

Finally! Clients Receive Credit for Participating in Mediation

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The new Supreme Court Family Rules came into effect on July 1, 2010. For the first time in British Columbia litigants pursuing family law disputes now have rules of court that are distinct from the general civil rules. So are the forms.

Mediation has a place in these new rules. The \$200 Registry Fee to commence a divorce action or any Family Law case will be waived if a Certificate of Mediation accompanies the Claim at the time it is filed. As well, the \$25 fee to file a response to a family claim will be waived providing the Certificate of Mediation accompanies the response. All of this is set out at Appendix C, Schedule 1, Section 2(2).

Form 100 gives the wording for the Certificate of Mediation that mediators can issue at the end of the mediation. It does not matter if the mediation did not settle or if the mediator decided that the matter was not suitable for mediation. Although the Rules do not define who qualifies as a mediator, Form 100 begins with a statement that the mediator is a member of a roster organization as defined by the Notice to Mediate (General) Regulation. Clearly, mediators listed on the family roster would qualify.

What is not so clear is whether mediators providing Child Protection mediation services or whether Family Justice Counselors who mediate parenting and child support disputes would also qualify.

Similarly the language of the Certificate needs some polishing. Not only are there two number 2's, at this time there is no box to check when the parties settle at mediation. Until this is corrected the Supreme Court Registry has agreed to accept Certificates of Mediation where the mediator checks only the first number 2, which simply states that the mediator conducted a mediation session with named participants.

My understanding is that the Rules Committee will consider these issues and others when it meets again in July 2011.

In the meantime, mediators have something new and valuable to offer their clients: a Certificate of Mediation that will reduce the subsequent cost of filing for divorce or for some other family law relief in Supreme Court.

The new Supreme Court Family Rules support mediation in another way. Judicial Case Conferences (JCC) typically occur early in any family litigation. Rule 7-1 at section 15(d) gives judges the power to “with the consent of the parties, refer any issues to mediation with a private mediator”.

In closing, the trend for change is ongoing. The *Family Relations Act* will be revised soon.

I am looking forward to seeing how the new act supports mediation.