

## **The McMillan Rail Shippers' Guide** Alternative Dispute Resolution (Agency Facilitation, Mediation, and Arbitration)

In addition to the remedies listed above, the Canadian Transportation Agency (Agency) also offers alternative dispute resolution mechanisms including facilitation, mediation and arbitration that are less formal and sometimes more easily accessible. These alternative mechanisms require the consent of all parties and are not available if the railway company refuses to participate.

### **Facilitation**

Facilitation refers to a process by which Agency representatives will assist you and the railway company by phone or email to reach an agreement. If you are unsuccessful in resolving your dispute by facilitation, you can still use the Agency's other dispute resolution processes.

### **Section 36.1 Mediation**

Mediation refers to a confidential process that occurs in person or by videoconference whereby you, the railway company and a neutral, third-party mediator come together to discuss and try to resolve your dispute. Unlike arbitration or adjudication, the mediator does not have the power to decide your dispute; the mediator can only assist you and the railway company in your negotiations. Mediation under section 36.1 can cover disputes on any matter within the Agency's jurisdiction, that is, any matter in which the Agency would have the ability to issue an order. If you and the railway company come to an agreement resulting from mediation, you can file the mediation agreement with the Agency and it will have the same force and effect as an order from the Agency.

If you have already begun a formal proceeding such as a LOS Complaint, you can still use the Agency's mediation processes; mediation will suspend the formal proceedings for the duration of the mediation and extend the Agency's time limits for making any determination under the *Canada Transportation Act* (Act)





## Section 36.2 Mediation or Arbitration

You and the railway company can also request that the Agency mediate or arbitrate a dispute relating to railway transportation covered by the Act, with the exception of matters pertaining to railway accidents. Mediation or arbitration under section 36.2 may also provide a process for resolving issues that do not neatly fit within the statutory remedies, such as service complaints, FOA or SLA.

To discuss questions regarding alternative dispute resolution tactics such as facilitation, mediation or arbitration send an email or telephone a member of McMillan's Rail Transportation Group at the contacts below.

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