

Current Rule 24.1	Draft Rule: changes in bold & underlined
<p>RULE 24.1 MANDATORY MEDIATION</p> <p>PURPOSE 24.1.01 This Rule provides for mandatory mediation in case managed actions, in order to reduce cost and delay in litigation and facilitate the early and fair resolution of disputes.</p> <p>NATURE OF MEDIATION 24.1.02 In mediation, a neutral third party facilitates communication among the parties to a dispute, to assist them in reaching a mutually acceptable resolution.</p> <p>DEFINITIONS 24.1.03 In rules 24.1.04 to 24.1.16, “defence” means, (a) Revoked: O. Reg. 457/01, s. 5. (b) a notice of intent to defend, (c) a statement of defence, and (d) a notice of motion in response to an action, other than a motion challenging the court’s jurisdiction; (“défense”) “mediation co-ordinator” means the person designated under rule 24.1.06. (“coordonnateur de la médiation”)</p> <p>APPLICATION Scope 24.1.04 (1) This Rule applies to actions that are, (a) commenced in, (i) the City of Toronto on or after January 4, 1999, (ii) The Regional Municipality of Ottawa-Carleton on or after January 4, 1999 but before January 1, 2001, (iii) the City of Ottawa on or after January 1, 2001, or (iv) the County of Essex on or after December 31, 2002; and (b) described in subrule (2).</p>	<p>RULE 24.1 MANDATORY MEDIATION</p> <p>PURPOSE 24.1.01 This Rule provides for mandatory mediation <u>in assigned actions</u>, in order to reduce cost and delay in litigation and facilitate the early and fair resolution of disputes.</p> <p>NATURE OF MEDIATION 24.1.02 In mediation, a neutral third party facilitates communication among the parties to a dispute, to assist them in reaching a mutually acceptable resolution.</p> <p>DEFINITIONS 24.1.03 In rules 24.1.04 to 24.1.16, “defence” means, (a) Revoked: O. Reg. 457/01, s. 5. (b) a notice of intent to defend, (c) a statement of defence, and (d) a notice of motion in response to an action, other than a motion challenging the court’s jurisdiction; (“défense”) “mediation co-ordinator” means the person designated under rule 24.1.06. (“coordonnateur de la médiation”)</p> <p>APPLICATION Scope 24.1.04 <u>(1) This Rule applies to the following actions:</u> <u>1. Actions that were governed by this Rule immediately before July 1st, 2009.</u> <u>2. Actions that are commenced in one of the following counties and assigned to mandatory mediation by the registrar, acting under the direction of the regional senior judge:</u> <u>i. The City of Toronto.</u> <u>ii. The City of Ottawa.</u> <u>iii. The County of Essex.</u></p>

(2) The actions referred to in clause (1) (b) are,
(0.a) actions governed by Rule 78 (Toronto Civil Case Management Pilot Project);
(a) actions governed by Rule 77 (Civil Case Management); and
(b) actions governed by Rule 76 (Simplified Procedure) and assigned to mandatory mediation by the regional senior judge.

Exceptions, Certain Actions

(2.1) Despite subrules (1) and (2), this Rule does not apply to:

1. An action under the *Substitute Decisions Act, 1992* or Part V of the *Succession Law Reform Act*.
2. An action in relation to a matter that was the subject of a mediation under section 258.6 of the *Insurance Act*, if the mediation was conducted less than a year before the delivery of the first defence in the action.

Proceedings Against the Crown Act

(3) In an action to which the *Proceedings Against the Crown Act* applies, if the notice required by section 7 of that Act has not been served, the Crown in right of Ontario is entitled to participate in mediation under this Rule but is not required to do so.

Revocation

(4) Clause (2) (0.a) is revoked on July 1, 2009.

EXEMPTION FROM MEDIATION

24.1.05 The court may make an order on a party's motion exempting the action from this Rule.

MEDIATION CO-ORDINATOR

24.1.06 The Attorney General or his or her delegate may designate a person as mediation co-ordinator for a county named in the Schedule to subrule 24.1.04 (1), to be responsible for the administration of mediation in the county under this Rule.

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24.1.06 The Attorney General or his or her delegate may designate a person as mediation co-ordinator for a county named in (delete "the Schedule to") subrule 24.1.04 (1), to be responsible for the administration of mediation in the county under this Rule.

<p>LOCAL MEDIATION COMMITTEES Establishment 24.1.07 (1) There shall be a local mediation committee in each county named in the Schedule to subrule 24.1.04 (1).</p> <p>Membership (2) The members of each committee shall be appointed by the Attorney General so as to represent lawyers, mediators, the general public and persons employed in the administration of the courts. (3) The Chief Justice of the Superior Court of Justice shall appoint a judge to be a member of each committee.</p> <p>Functions (4) Each committee shall, (a) compile and keep current a list of mediators for the purposes of subrule 24.1.08 (1), in accordance with guidelines approved by the Attorney General; (b) monitor the performance of the mediators named in the list; (c) receive and respond to complaints about mediators named in the list. (5) In carrying out their functions under subrule (4), committees may add mediators to the list and remove mediators from the list.</p> <p>MEDIATORS List of Mediators 24.1.08 (1) The mediation co-ordinator for a county shall maintain a list of mediators for the county, as compiled and kept current by the local mediation committee. (2) A mediation under this Rule shall be conducted by, (a) a person chosen by the agreement of the parties from the list for a county; (b) a person assigned by the mediation co-ordinator under subrule 24.1.09 (6) from the list for the county; or</p>	<p>LOCAL MEDIATION COMMITTEES Establishment 24.1.07 (1) There shall be a local mediation committee in each county (delete “the Schedule to”) named in subrule 24.1.04 (1).</p> <p>Membership (2) The members of each committee shall be appointed by the Attorney General so as to represent lawyers, mediators, the general public and persons employed in the administration of the courts. (3) The Chief Justice of the Superior Court of Justice shall appoint <u>a judge or a case management master</u> to be a member of each committee.</p> <p>Functions (4) Each committee shall, (a) compile and keep current a list of mediators for the purposes of subrule 24.1.08 (1), in accordance with guidelines approved by the Attorney General; (b) monitor the performance of the mediators named in the list; (c) receive and respond to complaints about mediators named in the list. (5) In carrying out their functions under subrule (4), committees may add mediators to the list and remove mediators from the list.</p> <p>MEDIATORS List of Mediators 24.1.08 (1) The mediation co-ordinator for a county shall maintain a list of mediators for the county, as compiled and kept current by the local mediation committee. (2) A mediation under this Rule shall be conducted by, (a) a person chosen by the agreement of the parties from the list for a county; (b) a person assigned by the mediation co-ordinator under subrule 24.1.09 (6) <u>or (6.1)</u> from the list for the county; or</p>
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(c) a person who is not named on a list, if the parties consent.

(3) Every person who conducts a mediation under subrule (2), whether named on the list or not, is required to comply with this Rule.

(4) Without limiting the generality of subrule (3), every person who conducts a mediation under subrule (2) shall comply with subrule 24.1.15 (1) (mediator's report).

MEDIATION SESSION

Time Limit

24.1.09 (1) A mediation session shall take place within 90 days after the first defence has been filed, unless the court orders otherwise.

Extension or Abridgment of Time

(2) In considering whether to exercise the power conferred by subrule (1), the court shall take into account all the circumstances, including,

(a) the number of parties, the state of the pleadings and the complexity of the issues in the action;

(b) whether a party intends to bring a motion under Rule 20 (Summary Judgment), Rule 21 (Determination of an Issue Before Trial) or Rule 22 (Special Case);

(c) whether the mediation will be more likely to succeed if the 90-day period is extended to allow the parties to obtain evidence under,

(i) Rule 30 (Discovery of Documents),

(ii) Rule 31 (Examination for Discovery),

(iii) Rule 32 (Inspection of Property),

(iv) Rule 33 (Medical Examination), or

(v) Rule 35 (Examination for Discovery by Written Questions); and

(d) whether, given the nature of the case or the circumstances of the parties, the mediation will be more likely to succeed if the 90-day period is extended or abridged.

Postponement

(3) Despite subrule (1), in the case of an action on the standard track, the mediation session may be postponed for up to 60 days

(c) a person who is not named on a list, if the parties consent.

(3) Every person who conducts a mediation under subrule (2), whether named on the list or not, is required to comply with this Rule.

(4) Without limiting the generality of subrule (3), every person who conducts a mediation under subrule (2) shall comply with subrule 24.1.15 (1) (mediator's report).

MEDIATION SESSION

Time Limit

24.1.09 (1) A mediation session shall take place within **180 days** after the first defence has been filed, unless the court orders otherwise.

Extension or Abridgment of Time

(2) In considering whether to exercise the power conferred by subrule (1), the court shall take into account all the circumstances, including,

(a) the number of parties, the state of the pleadings and the complexity of the issues in the action;

(b) whether a party intends to bring a motion under Rule 20 (Summary Judgment), Rule 21 (Determination of an Issue Before Trial) or Rule 22 (Special Case);

(c) whether the mediation will be more likely to succeed if the **180-day period** is extended to allow the parties to obtain evidence under,

(i) Rule 30 (Discovery of Documents),

(ii) Rule 31 (Examination for Discovery),

(iii) Rule 32 (Inspection of Property),

(iv) Rule 33 (Medical Examination), or

(v) Rule 35 (Examination for Discovery by Written Questions); and

(d) whether, given the nature of the case or the circumstances of the parties, the mediation will be more likely to succeed if the **180-day period** is extended or abridged.

Postponement

(3) Despite subrule (1), the mediation session may be postponed to a later date if,

(a) the parties consent to the date in

if the consent of the parties is filed with the mediation co-ordinator.

Selection of Mediator

(4) The parties shall choose a mediator under subrule 24.1.08 (2).

(5) Within 30 days after the filing of the first defence, the plaintiff shall file with the mediation co-ordinator a notice (Form 24.1A) stating the mediator's name and the date of the mediation session.

Assignment of Mediator

(6) If the mediation co-ordinator does not, within the times provided, if any, receive an order under subrule (1), a consent under subrule (3), a notice under subrule (5), a mediator's report or a notice that the action has been settled, he or she shall immediately assign a mediator from the list.

(7) The assigned mediator shall immediately fix a date for the mediation session and shall, at least 20 days before that date, serve on every party a notice (Form 24.1B) stating the place, date and time of the session and advising that attendance is obligatory.

(8) The assigned mediator shall provide a copy of the notice to the mediation co-ordinator.

writing; and

(b) the consent is filed with the mediation co-ordinator.

Selection of Mediator

(4) The parties shall choose a mediator under subrule 24.1.08 (2).

(5) Before setting the action down for trial, one of the parties shall file with the mediation co-ordinator,

(a) a notice (Form 24.1A) stating the mediator's name and the date of the mediation session; or

(b) a mediator's report under subrule 24.1.15 (1) indicating that the mediation has been concluded.

Assignment of Mediator

(6) If the mediation co-ordinator does not, within 180 days after the first defence has been filed, receive an order under subrule (1), a consent under subrule (3), a notice under clause (5) (a), a mediator's report or a notice that the action has been settled, he or she shall immediately assign a mediator from the list, unless the court orders otherwise.

(6.1) If the mediation co-ordinator does not, within the time provided by an order under subrule (1) or a consent under subrule (3), receive a notice under clause (5) (a), a mediator's report or a notice that the action has been settled, and the action is set down for trial, he or she shall immediately assign a mediator from the list, unless the court orders otherwise.

(7.1) The date scheduled for the mediation session shall be within 90 days after the appointment of the mediator, unless the court orders otherwise.

<p>Application 24.1.09.1 (1) This rule (rule 24.1.09.1) applies to actions governed by Rule 78 (Toronto Civil Case Management Pilot Project).</p> <p>Time Limit and Notice (2) Despite subrules 24.1.09 (1) and (5), (a) in the case of a wrongful dismissal action, a mediation session shall take place within 150 days after the close of pleadings, unless the court orders otherwise, and the plaintiff shall file the notice described in subrule 24.1.09 (5) at least 30 days before the date of the mediation session; (b) in the case of an action governed by Rule 76 (Simplified Procedure) that is assigned to mandatory mediation by the regional senior judge, a mediation session shall take place within 150 days after the close of pleadings, unless the court orders otherwise, and the plaintiff shall file the notice described in subrule 24.1.09 (5) at least 30 days before the date of the mediation session; and (c) in the case of any other action, a mediation session shall take place at the stage at which the parties agree that mediation is most likely to be effective, but in any case within 90 days after the action is set down for trial, unless the court orders otherwise, and the plaintiff shall file the notice described in subrule 24.1.09 (5) at least 30 days before the date of the mediation session.</p> <p>Revocation (3) This rule (rule 24.1.09.1) is revoked on July 1, 2009.</p> <p>PROCEDURE BEFORE MEDIATION SESSION Statement of Issues 24.1.10 (1) At least seven days before the mediation session, every party shall prepare a statement in Form 24.1C and provide a copy to every other party and to the mediator. (2) The statement shall identify the factual</p>	<p>Application 24.1.09.1 (1) This rule (rule 24.1.09.1) applies to actions governed by Rule 78 (Toronto Civil Case Management Pilot Project).</p> <p>Time Limit and Notice (2) Despite subrules 24.1.09 (1) and (5), (a) in the case of a wrongful dismissal action, a mediation session shall take place within 150 days after the close of pleadings, unless the court orders otherwise, and the plaintiff shall file the notice described in subrule 24.1.09 (5) at least 30 days before the date of the mediation session; (b) in the case of an action governed by Rule 76 (Simplified Procedure) that is assigned to mandatory mediation by the regional senior judge, a mediation session shall take place within 150 days after the close of pleadings, unless the court orders otherwise, and the plaintiff shall file the notice described in subrule 24.1.09 (5) at least 30 days before the date of the mediation session; and (c) in the case of any other action, a mediation session shall take place at the stage at which the parties agree that mediation is most likely to be effective, but in any case within 90 days after the action is set down for trial, unless the court orders otherwise, and the plaintiff shall file the notice described in subrule 24.1.09 (5) at least 30 days before the date of the mediation session.</p> <p>Revocation (3) This rule (rule 24.1.09.1) is revoked on July 1, 2009.</p> <p>PROCEDURE BEFORE MEDIATION SESSION Statement of Issues 24.1.10 (1) At least seven days before the mediation session, every party shall prepare a statement in Form 24.1C and provide a copy to every other party and to the mediator. (2) The statement shall identify the factual and</p>
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<p>and legal issues in dispute and briefly set out the position and interests of the party making the statement.</p> <p>(3) The party making the statement shall attach to it any documents that the party considers of central importance in the action.</p> <p>Copy of Pleadings</p> <p>(4) The plaintiff shall include a copy of the pleadings with the copy of the statement that is provided to the mediator.</p> <p>Non-Compliance</p> <p>(5) If it is not practical to conduct a mediation session because a party fails to comply with subrule (1), the mediator shall cancel the session and immediately file with the mediation co-ordinator a certificate of non-compliance (Form 24.1D).</p> <p>ATTENDANCE AT MEDIATION SESSION</p> <p>Who is Required to Attend</p> <p>24.1.11 (1) The parties, and their lawyers if the parties are represented, are required to attend the mediation session unless the court orders otherwise.</p> <p>Representative of Insurer</p> <p>(1.1) If an insurer may be liable to satisfy all or part of a judgment in the action or to indemnify or reimburse a party for money paid in satisfaction of all or part of a judgment in the action, a representative of the insurer is also required to attend the mediation session, unless the court orders otherwise.</p> <p>Authority to Settle</p> <p>(2) A party who requires another person's approval before agreeing to a settlement shall, before the mediation session, arrange to have ready telephone access to the other person throughout the session, whether it takes place during or after regular business hours.</p>	<p>legal issues in dispute and briefly set out the position and interests of the party making the statement.</p> <p>(3) The party making the statement shall attach to it any documents that the party considers of central importance in the action.</p> <p>Copy of Pleadings</p> <p>(4) The plaintiff shall include a copy of the pleadings with the copy of the statement that is provided to the mediator.</p> <p>Non-Compliance</p> <p>(5) If it is not practical to conduct a mediation session because a party fails to comply with subrule (1), the mediator shall cancel the session and immediately file with the mediation co-ordinator a certificate of non-compliance (Form 24.1D).</p> <p>ATTENDANCE AT MEDIATION SESSION</p> <p>Who is Required to Attend</p> <p>24.1.11 (1) The parties, and their lawyers if the parties are represented, are required to attend the mediation session unless the court orders otherwise.</p> <p>Representative of Insurer</p> <p>(1.1) If an insurer may be liable to satisfy all or part of a judgment in the action or to indemnify or reimburse a party for money paid in satisfaction of all or part of a judgment in the action, a representative of the insurer is also required to attend the mediation session, unless the court orders otherwise.</p> <p>Authority to Settle</p> <p>(2) A party who requires another person's approval before agreeing to a settlement shall, before the mediation session, arrange to have ready telephone access to the other person throughout the session, whether it takes place during or after regular business hours.</p>
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FAILURE TO ATTEND

Non-Compliance

24.1.12 If it is not practical to conduct a scheduled mediation session because a party fails to attend within the first 30 minutes of the time appointed for the commencement of the session, the mediator shall cancel the session and immediately file with the mediation co-ordinator a certificate of non-compliance (Form 24.1D).

NON-COMPLIANCE

24.1.13 (1) When a certificate of non-compliance is filed, the mediation co-ordinator shall refer the matter to a case management master or case management judge.

(2) The case management master or case management judge may convene a case conference under subrule 77.13 (1), and may,

- (a) establish a timetable for the action;
- (b) strike out any document filed by a party;
- (c) dismiss the action, if the non-complying party is a plaintiff, or strike out the statement of defence, if that party is a defendant;
- (d) order a party to pay costs;
- (e) make any other order that is just.

(3) Subrules 77.13 (7) and 77.14 (9) do not apply to the case conference.

CONFIDENTIALITY

24.1.14 All communications at a mediation session and the mediator's notes and records shall be deemed to be without prejudice settlement discussions.

OUTCOME OF MEDIATION

Mediator's Report

24.1.15 (1) Within 10 days after the mediation is concluded, the mediator shall give the mediation co-ordinator and the parties a report on the mediation.

(2) The mediation co-ordinator for the county may remove from the list maintained

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NON-COMPLIANCE

24.1.13 (1) When a certificate of non-compliance is filed, the mediation co-ordinator shall refer the matter to **a judge or case management master**.

(2) The judge or case management master may convene a case conference under rule 77.08, and may,

(a) establish a timetable for the action;

- (b) strike out any document filed by a party;
- (c) dismiss the action, if the non-complying party is a plaintiff, or strike out the statement of defence, if that party is a defendant;
- (d) order a party to pay costs;
- (e) make any other order that is just.

(3) Rule 77.10 (timetable) applies to a timetable established under clause (2) (a).

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OUTCOME OF MEDIATION

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(2) The mediation co-ordinator for the county may remove from the list maintained under

<p>under subrule 24.1.08 (1) the name of a mediator who does not comply with subrule (1).</p> <p>Agreement</p> <p>(3) If there is an agreement resolving some or all of the issues in dispute, it shall be signed by the parties or their lawyers.</p> <p>(4) If the agreement settles the action, the defendant shall file a notice to that effect,</p> <p>(a) in the case of an unconditional agreement, within 10 days after the agreement is signed;</p> <p>(b) in the case of a conditional agreement, within 10 days after the condition is satisfied.</p> <p>Failure to Comply with Signed Agreement</p> <p>(5) Where a party to a signed agreement fails to comply with its terms, any other party to the agreement may,</p> <p>(a) make a motion to a judge for judgment in the terms of the agreement, and the judge may grant judgment accordingly; or</p> <p>(b) continue the action as if there had been no agreement.</p> <p>CONSENT ORDER FOR ADDITIONAL MEDIATION SESSION</p> <p>24.1.16 (1) With the consent of the parties the court may, at any stage in the action, make an order requiring the parties to participate in an additional mediation session.</p> <p>(2) The court may include any necessary directions in the order.</p> <p>(3) Rules 24.1.09 to 24.1.15 apply in respect of the additional session, with necessary modifications.</p> <p>24.1.17 Revoked.</p>	<p>subrule 24.1.08 (1) the name of a mediator who does not comply with subrule (1).</p> <p>Agreement</p> <p>(3) If there is an agreement resolving some or all of the issues in dispute, it shall be signed by the parties or their lawyers.</p> <p>(4) If the agreement settles the action, the defendant shall file a notice to that effect,</p> <p>(a) in the case of an unconditional agreement, within 10 days after the agreement is signed;</p> <p>(b) in the case of a conditional agreement, within 10 days after the condition is satisfied.</p> <p>Failure to Comply with Signed Agreement</p> <p>(5) Where a party to a signed agreement fails to comply with its terms, any other party to the agreement may,</p> <p>(a) make a motion to a judge for judgment in the terms of the agreement, and the judge may grant judgment accordingly; or</p> <p>(b) continue the action as if there had been no agreement.</p> <p>CONSENT ORDER FOR ADDITIONAL MEDIATION SESSION</p> <p>24.1.16 (1) With the consent of the parties the court may, at any stage in the action, make an order requiring the parties to participate in an additional mediation session.</p> <p>(2) The court may include any necessary directions in the order.</p> <p>(3) Rules 24.1.09 to 24.1.15 apply in respect of the additional session, with necessary modifications.</p> <p>24.1.17 Revoked.</p>
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