



Notice to the Profession

Rules with Respect to Representation at a Mediation Session

The Small Claims Pilot Project at Robson Square Courthouse provides for a number of changes in order to support the goal of resolving matters in a just, speedy and inexpensive manner. One component of the pilot provides for mediation of those claims for more than \$5000 or for personal injury claims. Rule 7.4 of the *Small Claims Rules* governs these mediations.

Rule 7.2 also provides for mediation for certain claims up to \$10,000 filed in the North Vancouver, Surrey, Victoria, and Nanaimo Courthouses.

Rule 7.4 and 7.2 both provide that a party who has been served with a Notice of Mediation must attend the mediation session.

Under both Rules, if the party is not an individual, e.g. a partnership, corporation or society, a representative who knows the facts of the case and who has the authority to settle the claim must attend the mediation session.

If you have been retained to represent a party with respect to their claim you may attend the mediation session with the party but pursuant to Rule 7.4 and Rule 7.2 you may not attend the mediation session in the place of the party unless you are in-house counsel employed by the party. In other words, a lawyer or articled student who has been retained by a party but who is not employed by the party as in-house counsel is not a "representative" for the purposes of Rule 7.4 and Rule 7.2.

If a lawyer or articled student attends without his/her client and that client is a named party, the mediation will not proceed and the party may be subject to a court order as a result of their non-appearance as provided in Rule 7.4(31) – (35) and Rule 7.2(22) – (26).

The profession is encouraged to ensure that clients are aware of the provisions in Rule 7.4 and Rule 7.2.

It is expected that ensuring parties attend the mediation session will increase the likelihood of the claim being successfully resolved at the mediation session.

Thomas J. Crabtree
Chief Judge

May 26, 2011