

## Mediation

### What is Mediation?

Mediation is a process where a Mediator helps parties to reach a voluntary, mutually acceptable solution on some or all of the issues in dispute. It may replace a hearing if the parties come to an agreement.

### Why would I choose Mediation?

Mediation helps parties better understand each other's point of view. It can improve communication and future relations between the parties. Because it is flexible mediation allows parties to deal with both the immediate problem and its possible causes. It also allows them to craft creative solutions together. Mediating a dispute as soon as possible can help parties solve the problem quickly and keep it from getting worse.

Mediation allows parties to:

- Meet before the hearing
- Better understand the issues
- Take an active role in resolving the dispute
- Repair relationships
- Identify common interests
- Settle the issue or dispute without having a solution determined by the Board
- Solve the problem without going to a Board hearing
- Be more cost effective

### How do I request Mediation?

To request mediation, please contact the Surface Rights Board office by phone, email, or you may send the Surface Rights Board a completed Request for Mediation Form.

### Who are the mediators and what do they do?

Mediators are Board Members of the Surface Rights Board. They have training and experience in mediation and surface rights. They create a safe environment, encourage discussion and help the parties find solutions. They do not take anyone's side and cannot make decisions about the dispute. The Mediator;

- may contact you to explain the mediation process and address any questions you may have
- is neutral, guides discussions impartially and gives the parties feedback on their ideas
- encourages parties to look at the pros and cons of the different options for resolving the dispute
- helps the parties prepare a Mediation Memorandum of Agreement to sign if they reach a settlement

### What happens at Mediation?

At mediation, all parties try to reach an agreement to settle their dispute. At the beginning of the mediation, the Mediator guides parties on how the mediation will proceed and sets out the ground rules.

The Mediator guiding the mediation helps make the discussion of the issues easier and may offer new solutions. Mediations are conducted in accordance with the Surface Rights Board mediation guideline.

## Who should attend the Mediation?

**Parties with authority to resolve all matters must attend and participate in the Mediation.** If a party is a corporation, the corporate representative must have full knowledge of the matter and unrestricted authority to resolve the dispute.

Your lawyer is not required but may attend if you wish.

## What should I bring to the Mediation?

The parties should bring any information and documents to mediation that they think will be helpful to support their position on any issues in dispute. Documents exchanged are confidential.

## Are Mediations open to the public?

All documents and anything said at mediations are confidential. Unlike a hearing, mediation does not include the public.

Discussions in mediation cannot be talked about in a later hearing.

## What happens when the parties reach a settlement?

If the parties reach a settlement, the mediator helps them prepare a written Mediation Memorandum of Agreement. This document outlines what each party has agreed to do to resolve the dispute.

## What if an agreement is not reached at Mediation?

If mediation does not resolve the issues, then the Surface Rights Board may schedule a hearing. The Mediator who guided the mediation will not be assigned to hear the matter. Nothing relating to the mediation, except any matters that have been agreed to, can be revealed to the Board Members presiding at the hearing.

Once the mediation is over, the parties may have a better understanding of the issues and be more prepared at the hearing. As well, the Mediator can help the parties write a statement about the evidence and issues of the dispute. If the parties agree, the Mediator will include the statement in a Mediation Report available to the Board Members conducting the hearing.

## What about costs?

The parties may decide to discuss costs at the mediation. Agreements about costs may be included in the settlement agreement.

If the parties fail to reach an agreement about costs the issue may be addressed at a Board hearing. Pursuant to Section 39(1) of the *Surface Rights Act*, *The costs of and incidental to the proceedings under this Act are in the discretion of the Board and may be fixed in any case at a sum certain or may be taxed.*

Factors relevant to discussions about costs include:

- \* the reasons for incurring costs
- \* the contribution of counsel and experts retained
- \* the conduct of a party in the proceeding
- \* whether a party has unreasonably delayed or lengthened a proceeding
- \* the degree of success in the outcome of a proceeding
- \* the reasonableness of any costs incurred

## Where can I find more information?

For more details on mediation, please refer to the Surface Rights Board website at [www.srb.lcb.gov.ab.ca](http://www.srb.lcb.gov.ab.ca), or contact:

Jill Mason, Director  
Arlene Chmelyk, Board Officer  
Wanda McDonald, Board Officer

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The **Surface Rights Board** is an independent adjudicative tribunal established under statute by the Province of Alberta. The Board provides independent, accessible, fair, timely and impartial processes when operators and landowners or occupants fail to agree on compensation related to resource activity on privately owned lands or occupied public lands. The Board operates under many different pieces of legislation, including the Alberta *Surface Rights Act*.

### Produced by:

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