation must take place within 90 days of the first filing from the company. The latter filing is due within 20 days from service of the claim. The parties may agree to extend the time for the mediation, if required.

Mediation allows a neutral third party, a lawyer experienced in this area of the law, to meet with both parties to attempt to settle the case. Usually this occurs before discoveries have been completed.

Typically the parties agree to appoint a specific mediator. If no consensus is reached, the computer process will generate a name at random, which may not be a lawyer, let alone a lawyer well versed in this area of law. For that reason, the two lawyers try hard to reach an agreed well known experienced lawyer.

Nothing said at the mediation can be repeated outside the mediation. In particular any offers of settlement or even information exchanged at the mediation may be repeated in court, or to any party external to the case.

One party may use, however, information received at the mediation to prove an issue independently. If for example, you state at the mediation that the sales and marketing report which was due on December 1 was typed by your assistant and was not delivered to an administrative error, the company could later ask him/her for his/her recall of the events relevant to that issue.

Summaries of the case are given by each party to the mediator who reviews the essential issues of the case in advance. Mandatory mediation is a minimum of 3 hours and the mediator's fee is set by the rules of court as \$600. This fee is increased to "normal rates", usually \$350 per hour for time spent in excess of the three hour minimum.

Mediation can be successful, if you come prepared and with an open mind. Do not set predetermined goals, such as a dollar sum. Prepare a shopping list of settlement features you would like to attain and include non-monetary items, things that the court process would not allow, such as a letter of reference, perhaps an apology. In a recent mediation, the company offered reinstatement, once it realized that it had made an error. The sky is the limit for settlement issues, so do not feel constrained by the court action.

It is important to prepare for mediation just as you would prepare for discovery. Bring all relevant documents, including your job search file and any proof of any income earned since termination. If you started our own business, bring a statement of profit

and loss to date, with as much supporting documentation as possible.

The following is a summary of cases which I have taken to mediation, and the results achieved year to date:

	Case	Mediator	Result
1	January 2002	Aubrey Golden	settled
2	February 2002	Barry Fisher	settled
3	February 2002	Rick MacDowell	settled but not at mediation
4	February 2002	Justice Osborne	no
5	April 2002	Peter Israel	settled
6	May 2002	Aubrey Golden	case settled b/c of pending mediation
7	June 2002	Barry Fisher	settled
8	June 2002	Barry Fisher	no
9	June 2002	Aubrey Golden	settled
10	June 2002	Lynn Bevan	no
11	July 2002	Barry Fisher	settled
12	July 2002	Barry Fisher	settled
13	July 2002	Norm Grosman	no
14	August 2002	Barry Fisher	settled
15	August 2002	Barry Fisher	settled
16	Sept 2002	Barry Fisher	settled
17	Sept 2002	Norm Grosman	settled
18	Sept 2002	Aubrey Golden	settled
19	Sept 2002	Barry Fisher	no

14/19 cases settled at mediation or immediately thereafter - roughly 73%

Fisher 7/9 77%
Golden 4/4 100%
Grosman 1/2 50%