



# **BILL NO. 241**

*Government Bill*

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*1st Session, 59th General Assembly  
Nova Scotia  
54 Elizabeth II, 2005*

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## **An Act Respecting Commercial Mediation**

CHAPTER 36  
ACTS OF 2005

**AS ASSENTED TO BY THE LIEUTENANT GOVERNOR  
DECEMBER 8, 2005**

The Honourable Michael G. Baker, Q.C.  
*Minister of Justice*

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*Halifax, Nova Scotia  
Printed by Authority of the Speaker of the House of Assembly*

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## **An Act Respecting Commercial Mediation**

Be it enacted by the Governor and Assembly as follows:

- 1** This Act may be cited as the *Commercial Mediation Act*.
- 2** The purpose of this Act is to facilitate the use of mediation to resolve commercial disputes.
- 3** Where there is a conflict between this Act and any other enactment that requires or authorizes mediation, the other enactment prevails.
- 4**
  - (1)** Subject to subsection (3), this Act applies to commercial mediation unless, subject to subsections 6(4) and 9(4), the parties to the mediation agree to exclude or modify its application.
  - (2)** Subject to subsection (3), this Act binds Her Majesty in right of the Province.
  - (3)** This Act does not apply to a mediation
    - (a)** if the mediation is conducted in the course of an arbitration under the *Commercial Arbitration Act* unless, and then only to the extent that, the parties to the mediation agree;
    - (b)** if the mediation is required or authorized by the *Teachers' Collective Bargaining Act* or the *Trade Union Act* or by a collective agreement under either of those Acts; or
    - (c)** if, or to the extent that, its application is excluded or modified by the regulations.
- 5** Mediation means a collaborative process in which parties agree to request a third party, referred to as a mediator, to assist them in their attempt to try to reach a settlement of their commercial dispute, but a mediator does not have any authority to impose a solution to the dispute on the parties.
- 6**
  - (1)** This Act is based on the United Nations Commission on International Trade Law, (UNCITRAL) Model Law on International Commercial Conciliation (2002), and in interpreting this Act, consideration must be given to its international origin, the need to promote uniformity in its application and the observance of good faith.
  - (2)** In interpreting this Act, recourse may be had to
    - (a)** the Report of the United Nations Commission on International Trade Law on its thirty-fifth session; and
    - (b)** the UNCITRAL Model Law on International Commercial Conciliation with Guide to Enactment and Use 2002.

(3) Where a question arises during a mediation that no rule in this Act expressly covers, the question is to be settled in conformity with the general principles on which the Model Law on International Conciliation is based.

(4) The parties to mediation may not exclude or modify the application of this Section.

7 (1) A mediation commences on the day on which the parties to a dispute agree to submit that dispute to mediation.

(2) A party who invites another party to mediate may consider its invitation rejected if the party does not receive acceptance within thirty days after the day on which the party sent its invitation or within the period specified in the invitation.

(3) A mediation terminates on the day on which the parties reach a settlement agreement or the day on which the mediator or any party declares to the others that the mediation is terminated.

8 (1) Generally, a mediation is to be conducted by a mediator appointed by agreement of the parties.

(2) The parties may ask an institution or a third party to recommend or appoint a mediator and, where the institution or third party agrees to do so, it shall make every effort to recommend or appoint a person who is impartial and independent.

(3) A mediator and any person who is approached or recommended to be a mediator shall disclose without delay any circumstances that are likely to give rise to justifiable doubts about their impartiality or independence.

9 (1) The parties are free to agree on the manner in which the mediation is to be conducted and may agree to follow a set of existing rules.

(2) To the extent that the parties have not agreed on the manner in which the mediation is to be conducted, the mediator may conduct the mediation as the mediator considers appropriate, taking into account any requests by the parties and the circumstances of the mediation, including the need for a speedy settlement.

(3) The mediator may meet or communicate with the parties together or separately.

(4) The mediator shall maintain fair treatment of the parties throughout the mediation, taking into account the circumstances of the mediation, and the parties to a mediation may not exclude or modify this rule.

10 The mediator may make proposals for settlement of a dispute at any stage of the mediation.

11 (1) A mediator may disclose to a party any information relating to a mediation that the mediator receives from another party unless that other party has expressly asked the mediator not to disclose the information.

**(2)** With respect to third parties, all information relating to a mediation must be kept confidential unless

- (a) all the parties agree to the disclosure;
- (b) the disclosure is required under the law;
- (c) the disclosure is required for the purposes of carrying out or enforcing a settlement agreement; or
- (d) the disclosure is required for a mediator to respond to a claim of misconduct.

**12 (1)** None of the following information, in any form, is admissible in evidence in an arbitral, judicial or administrative proceeding:

- (a) an invitation by a party to mediate, a party's willingness or refusal to mediate a dispute, information exchanged between the parties before a mediation commences and any agreement to mediate;
- (b) a document prepared solely for the purposes of a mediation;
- (c) views expressed or suggestions made by a party during a mediation concerning a possible settlement of the dispute;
- (d) statements or admissions made by a party during a mediation;
- (e) proposals for settlement made by the mediator;
- (f) the fact that a party had indicated its willingness to accept a proposal for settlement made by the mediator;
- (g) the fact that a party terminated the mediation.

**(2)** Notwithstanding subsection (1), the information may be admitted in evidence to the extent required

- (a) under the law;
- (b) for the purposes of carrying out or enforcing a settlement agreement; or
- (c) for a mediator to respond to a claim of misconduct.

**(3)** Except for the limitations set out in subsection (1), information created for purposes other than a mediation does not become inadmissible because it was used in a mediation.

**(4)** Subsections (1) and (2) apply whether or not the arbitral, judicial or administrative proceeding relates to a dispute that is or was the subject of a mediation.

**13** A mediator shall not act as

- (a) both a mediator and an arbitrator; or
- (b) an arbitrator after acting as the mediator,

for the dispute that is the subject of the mediation or for another dispute that arises from the same contract or legal relationship or a related contract or legal relationship between the parties.

**14 (1)** The parties to a mediation may agree not to proceed with arbitral or judicial proceedings before a mediation is terminated; however, an arbitrator or court may permit the proceedings to proceed if the arbitrator or court considers that it is necessary to preserve the rights of any party or is otherwise necessary in the interests of justice and the arbitrator or court may make any order necessary.

**(2)** Commencement of arbitral or judicial proceedings is not of itself to be regarded as a termination of the agreement to mediate disputes or as termination of a mediation.

**15 (1)** A settlement agreement is binding on the parties.

**(2)** On application to the Supreme Court of Nova Scotia with notice to all parties, the agreement may be filed with the Court.

**(3)** Once filed, the agreement is enforceable as if it were a judgment of that court.

**16 (1)** The Governor in Council may make regulations

(a) excluding or modifying the application of this Act;

(b) defining any word or expression used but not defined in this Act;

(c) respecting any matter that the Governor in Council considers necessary or advisable to carry out effectively the intent and purpose of this Act.

**(2)** The exercise by the Governor in Council of the authority contained in subsection (1) is regulations within the meaning of the *Regulations Act*.

**17** This Act comes into force on such day as the Governor in Council orders and declares by proclamation.

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