

What is Construction Mediation in Alberta?

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Here are the top five takeaways:

1. Mediation can offer early resolution to disputes: it saves time and costs, preserves business relationships, and provides more flexible and confidential resolutions.
2. Timing matters: mediation can occur before or during litigation, and the best moment depends on the dispute's nature, personalities, and desired outcomes.
3. Choosing the right mediator is critical: experience, industry background, and mediation style all influence whether the process is productive.
4. Preparation drives success: well-structured mediation materials that clearly outline the facts, law, and settlement history can significantly improve the chances of resolution.
5. Even unsuccessful mediations add value: they help narrow issues, clarify positions, and make subsequent litigation or negotiations more focused and efficient.

Introduction

Mediation offers potential for early resolution of construction disputes before the matter proceeds to adjudication. It can help parties resolve disputes early, preserve business relationships, and save substantial costs. It is also a required step before a matter proceeds to trial in Alberta.

Construction disputes often involve many parties, including owners, contractors, and subcontractors and complex overlapping legal and factual issues. Mediation can be particularly effective in these kinds of disputes because of the high cost of complex legal proceedings.

Timing

Choosing the right mediator is an important decision. Parties should consider a mediator's professional background and mediation style. Mediators have varied professional experience. Retired judges, construction experts, and lawyers with industry experience may act as mediators. In addition, each mediator may take a different approach to mediation. Some may focus on strict legal rights, while others may lend greater weight to equitable or practical commercial solutions. One mediator may prefer guiding parties to an agreement, whereas another mediator may push for resolution with evaluative input. In light of all the factors that influence selection of a mediator, it remains a contextual decision.

Selecting a Mediator

Mediators come from diverse professional backgrounds. Their mediation styles vary—some focus on legal rights, while others emphasize practical or equitable solutions. Selecting the right mediator is a contextual decision, and BD&P's experienced team can help guide your choice.

Mediation Materials

The mediation materials that are exchanged with other parties and the mediator set the tone. Done properly, they can move the needle toward settlement. Effective mediation materials include:

- Key facts and issues in dispute;
- Relevant law and supporting authorities;
- Expert reports and technical documents; and
- Settlement history and offers.

Technical experts often are very important to understanding causation and damages in construction cases. Choosing the right experts to support your case is an important choice and counsel with experience in selecting and working with experts makes mediations more likely to be successful. Your materials help a mediator and the other parties understand the strength of your position and what you want to accomplish.

What does Mediation look like?

Mediations come in many shapes and sizes. They are typically completed within a single day, although complex disputes may require more time. Mediations may take place in-person or virtually. There is flexibility in deciding how a mediation will take shape.

The mediation table should include decision-makers with the authority needed to arrive at a resolution. Senior management, business personnel, and project representatives may offer helpful perspectives. In addition, if a dispute engages insurance coverage, then insurers should be present. Finally, if a dispute involves technical issues, then experts are also important.

Although there is no one-size-fits-all formula for mediations, certain tips can provide for a smooth experience. These include:

- Participate in good faith.
- Provide a clear summary of issues.
- Be prepared to discuss a range of solutions.
- Avoid overloading the mediator with information.

Incorporating these tips into your mediation gives you the best chance of achieving a beneficial result.

What if Mediation does not Resolve the Dispute?

Participating in a mediation does not guarantee a resolution. At the end of the mediation, the disputing parties may remain at odds. If you find yourself in this position, you still have options. Depending on proximity to trial, you might attempt a second mediation or continue discussing resolution with the other parties without the mediator. Alternatively, you might simply continue with the litigation process. Even if you proceed to trial, your participation in a mediation may help narrow the issues, making trial preparation easier. Ultimately, while you cannot always rely on mediation to resolve a dispute, even an unsuccessful mediation can constitute a fruitful step in the litigation process.

Conclusion

- Saves time and legal costs compared to trial
- Preserves business relationships
- Provides confidentiality and flexibility
- Allows parties to control the outcome
- Encourages creative, practical solutions

Mediation in construction disputes is not about “winning”. It’s about finding workable solutions that let parties move forward. With the right timing, mediator, preparation, and participation, mediation can be one of the most effective tools for resolving construction conflicts outside the courtroom.

Need a mediator? Our team can help.

Learn more about how mediation can help resolve construction disputes efficiently and explore how our [Construction Group](#) helps clients achieve practical resolutions.

Looking for the right construction lawyer? [Watch this video](#) to learn what to look for when a construction litigator.