

**COURT OF QUEEN'S BENCH OF ALBERTA**

**CIVIL PRACTICE NOTE NO. 11**

**COURT ANNEXED MEDIATION**

**EFFECTIVE SEPTEMBER 1<sup>ST</sup>, 2004**

***Preamble***

Alberta Justice is proceeding with a pilot initiative to promote private, user pay, interest based mediation in Alberta. Alberta Justice has requested that the within Practice Note be issued to facilitate implementation of this pilot project to promote mediation as an additional method of dispute resolution. It is not intended to derogate in any way from the JDR program in the Court of Queen's Bench. The Court will not be involved in the management of court annexed mediation. Alberta Justice will be responsible for the appointment of mediation coordinators, together with support staff in each judicial district where the pilot project will be undertaken.

1. This practice note applies to non-family civil actions in the Court of Queen's Bench of Alberta, Judicial Districts of Edmonton and Lethbridge, filed on or after September 1<sup>st</sup>, 2004.
2. After January 1<sup>st</sup>, 2005, provided that all parties to an action have filed and served Affidavit of Records pursuant to Part 13 of the Alberta Rules of Court, any party may file and serve a Request to Mediate on all other parties.
3. No Request to Mediate may be served after a Certificate of Readiness has been filed.
4. Unless one or more parties object to the Request to Mediate, the mediation shall proceed before a mediator agreed to by the parties or from a roster of mediators established by Alberta Justice.
5. If the parties are unable to agree on a mediator within 30 days of service of the Request to Mediate, the parties shall attend on the Mediation Coordinator for the Judicial District, who shall appoint a mediator from the roster.
6. Following appointment of a mediator, the parties and the mediator will decide within 30 days what exchange of information is required for the mediation.
7. The mediation shall proceed for a minimum of three hours within 120 days of service of the Request to Mediate or as agreed to by the parties.
8. The parties shall attend the mediation, and those with authority to act on behalf of a party shall attend to provide a decision.
9. Any party served with a Request to Mediate who objects to mediation proceeding shall within 30 days of service of the Request to Mediate apply on notice to all other parties

to the Mediation Coordinator for an exemption of the action from mediation. Any party dissatisfied with the decision of a Mediation Coordinator may apply to a Justice of the Court of Queen's Bench, on notice to all parties, within 15 days to set aside or vary the decision of the Mediation Coordinator.

10. An exemption from mediation may be granted if:
  - (a) The case is too complex.
  - (b) The volume of records, number of issues in dispute, or status of the action renders mediation premature.
  - (c) The parties express a desire to proceed with a Judicial Dispute Resolution in the Court of Queen's Bench.
  - (d) Other sufficient reason exists.
11. The Request to Mediate does not operate as a stay of proceedings and does not affect Case Management Orders.
12. Everything said in a mediation is confidential unless disclosure is required by law or as agreed to by the parties.
13. Discussions in mediation and any materials produced for the mediation are inadmissible in any proceedings except to prove the fact or terms of a settlement agreement.
14. The mediator is not compellable or competent to testify in any proceedings.
15. Should a party served with a Request to Mediate who does not seek an exemption from mediation fail to attend the mediation or fail to respond to the Request to Mediate, the serving party shall be at liberty to apply to a judge for an order of costs payable forthwith by that party. In addition, the failure to respond to the Request to Mediate or the failure to cooperate with the mediation may be considered in awarding costs of the action.

Dated this 2<sup>nd</sup> day of July, 2004

---

Allan H. J. Wachowich  
Chief Justice

---

Allen B. Sulatycky  
Associate Chief Justice