



## THE ROLE OF THE MEDIATOR

### The role of the mediator is to:

- be impartial;
- deal respectfully with all participants;
- after being appointed to the file, contact each party and/or their representatives to initiate the proceedings, explain the mediation process and its voluntary aspect, explain the roles of all parties, ask questions in order to ascertain the issues and interests underlying the respective positions, explain why the persons having the necessary authorities to settle the dispute should attend all mediation sessions;
- protect the confidentiality of the whole mediation process, subject to any applicable law.
  
- **during the pre-mediation, where applicable:**
  - re-explain the mediation process;
  - review the roles of parties and/or their representatives;
  - explain the forms and
  - answer any questions.
  
- **prior to starting the mediation:**
  - ensure that the consent to mediate has been signed by all participants and
  - in consultation with the participants establish the rules of procedures to be followed during the mediation.
  
- **during the mediation:**
  - help parties to listen to each other and encourage open and respectful communication;
  - assist parties to focus on the future rather than dwell on the past and encourage discussions on interests rather than positions;
  - help parties to understand the other party's perspective;
  - assist parties in identifying issues related to the dispute;
  - guide parties to identify their common and specific interests, concerns and needs;
  - support parties in exploring viable options based on objective criteria;
  - support parties in the development of their own solutions and
  - review the settlement intervened between parties to ensure all terms related to occupational health and safety are in compliance with the provisions of the *Canada Labour Code*, Part II and its Regulations.

## **THE ROLE OF THE MEDIATOR (...cont'd)**

- **at the conclusion of the mediation:**

- destroy all notes taken during the mediation process at the end of the mediation or at a later date, when a follow up is required;

- ensure that the notes taken during the mediation process that are not destroyed immediately after the mediation are not placed on the official appeal's file or in any other file under the control of the Tribunal and

- advise the Director that a settlement has been reached or not and thereafter file a memorandum of the Tribunal by memo to be placed on in the appeal's docket that:

- \*either, no settlement has been reached and a hearing date is to be scheduled or

- \*a settlement has been reached with an execution timeframe, where applicable, requiring a follow-up in the event a notice of withdrawal is not received once the timeframe is over.

### **The role of the mediator is NOT to:**

- take sides;
- act as a lawyer, a representative or an advocate for either party;
- tell parties what the issues are between them;
- take responsibility for the issues;
- solve the problems;
- make decisions for parties;
- provide his/her own opinions;
- give suggestions;
- discuss the likely outcome should the appeal proceed to a hearing;
- give advice on the legal implications of any settlement reached by parties;
- draft the Terms of Settlement when parties agree to settle the dispute;
- put an end to the appeal's request;
- divulge the content of the Terms of Settlement to anyone without permission of parties.

**The mediator cannot be called as a witness in any subsequent administrative or legal proceeding.**