

LITIGATION

BULLETIN

*A Report on Developments  
in Canadian Litigation*

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**MANDATORY MEDIATION IN TORONTO: HOW IT ALL WORKS**

All newly commenced actions in Toronto are subject to Mandatory Civil Case Management and Mediation. In our last bulletin, we described how Case Management works. In this bulletin, we provide an overview of the Mandatory Mediation Program.

**THE BASIC STRUCTURE**

Unless the court rules otherwise, parties in any Case Managed proceeding must attend a mediation session within 90 days after the first defence is filed. In most cases, the parties may agree to postpone the mediation for up to 60 days.

In mediation, a neutral third party, a private sector mediator, helps the parties explore a solution that works for both of them. Mediators never decide cases or impose settlements. Rather, their role is limited to helping the parties communicate and negotiate constructively.

Parties may find their own mediator or choose from the court's roster. The parties must select a mediator 60 days prior to the mediation. If they cannot agree on a mediator, the court appoints one. Generally, parties share the cost of the mediation session equally and the mediators fees are \$600 to \$825.

**THE MEDIATION SESSION**

All parties, and their counsel, must attend the mediation. Lawyers may not attend in place of their clients, and the mediation may not proceed unless all parties have either authority to settle the case or telephone access to someone with authority to settle. Thus, an individual representing a corporate or similar party must be authorized to decide on the entity's behalf.

Everything said in, and all information arising from, the mediation is strictly confidential, and may not be used outside the mediation for any court purpose. Although the process is informal, mediators generally structure the discussion. All parties are given an opportunity to present their story, identify what they consider important and ask questions. Basically, the mediator helps the parties explore settlement options. To achieve this goal, the mediator may meet with each party alone either before or during the session.

Parties in Mandatory Mediation are not obliged to continue with a session beyond three hours. If the mediation cannot be concluded within three hours, the mediator may continue the session with the parties' consent. Mediators may also end sessions in fewer than three hours if the process clearly is not constructive for the parties or the case settles.

**THE OUTCOME**

When parties reach a settlement at mediation, the defendant notifies the court. Agreements resolving some or all of the issues in the case are legally binding and must be in writing and signed by the parties or their lawyers. Consequently, should a party violate a signed agreement, any other party to the agreement may either move for a judgment under the agreement's terms or continue the case as if no agreement had been reached.

When parties cannot settle their dispute at mediation, the case continues through the litigation process. Mediators must complete and file a report on the outcome of every mediation, however, the report contains no information regarding what was said or done at the session.

## WHO WE ARE



**BRETT HARRISON**

*Direct Line:* 416.865.7932

*E-mail:* bharrison@mcbinch.com

Brett Harrison is an associate in the firm's Litigation and Dispute Resolution Department. His practice includes corporate/commercial litigation, insolvency, lender liability and competition issues.

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*The foregoing provides only an overview of Mandatory Mediation in Toronto. Readers are cautioned against making any decisions based on this material alone. Rather, a qualified lawyer should be consulted.*

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*For further information on these or other litigation matters, please contact one of the lawyers listed below, all of whom practice in the litigation field:*

Nicole Broley	416.865.7010	nicole.broley@mcmillanbinch.com
Hilary E. Clarke	416.865.7286	hilary.clarke@mcmillanbinch.com
Jennifer Dent	416.865.7127	jennifer.dent@mcmillanbinch.com
Teresa M. Dufort	416.865.7145	teresa.dufort@mcmillanbinch.com
W. Brad Hanna	416.865.7276	brad.hanna@mcmillanbinch.com
Brett Harrison	416.865.7932	brett.harrison@mcmillanbinch.com
David W. Kent	416.865.7143	david.kent@mcmillanbinch.com
Markus Koehnen	416.865.7218	markus.koehnen@mcmillanbinch.com
Karen Kuzmowich	416.865.7149	karen.kuzmowich@mcmillanbinch.com
Adrienne Lee	416.865.7226	adrienne.lee@mcmillanbinch.com
Daniel V. MacDonald	416.865.7169	dan.macdonald@mcmillanbinch.com
Paul G. Macdonald	416.865.7167	paul.macdonald@mcmillanbinch.com
J. Scott Maidment	416.865.7911	scott.maidment@mcmillanbinch.com
Jason Murphy	416.865.7887	jason.murphy@mcmillanbinch.com
Leonard Ricchetti	416.865.7159	leonard.ricchetti@mcmillanbinch.com
Julie Stanchieri	416.865.7885	julie.stanchieri@mcmillanbinch.com
Sean Werger	416.865.7856	sean.werger@mcmillanbinch.com

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TELEPHONE: 416.865.7000  
FACSIMILE: 416.865.7048  
WEB: WWW.MCMILLANBINCH.COM