



Canadian
Transportation
Agency

Office
des transports
du Canada

Resolution of Disputes through Mediation

A Resource Tool

Making Transportation Efficient and Accessible for All

available in multiple formats

Canada 

This document and other Canadian Transportation Agency publications are available on our website at **www.cta.gc.ca**.

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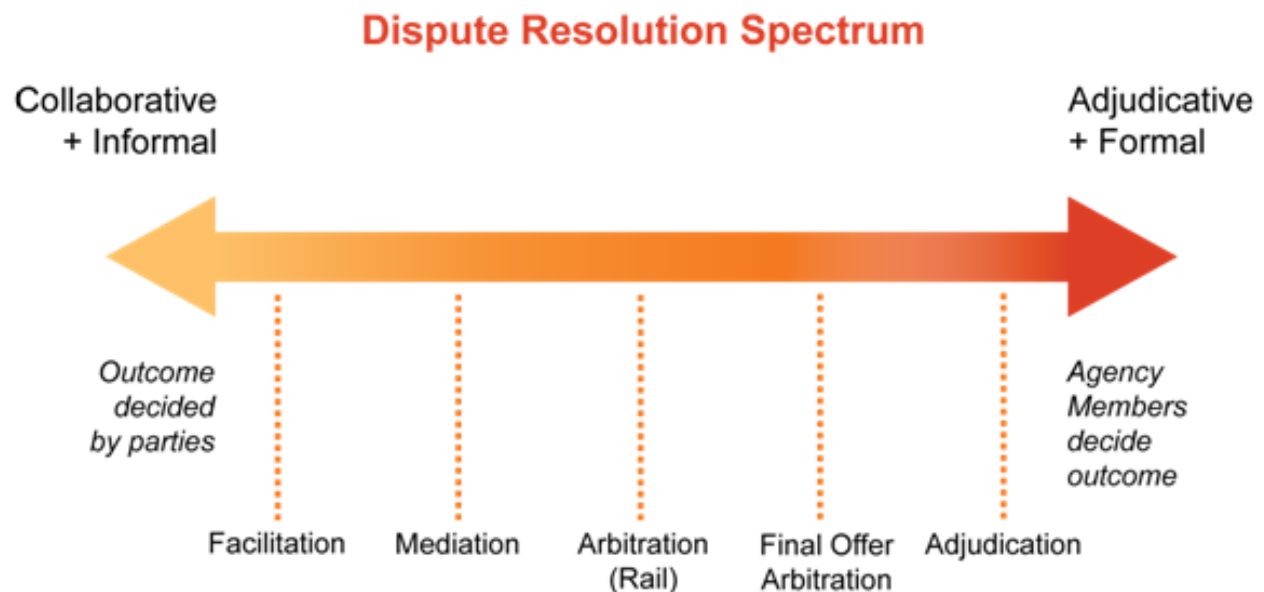
Part 1 – Introduction

The Canadian Transportation Agency is an independent, quasi-judicial tribunal and economic regulator. It makes decisions and determinations on a wide range of matters within the federal transportation system under the authority of Parliament, as set out in the *Canada Transportation Act* and other legislation.

Our Mandate includes:

- **Economic regulation**, to provide approvals, issue licences, permits and certificates of fitness, and make decisions on a wide range of matters involving federal air, rail and marine transportation.
- **Dispute resolution**, to resolve complaints about federal transportation services, rates, fees and charges.
- **Accessibility**, to ensure Canada's national transportation system is accessible to all persons, particularly those with disabilities.

The Agency offers a number of dispute resolution services, ranging from [facilitation](#) to [mediation](#), [arbitration](#) (rail), [final offer arbitration](#)¹, and adjudication. The parties involved in a transportation-related dispute can choose from among these services. It is the parties' responsibility to evaluate their dispute resolution options.



¹ www.cta.gc.ca/eng/publication/final-offer-arbitration1

This resource tool contains information for parties seeking mediation as an option to solve their dispute. It provides information about the Agency's mediation process to ensure predictability and transparency for the parties. It also clarifies what to expect from the mediation process and what is required from mediation participants.

The first part of this resource tool gives an overview of the Agency's enabling legislation and examples of the types of cases referred to mediation.

The second part describes the Agency's mediation process. Specifically, it describes what mediation is and outlines the steps of the mediation process, as well as how to request mediation.

The next part of the resource tool informs the parties about their roles and responsibilities throughout the mediation process, describes the roles and responsibilities of the [Mediator](#), and shares a few suggested keys to success.

The fourth part has a glossary of relevant terminology.

Finally, this document contains a series of appendices, including various forms which may be used by the parties throughout the mediation process, and other useful references.

Legislation

The *Canada Transportation Act* is the statute that enables the Agency to resolve transportation-related disputes through various dispute resolution mechanisms, including mediation. Although the mediation provisions are recent additions to the CTA, the Agency offered mediation services as a pilot project from 2000 to 2007 to provide parties with access to another alternative dispute resolution option in addition to facilitation.

In 2007, the Act was amended to introduce subsections 36.1(1) to 36.1(7), related to mediation. Subsection 36.1(1) gives the Agency the authority to refer a matter within its jurisdiction to mediation if all the parties to the dispute, by agreement, make a request for mediation. Subsection 36.1(2) and the following provisions prescribe the essential aspects of the mediation process such as the appointment of a Mediator, confidentiality, and the 30-day time limit to complete the mediation process.

For the complete text of the relevant mediation provisions, consult [section 36.1 of the Act \(Appendix A\)](#).

Examples of cases referred to mediation

Over the years, parties involved in air, rail or accessibility disputes have requested that the Agency refer their dispute to mediation. These disputes involved a wide variety of issues, samples of which are listed below. This is not an exhaustive list.

Air transportation

Mediation is available to resolve disputes over issues such as:

- flight disruptions;
- refusal to transport;
- denied boarding (overbooking); and
- lost baggage.

Rail transportation

Mediators typically work with parties to resolve issues related to:

- noise and vibration complaints from the construction or operation of a railway;
- crossings, where parties cannot agree on the construction, maintenance or apportionment of the costs of a road or utility crossing;
- level of service provided by a carrier to a shipper; and
- private crossings, where the railway company and a landowner cannot agree on the construction or maintenance of a suitable crossing across the railway for the owner's enjoyment of the land.

Accessible Transportation

Mediation is available to parties in an accessible transportation dispute when the issue falls under the Agency's jurisdiction (i.e., the complainant is considered a person with a disability under the Act and the incident occurred in the federal transportation network).

Mediators typically work with parties to resolve issues related to:

- the provision of adequate or timely assistance with baggage, wheelchairs, and/or seat transfers;
- the proper application of policies, or changes needed to the policies, aimed at addressing the needs of persons with disabilities; and
- problems with inconsistent service across the network due to breakdowns in communication between individuals or systems.

Marine transportation

Although the Agency has the mandate to resolve marine-related disputes – such as pilotage charges, port fees, shipping conference charges, level of service, and coasting trade applications – historically, these issues have not been referred to mediation by the parties.

Part 2 – The Mediation Process

Introduction to mediation

Mediation is an informal, voluntary and confidential process that promotes open and respectful communication. A neutral and impartial Mediator will assist the parties in negotiating a mutually satisfactory settlement themselves – the mediators have no decision making powers. Agency employees who are qualified Mediators and experienced in the transportation sector are appointed by the Chair of the Agency to manage the mediation process.

Mediation allows the parties in a dispute to express their views on the dispute, examine their interests and concerns, explore a variety of creative options, and develop their own solutions in a timely and cost-effective manner.

Mediation is an informal alternative to the Agency's formal decision making process. However, it's still a structured process with requirements that the parties must follow. For instance, it must be completed within a 30-day statutory deadline after the dispute is referred for mediation, unless the parties to a dispute agree otherwise.

The mediation process is confidential and parties must agree in writing to maintain confidentiality, even if the mediation does not result in the resolution of all issues.

All discussions during the mediation and any documents produced remain confidential unless the parties to the dispute otherwise agree, including in situations where the dispute is referred for adjudication. The Mediator will not disclose to anyone who is not a party to the mediation anything said or submitted by the parties **unless** disclosure is required by law, or there is a real or potential threat to human life or safety in not

Why is confidentiality important and how is it preserved?

Confidentiality is one of the key foundations of mediation. Parties must agree in writing to maintain confidentiality, regardless of whether they reach a settlement. All information provided during mediation will be exchanged on a confidential basis for the purposes of settlement negotiations. The Mediator will not disclose to anyone who is not present during the mediation session anything said or submitted by the parties **unless** disclosure is required by law or there is a real or potential threat to human life or safety in not disclosing the information.

Note that the Mediator will not discuss any elements brought forth during the course of the mediation session with Agency personnel, except for purposes related to Agency Mediator training.

The Agency preserves confidentiality by using aggregate data when it publishes information on mediation cases in its Annual Report.

disclosing the information. This confidentiality allows parties to express their views openly and helps to develop an honest and trusting relationship.

The mediation process also allows for more creativity and empowers the parties to construct solutions that better meet their needs and which may not be available through the formal process. Parties have expressed high levels of satisfaction with mediation, since they can decide together how to address the issues and determine their own outcome.

A dispute can be mediated even if it has already been filed with the Agency for adjudication. An adjudication process will be put on hold while the mediation takes place (except for Net Salvage Value cases, where the timelines cannot be extended as per subsection 144(4) of the Act). If one or more of the issues are not fully and finally resolved through mediation, then the adjudication process can be re-started to address those issues. However, the adjudication process will not re-start and the case will be closed if all the issues have been resolved through mediation and the parties have agreed – and indicated in their [Settlement Agreement](#) – that it is final and binding, meaning they will have no further recourse before the Agency on these matters.

In order to reach a resolution, the parties participating in the mediation process must have full authority to resolve the dispute or have ready access to the person with the authority to approve a Settlement Agreement ([Appendix F](#)). The mediation process may involve multiple parties which can be represented by a single individual. However, it is also possible to include additional people, such as subject matter experts or legal counsel. In all cases, the persons involved should

Do I have to be represented by legal counsel?

The decision as to who will represent each party is up to the party, including whether or not to be represented by legal counsel. You are free to consult your legal counsel or subject matter experts at any time during the mediation process.

be limited only to those who will contribute to the resolution of the dispute. The list of participants must be mutually agreed to by the parties to the dispute, and any change to the representation is to be communicated promptly in writing to the Mediator.

Requesting mediation

You can request mediation services before filing a formal complaint on any matter within the Agency's jurisdiction. Parties must submit a Request to Mediate form ([Appendix C](#)) either individually or jointly.

In the case of a group complaint, the following information has to be provided:

- the authorized spokesperson;

- a list of persons that the spokesperson represents along with evidence of the authorization to represent;
- any incorporation documents; and
- a description of the group, including but not limited to, its members' interests in the complaint and other applicable details (e.g. for rail noise and vibration complaints, the members' geographical locations).

If your case is already in the adjudication process, you can still request that it be referred to mediation at any time before a final decision is rendered. To do this, contact the case officer who has been assigned to your file, indicate your interest in mediation, and submit a Request to Mediate form. Upon receipt of this form, the Agency will contact the other parties to determine whether they agree to participate in the mediation process.

In what language will the mediation be conducted?

The mediation process is conducted in either English or French. It is up to the parties to decide the language in which they would like to have the mediation session conducted. The Agency does not provide translation or interpretation services. Special requests for accommodation are addressed on a case-by-case basis.

As the mediation process is voluntary, all parties must agree in writing to participate before the process can proceed. If all parties agree to refer their dispute to mediation, the Chair of the Agency will appoint one or two Mediators to mediate the dispute. From this point on, you will have 30 days to complete the mediation, unless all parties agree to an extension.

The Agency does not charge parties for its mediation services.² However, parties are responsible for their own costs, which may include, but are not limited to, travel expenses and fees for any resources that the parties wish to engage (i.e., parties' legal counsel and subject matter experts). The Agency does not provide financial assistance to parties to cover those costs.

The steps of the mediation process

The mediation process consists of three basic steps: pre-mediation, the mediation session and post-mediation.

Pre-mediation

Once an Agency Mediator is appointed by the Chair of the Agency, the Mediator communicates with the parties and requests their input with respect to:

² This policy is currently under review. In the future, the Agency may consider cost-sharing for costs such as site visits, mediation venue, etc.

- identifying, clarifying, and confirming the issues that the parties want to address in mediation;
- the duration and location of the mediation session;
- whether parties wish to have a site visit prior to the mediation session;
- identifying who will participate in the mediation session;
- establishing ground rules for the mediation session; and
- obtaining parties' availabilities over the next 30 days.

Any request to extend the 30-day statutory deadline must be made in writing and agreed to by all parties.

The Mediator shares basic information about the mediation process with parties (such as this resource tool) in order to allow parties to familiarize themselves with the process, understand what will be expected of them, and prepare questions ahead of the pre mediation telephone interview. The Mediator also requests that parties sign and return the Agreement to Mediate form ([Appendix D](#)).

The Mediator then holds an information session with each party, usually by phone, to educate the parties about the mediation process and to answer any questions the parties may have. The Mediator also uses this time to clarify and to confirm the issues that the parties wish to discuss during the mediation session, as well as clarify expectations of all parties.

There is always opportunity to resolve the dispute during this pre-mediation phase over the telephone. Mediators add value by clarifying the issues and encourage parties to prepare for the discussions that will take place during the mediation process.

From the onset of pre-mediation and throughout, each party must continue to demonstrate a clear commitment to resolve the matter in a timely fashion. If not, the Mediator can terminate the process.

Am I allowed to raise new issues during the mediation session?

At the pre-mediation stage, you will be asked to communicate the issues that you will be raising in the mediation session. These issues will be communicated to all parties prior to the mediation session. Therefore, any changes to the issues must be communicated promptly in writing to the Mediator so that all parties can be informed and adequately prepare.

Mediation session

A mediation session usually involves a face-to-face meeting held in a location agreed to by the parties and managed by the Mediator, which may be held at the offices of one of

the parties. While face-to-face meetings are the preferred approach to mediation, in certain circumstances, where parties agree, teleconference meetings may be arranged.

The mediation session may last from a half day to two days, depending on the complexity of the issues and the number of parties involved. In rare cases, there may be more than one session.

The Mediator helps the parties jointly address all of the issues and negotiate a mutually satisfactory settlement in a five-step process.

1. Introduction:

During the introduction, the Mediator opens the meeting, explains the mediation process once again, and reaffirms the ground rules ([Appendix E](#)) to ensure that the meeting is productive. The Mediator reviews the Agreement to Mediate and outlines key parameters for the meeting such as confidentiality, voluntary participation and impartiality.

2. Defining the issues:

After the introduction, the Mediator invites the parties to share their views on the mediation and invites them to try to understand each others' perspective (note that *understanding* doesn't mean *agreeing* to what is said). The parties, with the assistance of the Mediator, set the agenda by identifying and prioritizing the issues to be addressed.

3. Exploring the interests:

The Mediator then encourages the parties to shift from positional negotiation – where one party makes a demand on the other – to [interest-based negotiation](#). Interest-based negotiation encourages parties to identify the interests or needs that lie behind a position, and then to find solutions that satisfy all parties' interests or needs.

When people are in dispute, they often make demands or statements that are framed as their solutions to resolving the dispute. These demands or statements are called the person's positions. Interests are broader than positions. Interests underlie positions and are what each party needs to address for the resolution of the dispute. Interests include people's hopes, needs, concerns, and fears. While a position can only be accepted or rejected, an interest can be met in a variety of ways.

At any point during the session, the Mediator or the parties can request a caucus.

What is a caucus?

The Mediator may hold separate meetings with each party during the mediation session, either upon request of a party or at the Mediator's discretion – these meetings are called caucuses. The parties also have the option of meeting without the Mediator.

The caucus is one of the Mediator's invaluable tools to gather additional information and provide the feedback needed for a clearer understanding of the case. This allows the parties to move forward towards a solution.

If the Mediator believes that information disclosed in a caucus with one party is significant to the mediation process, the Mediator may disclose the information to the other party, unless the party making the disclosure clearly and specifically states that it is confidential.

4. Generating options:

Once the interests are known, the parties are invited to:

- generate all possible options that they think may help resolve the dispute and then evaluate the viability and feasibility of the options identified; and
- compare each option with their alternatives to evaluate if any of these options meet their interests and needs. If this is the case, and the parties are in agreement, then they can decide on how to implement these options.

5. Reaching agreement:

The final step of the mediation session is to reach agreement by documenting who will do what, when, and where, in a signed confidential Settlement Agreement.

Sometimes the parties reach agreement on some issues but not others. In this case, the parties can sign a partial settlement, evidencing the matters to which they have agreed. They can then proceed to adjudication on the remaining issues.

There may be media interest in some disputes referred to mediation. Parties must jointly agree what information, if any, will be released.

What are the possible outcomes of a mediation session?

There are four possible outcomes of a mediation session:

1. full resolution of the issues;
2. partial resolution of the issues;
3. no resolution of the issues; or
4. a commitment to completing defined actions within defined timeframes made by the parties (undertakings) i.e. working towards a resolution.

What are the essential elements and considerations when parties are drafting their Settlement Agreement?

- The issues resolved by the parties.
- How outstanding issues, if any, will be addressed.
- The mediation commitments and expected outcomes.
- Who is responsible for each commitment?
- The timeframe for execution of commitments (overall or for each individual commitment).
- Rights extinguished and rights that remain.
- Whether the draft Settlement Agreement is to be reviewed by the parties' legal counsel before being signed.
- Mechanisms in the event that one party does not comply with the terms of agreement or if a problem arises in interpreting the clauses.
- The parties' intentions as to whether the Settlement Agreement is final and binding which would preclude the Agency from adjudicating the issues addressed in it.
- Visualize the short and long-term implications of the Settlement Agreement.
- Whether parties wish to file their Settlement Agreement, pursuant to subsection 36.1(7) of the Act, so that it becomes enforceable as if it were an order of the Agency. (See [Appendix G](#)).

Post-mediation

If the parties have signed a Settlement Agreement, it can be filed with the Agency as per subsection 36.1(7) (refer to [Appendix G](#) for the filing procedure). Upon filing, if one of the parties fails to fulfill one or more of the terms in the settlement, the filed agreement is enforceable in the same manner as an Agency order, which may involve its filing with the superior courts.

Although a Settlement Agreement can be filed with the Agency at any time, the parties can discuss the merits of filing the Settlement Agreement at this time.

Should the case remain unresolved (or partly resolved), parties may have the outstanding issues addressed in the Agency's adjudication process. To preserve confidentiality, Mediators are excluded from any other process before the Agency that's related to a mediation in which they were previously involved.

Part 3 – Role of the Parties and the Mediator, and Keys to Success

Each party involved in a mediation process must recognize that they, and the Mediator, have key roles and responsibilities to play in order to maximize the efficiency and effectiveness of the process.

Role of the parties

In pre-mediation:

- be responsive to requests for information from the Mediator especially with respect to the identification of the issues to be dealt with and make your availability a priority;
- provide a **signed copy** of the Agreement to Mediate;
- think about the key issues as you see them and as the other party may see them;
- prepare opening remarks explaining your perspective on the issues and your general objectives for the mediation session;
- consider your interests (concerns, hopes, fears, desires, expectations, etc.) and needs, as well as what the other party's interests and needs may be;
- identify possible solutions that might satisfy your interests and the interests of the other party;
- consider your alternatives should mediation not result in the resolution of all issues in dispute; and
- in the case of a group complaint, the group constituents have to provide the following information:
 - the authorized spokesperson;
 - a list of persons that the spokesperson represents along with evidence of the authorization to represent;
 - any incorporation documents; and
 - a description of the group, including but not limited to, its members' interests in the complaint and specific geographical locations of the residences of its members.

In mediation:

- each party will sign and retain a copy of the Agreement to Mediate, which will have the signatures of all the parties present;

- ensure that you have the necessary authority to settle the complaint;
- participate in good faith and communicate in an open, respectful and honest manner;
- adhere to the agreed-upon ground rules;
- generate options for the resolution of the dispute;
- be curious and ask questions;
- understand that the primary responsibility for resolving the issues rests with the parties and not with the Mediator; and
- when the dispute has been settled, draft and sign the Settlement Agreement.

In post-mediation:

- decide if you will file the Settlement Agreement as per subsection 36.1(7);
- decide whether outstanding issues are to be referred to the Agency's adjudication process or another dispute resolution process; and
- complete a survey to provide feedback about the mediation process. This feedback is considered by the Agency as it continuously improves its mediation services.

Role of the Mediator

The role of the Mediator is to:

- be impartial;
- keep information confidential;
- ensure that a decision maker or individual who is duly authorized to negotiate and enter into an agreement for each party is at the mediation (authority to settle);
- meet with the parties separately by phone, prior to mediation, to discuss their perspectives on the dispute, explain the mediation process and answer any questions;
- ensure that the Agreement to Mediate is signed by all participants prior to the commencement of mediation;
- establish the ground rules for mediation in consultation with the parties;
- encourage the parties to consider each other's perspective on the dispute;
- guide the parties in exploring their respective interests and needs;

- facilitate communication and keep discussions focused;
- help the parties to focus on the future, rather than the past, and on interests, rather than on positions (interest-based negotiation);
- continually assess whether it is appropriate to continue the mediation process and exercise his or her authority to terminate the process if required;
- assist the parties in their development of viable options for resolving the dispute and assessing the various options in light of objective criteria;
- focus on problem solving and ensure parties are aware and understand the issues and possible reasonable solutions;
- destroy all personal notes taken during the mediation process; and
- in the event of an impasse, each party individually may be assisted in evaluating the strengths and weaknesses of their positions and provided with options to assist them to reach a satisfactory resolution of their dispute.

A summary of roles of the parties and of the Mediator at each phase of the mediation process can be found in [Appendix B](#).

What is *not* part of the Mediator's role and responsibilities?

The role of the Mediator is *not* to:

- determine who should participate in the mediation;
- take sides or advocate for any party;
- make decisions for the parties;
- identify the issues;
- take responsibility for the outcome;
- draft the Settlement Agreement if the parties agree to settle the dispute;
- provide legal advice on the implications of the Settlement Agreement;
- assert or protect the legal rights of any party;
- retain a copy of the Settlement Agreement; or
- act in any other proceeding with the Agency.

Keys to success

Parties that maximized their chances of resolving their dispute through mediation have:

- respected their roles and fulfilled their responsibilities during each stage of the process;
- prepared themselves for mediation and actively participated in the process;
- made a concerted effort to understand the other party's point of view;
- been inquisitive, creative, and flexible;
- acted in good faith and expressed themselves openly and respectfully;
- been more concerned with resolving the dispute than laying blame or winning; and
- were fully authorized to settle, or had ready access to the necessary authority to do so.

Part 4 – Glossary of Terms

Adjudication – The decision-making process used when cases are heard before the Agency. When you file a complaint with the Agency, the Chair appoints a panel to consider the case. The Agency panel reaches its decision through a process that is court-like: it is impartial, transparent and fair. The decision is final and made public.

Arbitration – A dispute resolution process where the parties to the dispute refer their case to an arbitrator. The decision of the arbitrator is known as the Award and is private. The arbitrator reviews the facts of the case and renders an Award which is legally binding on all parties.

Caucus – A meeting held between the Mediator and a party, separate from the other parties. Caucusing takes place during the mediation session.

Facilitation – Involves an informal exchange between a complainant, a service provider and a neutral third party. It is an alternative to more formal dispute resolution options.

Final Offer Arbitration (FOA) – Can be used in certain cases to resolve a dispute respecting the transportation by air, rail or water between commercial shippers, railway companies and transit authorities. In a confidential process, each side develops and submits a final offer to resolve the dispute, and agrees in advance to be bound by the arbitrator's decision on which final offer will be used to settle the dispute.

Interest-Based Negotiation – An approach for helping two sides reach an agreement in a dispute. It involves the shift from “your position versus mine” to a perspective of “you and I versus the problem.”

Mediation – An informal but structured process in which an impartial and neutral third party (Mediator) who has no decision-making power assists parties to settle their differences through negotiation.

Mediator – Manages the mediation process. Agency Mediators are employees who are qualified Mediators, are appointed by the Chair of the Agency, and are experienced in the transportation sector.

Settlement Agreement – Sets out terms parties have agreed to as a result of mediation.

Undertakings – Commitments made by one or more parties to complete defined actions within defined timeframes, with the goal of moving towards resolution of the dispute.

Appendix A – Legislative Reference: Section 36.1 of the *Canada Transportation Act*

Mediation

Request by parties

36.1

- (1) If there is a dispute concerning a matter within the Agency's jurisdiction, all the parties to the dispute may, by agreement, make a request to the Agency for mediation. On receipt of the request, the Agency shall refer the dispute for mediation.

Appointment of Mediator

- (2) When a dispute is referred for mediation, the Chairperson shall appoint one or two persons to mediate the dispute.

Mediator not to act in other proceedings

- (3) A person who is appointed to mediate a dispute may not act in any other proceedings before the Agency in relation to that matter.

Confidentiality of mediation

- (4) All matters relating to the mediation of a dispute shall be kept confidential, unless the parties to the dispute otherwise agree, and information provided by a party for the purposes of mediation shall not be used for any other purpose without the consent of that party.

Time limit for completion of mediation

- (5) Unless the parties to a dispute otherwise agree, the mediation of the dispute shall be completed within 30 days after the dispute is referred for mediation.

Effect of mediation on proceedings

- (6) The mediation has the effect of
 - (a) staying for the period of the mediation any proceedings before the Agency in so far as they relate to a matter that is the subject of the mediation; and
 - (b) extending the time within which the Agency may make a decision or determination under this Act with regard to those proceedings by the period of the mediation.

Filing of mediation agreement

- (7) An agreement that is reached as a result of mediation may be filed with the Agency and, after filing, is enforceable as if it were an order of the Agency.

Appendix B – Summary of Roles: Parties and Mediator

Pre-mediation

Your Role	Mediator's Role
<ul style="list-style-type: none"> • Be responsive and make your availability a priority • Sign a copy of the Agreement to Mediate • Prepare for the mediation: <ul style="list-style-type: none"> ○ Think about the key issues ○ Prepare opening remarks ○ Reflect on your interests and needs ○ Identify possible solutions ○ Think about your alternatives ○ Think about the other party's perspective, interests and alternatives • In the case of a group complaint, the group constituents have to provide the following information: <ul style="list-style-type: none"> ○ the authorized spokesperson ○ a list of persons that the spokesperson represents along with evidence of the authorization to represent ○ any incorporation documents and a description of the group, including any incorporation documents ○ a description of the group, including but not limited to, its members' interests in the complaint and specific geographical locations of the residences of its members 	<ul style="list-style-type: none"> • Explain mediation and answer any questions • Clarify and confirm issues • Be impartial • Establish the ground rules for mediation • Keep information confidential • Share basic information about the mediation process with parties, such as the Mediation Resource Tool, in order to allow parties to familiarize themselves with the process, understand what will be expected of them and prepare questions ahead of the telephone interview • Request input from parties as to the location of the mediation session, who will participate in the mediation and parties' availabilities over the next 30 days • Meet with the parties separately by phone, prior to mediation • Ensure that the Agreement to Mediate is signed by all participants

Mediation session: Introduction

Your Role	Mediator's Role
<ul style="list-style-type: none"> • Agree to the ground rules • Be curious and ask questions • Confirm authority to settle • Participate in good faith 	<ul style="list-style-type: none"> • Set the tone and review ground rules • Encourage parties to consider each other's perspective on the dispute • Guide parties in exploring their respective interests and needs • Review the Agreement to Mediate and outline key parameters, such as confidentiality, voluntary participation and impartiality • Facilitate communication and keep parties focused • Verify authority to settle • Help parties focus on the future, rather than the past, and on interests, rather than on positions • Continually assess whether it is appropriate to continue the mediation process and consider termination if necessary

Mediation session: Identify issues and set agenda

Your Role	Mediator's Role
<ul style="list-style-type: none">• Prepare opening remarks:<ul style="list-style-type: none">○ Communicate your perspective on the facts and the issues in an open, respectful and honest manner○ Identify issues for discussion○ Identify your objectives• Actively listen to the other party:<ul style="list-style-type: none">○ Try to understand the other party's perspective• Ask clarifying questions	<ul style="list-style-type: none">• Listen to the parties• Invite parties to identify and prioritize the issues to be addressed• Ask clarifying questions<ul style="list-style-type: none">○ Capture and frame the issues in a neutral way

Mediation session: Explore issues and interests

Your Role	Mediator's Role
<ul style="list-style-type: none">• Share information• Seek to understand the needs and interests expressed by the other party• Generate options for the resolution of the dispute• Understand that the primary responsibility for resolving the issues rests with the parties and not with the mediator• Articulate what is important to you	<ul style="list-style-type: none">• Generate complete information• Assist parties shifting from position- to interest-based negotiation• Assist the parties in their development of viable options for resolving the dispute and assessing the various options in light of objective criteria<ul style="list-style-type: none">○ Focus on problem solving and ensure parties are aware and understand the issues and possible reasonable solutions

Mediation session: Generate and assess options

Your Role	Mediator's Role
<ul style="list-style-type: none">• Raise all possible options to solve the dispute – brainstorming• Assess “do-ability” and viability of the options	<ul style="list-style-type: none">• Capture possible solutions• Conduct a reality check – i.e. evaluate viability and feasibility of the options identified<ul style="list-style-type: none">○ In the event of an impasse, each party individually may be assisted in evaluating the strengths and weaknesses of their positions and provided with options to assist them to reach a satisfactory resolution of their dispute

Mediation session: Reach agreement

Your Role	Mediator's Role
<ul style="list-style-type: none">• Draft the Settlement Agreement• Visualize the short and long-term implications of the Settlement Agreement• Sign and date the Settlement Agreement	<ul style="list-style-type: none">• Concretize options (Who will do what? Where? When?)• Close the mediation session

Post-mediation

Your Role	Mediator's Role
<ul style="list-style-type: none">• Decide if you will file your Settlement Agreement as per subsection 36.1(7) of the Act• Decide whether outstanding issues will be referred to the Agency's adjudication process or another dispute resolution process• Complete a survey to provide feedback about the mediation process. This feedback is considered by the Agency as it continuously improves its mediation services	<ul style="list-style-type: none">• Report the outcome of the mediation to the Agency• Maintain the confidentiality of the mediation process• Destroy all personal notes taken during the mediation process

Appendix C – Request to Mediate

[Request to Mediate](#)³

Appendix D – Agreement to Mediate

[Agreement to Mediate](#)⁴

Appendix E – Mediation Ground Rules

Ground rules set the tone for the mediation session and should be agreed upon by all parties prior to the start of mediation. The following rules shall be observed by the parties during the mediation session, and will be monitored by the Mediator. Parties will have the opportunity to discuss and add to the following:

1. Prior to the mediation session, all known relevant information should be disclosed to all parties, including the Mediator.
2. Throughout the mediation process, whenever further information is identified as necessary to the resolution of the dispute, it should be provided as soon as possible.
3. Everything disclosed during the mediation session will be without prejudice.
4. Complex concepts and documentation should be simplified to the fullest extent possible to ensure understanding by all.
5. Participants will refrain from personal attacks or characterizations.

³ www.cta.gc.ca/sites/all/files/Request-to-mediate-EN.pdf

⁴ www.cta.gc.ca/sites/all/files/Agreement-to-mediate-EN.pdf

6. Participants will treat all parties involved in the process with respect. This means allowing each party an opportunity to present ideas and solutions without being interrupted.
7. During the mediation session, parties may consult with individuals (i.e., their own legal counsel or subject matter experts).
8. The Mediator or parties can request a caucus at an appropriate time.
9. All proposed solutions and alternatives should be considered thoroughly by all parties.
10. Parties should use objective criteria (such as cost, efficiency, regulatory requirements, etc.) to evaluate proposed solutions.

Appendix F – Sample Settlement Agreement

[Sample Settlement Agreement](#)⁵

Appendix G – How to File a Settlement Agreement

Subsection 36.1(7) of the *Canada Transportation Act* states that:

An agreement that is reached as a result of mediation may be filed with the Agency and, after filing, is enforceable as if it were an order of the Agency.

To file a Settlement Agreement, one of the parties must make the request in writing:

By mail

Secretary
Canadian Transportation Agency
Ottawa, Ontario
K1A 0N9

By courier

Secretary
Canadian Transportation Agency
15 Eddy Street
17th Floor, Mailroom
Gatineau, Quebec
J8X 4B3

The written request must:

- provide current contact information for all parties;
- be copied to all other parties to the mediation; and
- include two copies of the Settlement Agreement, placed in a separate envelope and addressed to the Secretary of the Agency and marked ***Confidential – to be opened by addressee only.***

⁵ www.cta.gc.ca/sites/all/files/Sample-Settlement-Agreement-EN.pdf

The Agency will acknowledge to all the parties to the mediation, the receipt and filing of the Settlement Agreement as per subsection 36.1(7).

One copy of the Settlement Agreement bearing the Secretary's stamp shall be returned to the party who made the request. The second copy will be retained by the Agency and will be treated and labeled as confidential information.