Three Years of Court-Connected Small Claims Mediations

The Importance of System, Program, Case, and Mediator Characteristics to the Court Mediation Program's Outcomes

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Executive Summary

The Court Mediation Program (the "CMP") is administered by Mediate BC Society in partnership with the Provincial Court judiciary; the Dispute Resolution Office, the BC Ministry of Attorney General; and Court Services Branch. The CMP, which currently operates in five registries of the Provincial Court of BC [Robson Square (i.e., downtown Vancouver), North Vancouver, Surrey, Victoria, and Nanaimo] began in 1998, and offers free mediation services to small claims litigants, and a practicum program that gives trained but inexperienced mediators an opportunity to gain practical experience.

In 2007, the Robson Square Pilot Project commenced and led to: (a) a more complete integration of the CMP into the court system; (b) motor vehicle personal injury claims and claims between \$10,000 and \$25,000 being referred in the Vancouver registry for mediation under Provincial Court Rule 7.4; and; (c) cases in Vancouver between \$0 and \$5000 being diverted to a new Simplified Trial process rather than being mediated. The CMP continues to mediate small claims under \$10,000 in the Nanaimo, North Vancouver, Surrey, and Victoria Registries under Provincial Court Rule 7.2. The CMP has applied the same approach that it had developed for cases under \$10,000 to the new Rule 7.4 cases in Vancouver. This mediation model includes the following aspects:

Mediators

- Mediators come from a wide variety of professional backgrounds. They are independent contractors who are paid on a per case basis. They are not employees of Court Services or the judiciary;
- Mediators must meet high standards to enter the program including membership on Mediate BC's Civil Roster which sets out requirements for formal mediation training and experience as well as a successful grade on a written examination on agreement writing and small claims process;
- Mediators receive training and oversight through the program.

Processing and Scheduling Cases

- Case pleadings are reviewed by the program to screen out serious safety issues;
- No pre-mediation meetings or pre-mediation interventions take place by mediators or staff;
- Cases are scheduled for one two-hour mediation session. No further sessions are permitted;
- Mediators are assigned by the program to mediations based solely on their availability and location.

Rules

- Parties, mediators and the program must abide by the Small Claims Rules, which were designed to achieve finality for the parties and the court, amongst other objectives;
- The need to work within the Rules constrains flexibility within the program and prevents recognition of settlements that do not meet the technical requirements set out by the Rules. For instance, settlements that are finalized by anything other than a Form 25 Mediation Agreement at the conclusion of the two-hour session are not officially recognized as settling the case.

Conduct of the Mediation

- Mediators must use interest-based approaches and refrain from giving legal opinions or advice;
- Sessions can involve either a practicum mediator and a mentor mediating together or an experienced mediator only;
- Up to 2012, observers sat in on some mediation sessions for quality control and professional development purposes but did not participate in the session;
- Parties have the right to have their legal counsel attend a mediation session, while support persons may attend by consent of all parties and the mediator; and;
- Parties may attend by teleconference by consent or as permitted by the Court.

In this report, we present an analysis of all 4,327 of the CMP's cases that were mediated between April 1, 2008 and August 15, 2010. The purpose of this analysis was to determine which characteristics of the Small Claims System ("System Characteristics"), the Court Mediation Program itself ("Program Characteristics"), the case ("Case Characteristics"), and/or the mediators ("Mediator Characteristics") were related to settlement at mediation. In this analysis, we used the CMP's narrow definition of "settlement". Specifically, a mediation was was only considered "settled" if a Form 25 Mediation Agreement was completed at the end of the mediation session. However, many cases do settle within a few weeks of mediation, and these settlements are likely due, at least in part, to the mediation. However, because of the narrow way in which settlement was defined, we were not able to assess the contribution that mediation made toward settling these cases. Thus, this study underestimates the full impact of mediation on small claims cases.

SUMMARY OF KEY FINDINGS

 The following System/Program, Case, and Mediator Characteristics were statistically related to settlement: the Rule (i.e., Rule 7.2 versus Rule 7.4) and Registry that claims were mediated under, the amount and type of claim, and the identity of the mediator. However, these relationships were statistically quite weak, and were of little practical significance.

- 2. In terms of System/Program Characteristics, claims mediated in downtown Vancouver settled less often than claims in other Registries, and claims mediated under Rule 7.4 settled less often than those mediated under Rule 7.2. This is because claim amounts in Vancouver (the vast majority of which are mediated under Rule 7.4) are substantially higher than those in the other Registries (all of which mediate under Rule 7.2). Therefore comparing settlement rates between Vancouver and the other Registries is, in essence, comparing apples to oranges. In terms of Case Characteristics, both the type and amount of claim were related to settlement but, again, these relationships were statistically weak. The amount of claim was the Case Characteristic most closely related to settlement.
- 3. The highest settlement percentages were in claims below \$5,000 (50-60%). Settlement rates gradually decreased as claim amounts increased. They were moderate (40-50%) in claims from \$5,000 \$24,999, and quite low (33%) in claims of exactly \$25,000.
- 4. There were a disproportionate number of claims of exactly \$25,000, likely because many litigants abandoned a portion of their claim so they could access the small claims regime. These cases involved more lawyers and were likely more complex than lower cases with lower claim amounts. They settled far less often than other claims.
- 5. Personal injury, insurance, and employment cases settled least often, and were only about half as likely to settle as goods and services cases. This is likely because goods and services cases tend to have lower claim amounts, while personal injury, insurance, and employment cases are higher in amount and have a disproportionate number of claims of \$25,000.
- 6. In terms of Mediator Characteristics, the identity of the mediator was the variable most closely related to settlement. Further, it was most robust predictor of settlement of <u>all</u> the variables we analyzed. Again, it was only a weak predictor of settlement.
- 7. Most mediators settled more cases when there were no lawyers at the mediation (72%). Some mediators settled approximately as many cases when lawyers were present as when they were not (15%). A few mediators actually settled *more* cases when there was at least one lawyer at mediation (13%).

CONCLUSIONS AND RECOMMENDATIONS

- 1. Taken together, the results of this study indicate that most cases seem to settle under the CMP mediation model when they are within the range of claim amounts that the program was designed to mediate, i.e., under \$10,000. Cases with higher claim amounts that are mediated in the Vancouver Registry settle far less often - especially claims of exactly \$25,000. This does not mean that mediation is not effective with higher claim amounts. It simply means that the current CMP model must be modified to be more effective with these types of cases.
- 2. Because Program and Case Characteristics were only weakly related to settlement, changing referral criteria or case assignments on the basis of these variables will not

- have tremendous impacts on settlement rates. That being said, the CMP could consider mediating only cases under a specific monetary limit (e.g., cases under \$20,000).
- 3. There was some limited evidence that some mediators have particular strengths/specialties. The CMP could, insofar as possible, assign these mediators to cases that best fit their proficiencies.
- 4. The CMP should conduct additional research on how to improve settlement rates with higher-claim amounts. Potential modifications to the CMP's current mediation model should be identified based on the literature, best practice reviews, and interviews with skilled mediators. These modifications should then be implemented and their effectiveness tested.

Introduction

The overall mandate of the Mediate BC Society ("Mediate BC") is to lead, promote, and facilitate mediation and other collaborative dispute resolution processes throughout British Columbia. Mediate BC's vision is: (a) to help create a civil society where mediation and other collaborative dispute resolution processes are widely accepted and used; and; (b) to be an organization that serves the public interest and supports the community of mediators and other dispute resolution practitioners. Among its other programs, Mediate BC administers the Court Mediation Program (the "CMP"), the mandate of which is to enhance access to justice for litigants and contribute to culture change in the BC justice system by providing: (a) early opportunities for resolution through quality mediation services; and; (b) opportunities for mediators to practice mediation skills in a quality environment. The CMP provides mediation services to small claims court litigants free of charge.

1.0. History of the Court Mediation Program

The CMP originally began as a time-limited project, and conducted its first mediations under a Practice Direction of the Provincial Court in 1998. At the time, the CMP's main objectives were to provide trained but inexperienced mediators with an opportunity to develop their skills by mediating in Small Claims court with an experienced mentor; to provide free mediations to Small Claims litigants; and to assess whether mediating civil cases would relieve pressure on the Provincial Court bench's case load. In 2003, the Practice Direction was replaced by Rule 7.2 of the Small Claims Rules of the Provincial Court of British Columbia (the "Rules"). In 2005, the monetary jurisdiction of the Provincial Court was raised from \$10,000 to \$25,000 but the CMP was still limited to mediating cases up to \$10,000. In 2007, the CMP was invited to participate in the Robson Square Pilot Project (the "Pilot") under Rule 7.4 in collaboration with the Provincial Court judiciary, the Dispute Resolution Office of the Ministry of Attorney General, and Court Services Branch¹.

Under Rules 7.2 and 7.4, certain cases are referred automatically to the CMP for mediation. Mediations are held in one of five Provincial Court registries: Vancouver (also known as the Robson Square Registry), North Vancouver, Surrey, Victoria, and Nanaimo. North Vancouver, Surrey, Victoria and Nanaimo operate under Rule 7.2, which governs certain cases involving claims or counterclaims of up to \$10,000². Vancouver operates under Rule 7.4³, which makes mediation mandatory for all personal injury claims⁴, and in all cases involving claims or counterclaims between \$5,000 and \$25,000⁵. The CMP also provides a practicum program for

¹ Mediation is also available to litigants under other Small Claims Rules. Under Rule 7, a judge may mediate issues at a settlement conference. Under Rule 7.3, a party may compel the other party to attend a private mediation.

² With some statutory exceptions and judicial exemptions on application.

³ During the transition from Rule 7.2 to 7.4 in 2007 and 2008, a small number of Rule 7.2 cases were mediated in Vancouver as well.

⁴ Motor vehicle personal injury claims are exempt from mediation in Rule 7.2 registries.

⁵ Except for financial institutional debt claims, judicial exemptions on application, and rare exemptions by the Mediation Coordinator.

new mediators seeking advanced mediation training and experience in court-connected mediation. During the course of the practicum, the practicum mediator participates in up to 10 mediation sessions along with a senior mediator, who acts as a mentor.

2.0. The Court Mediation Program's Mediation Model

The CMP's mediation model (i.e., the collective administrative and mediation approaches used by the program) was developed for cases between \$0 and \$10,000. When Rule 7.4 was implemented in 2007 (i.e., when motor vehicle personal injury claims and cases up to \$25,000 were added to the CMP's caseload in the Vancouver Registry and cases between \$0 and \$5000 were diverted to a new Simplified Trial process), some aspects of the CMP's administration changed. However, the CMP's structured mediation approach essentially remained the same. The main features of the CMP's mediation model include:

Mediators

- Mediators come from a wide variety of professional backgrounds. They are independent contractors who are paid on a per case basis. They are not employees of Court Services or the judiciary;
- Mediators must meet high standards to enter the program, including membership on Mediate BC's Civil Roster which sets out requirements for formal mediation training and experience as well as a successful grade on a written examination on agreement writing and small claims process;
- Mediators receive training and oversight through the program.

Processing and Scheduling Cases

- Case pleadings are reviewed by the program to screen out serious safety issues;
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Rules

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- The need to work within the Rules constrains flexibility within the program and prevents recognition of settlements that do not meet the technical requirements set out by the Rules. For instance, settlements that are finalized by anything other than a Form 25 Mediation Agreement at the conclusion of the two-hour session are not officially recognized as settling the case.

Conduct of the Mediation

- Mediators must use interest-based approaches and refrain from giving legal advice;
- Sessions can involve either a practicum mediator and a mentor mediating together or an experienced mediator only;
- Up to 2012, observers sat in on some mediation sessions for quality control and professional development purposes but did not participate in the session;
- Parties have the right to have their legal counsel attend a mediation session, while support persons may attend by consent of all parties and the mediator; and;
- Parties may attend by teleconference by consent or as permitted by the Court.

3.0. Purpose of this Study

The CMP has been collecting extensive program utilization and outcome data since its inception in 1998. The purpose of this study was to analyze all 4,327 of the CMP's cases that were mediated between April 1, 2008 and August 15, 2010 to determine which characteristics of the BC Small Claims System ("System Characteristics"), the Court Mediation Program itself ("Program Characteristics"), the case ("Case Characteristics"), and/or the mediators ("Mediator Characteristics") were related to settlement at mediation. In this report, "settlement" is defined very narrowly as mediation sessions that ended with a completed Form 25 Mediation Agreement. Many cases do settle within a few weeks of mediation, and these settlements are likely due (at least in part) to the mediation. However, we are not able to assess the contribution that mediation made toward settling these cases. Cases that settled shortly after mediation or cases that settled in the mediation but used a different method of recording the terms of the settlement were not classified as "settlements" in our statistical analyses⁶. Because of this narrow definition of settlement, the true effect of mediation on settlement is underestimated in this report. Using a less conservative method of estimating the impact of mediation on settlement, Focus Consultants concluded that the "true" CMP settlement rate is closer to 50%⁷.

"System / Program Characteristics" are aspects of a claim determined either by the location of filing or other court or program factors. These include:

- The Court Rule ("Rule"; 7.2 or 7.4) and Court Registry ("Registry") that the claim was filed under. Rule 7.2 applies to certain claims under \$10,000, and Rule 7.4 applies to claims from \$5,000 to \$25,000. Rule 7.4 cases are only mediated in the Vancouver registry, and the other four registries mediate solely under Rule 7.2. Thus, although a small number of cases in Vancouver are mediated under Rule 7.2, Rule and Registry are essentially confounded.
- The time between filing and mediation ("Time Pending"); and;

⁶ The underestimated effects of mediation are likely randomly distributed across the System/Program, Case, and Mediator variables analyzed in this study. Therefore, it should not affect the statistical significance or magnitude of the relationships between these variables and settlement.

⁷ See: Focus Consultants, "Evaluation of the Small Claims Court Pilot Project (Victoria, August 19, 2009) at p. 43. Unfortunately, we did not have access to the same data sources Focus Consultants used to estimate the impact of mediation on post-mediation settlements.

Whether the mediation involved a practicum mediator.

"Case Characteristics" are aspects of the claim itself. This includes: (a) the type of claim, which the CMP classifies into one of the following seven categories: goods and services, real property, personal property, financial claims, employment, personal injury, or insurance; and; (b) the amount of the claim.

"Mediator Characteristics" are attributes of the mediator who mediated the claim, and include:

- The mediator's "Stage" (i.e., whether s/he is a practicum mediator, a mentor who supervises practica, or a "regular" small claims mediator who mediates solo but is not a mentor);
- The mediator's professional background. Although CMP mediators have a wide variety of professional backgrounds, the only easily available data we had on hand was whether they fell into one of two groups: those who were members of the Law Society of British Columbia (45% of CMP mediators) and those who were not (55% of CMP mediators); and;
- The volume of cases that the mediator had mediated for the CMP in the previous two years.

Method

In November 2007 critical changes were made to the British Columbia Small Claims Rules that significantly affected the nature of the cases referred to the CMP. To ensure that only cases that reflect these critical changes were included in this study, data from all mediations conducted between April 1, 2008 and August 15, 2011 were included (N = 4327). Of these cases, 2643 (61%) were goods and services claims, 421 (10%) were real property claims, 366 (8%) were personal property claims, 329 (8%) were employment claims, 202 (5%) were personal injury claims, 182 (4%) were financial claims, and 184 (4%) were insurance claims. Forty-seven different mediators practiced through the CMP during the time period under study.

One of the important elements of our analysis was going beyond analyzing the relationship of each variable with settlement in isolation from other variables (i.e., a univariate approach). Rather, where possible, emphasis was put on the *combined relationship* that two or more variables together have on outcomes (i.e., a multivariate approach). This allows for more intricate questions to be asked. We begin each section of this report with a table that summarizes the research questions that are addressed in that section and very brief (yes/no) answers to those questions. For simplicity's sake, the explanatory text below these tables only discusses research questions whose answer is "yes".

In this report we use footnotes to describe the technical statistical analyses used and the results of those analyses. In the body of the report we only state whether results were "statistically significant", and, when appropriate, how "practically significant," i.e., meaningful, they were. Many of the analyses in this report test the extent to which a variable or set of variables predict whether each individual case settled in mediation or not. This kind of analysis then provides overall indicators of the extent to which the variable(s) predicted settlement over all the cases. These indicators give the reader a sense of the practical significance of a predictor. Two of these indicators we report are: (a) Naglekerke's R-square, which is (very roughly speaking) the proportion of variance in settlement that the predictor variable(s) explain; and; (b) the variable(s) ability to correctly classify cases as settled or not settled. In terms of probability, flipping a coin would correctly classify 50% of cases. Thus, the extent to which a predictor variable correctly classifies over 50% of cases is an indicator of how meaningful/practically significant that predictor is.

We follow social science convention by considering a statistically significant result to be a result where p < .05.

 $^{^{9}}$ A result may be statistically but not practically significant. This particularly true in large samples such as those in this study.

Results

1.0. System/Program Characteristics

The research questions regarding the relationships between System and Program Characteristics and settlement are summarized in the table below. When interpreting these results, keep in mind that claims mediated under Rule 7.4 range from \$5,000 to \$25,000 and are mediated only in Vancouver, while claims mediated under Rule 7.2 are \$10,000 or less, and are only mediated in non-Vancouver Registries. Thus, comparing claims mediated in Vancouver to those mediated in the other Registries is like comparing apples to oranges.

Research Question	Brief Answer
1. Do settlement rates differ by Rule?	Yes
2. Do settlement rates differ by CMP Registry?	Yes
3. Is the time from filing to the mediation date ("Time Pending") related to settlement?	o No ¹⁰
4. Is Time Pending related to settlement in a particular Rule or in particula CMP Registries?	r No ¹¹
5. Do mediations that involve a practicum student settle more or less ofter than those involving a regular small claims mediator ("SCM") or a Mento only?	
6. Do mediations that are observed settle more or less often than those that are not observed?	t No ¹³

1.1. Settlement rates under Rule 7.2 and Rule 7.4

Cases mediated under Rule 7.2 settled significantly more often than those under Rule 7.4 (57% versus 43% respectively¹⁴), but, in terms of practical significance, Rule only accounted for 3% of the variance in settlement rates. Also, it did not predict settlement well, correctly classifying only 57% of cases.

¹⁰ Spearman's r = -0.02, ns.

¹¹ Two direct logistic equations were estimated: one with Time Pending, Rule, and Time Pending * Rule, and the other with Time Pending, Registry, and Time Pending * Registry. Although both models significantly predicted settlement (Chi-squares (3; 9) = 93.2 and 111.0, respectively, ps < .001), only the Rule and Registry terms were significant, indicating that all the predictive power in these equations came from these two variables and not their interaction with Time Pending.

¹² Settlement rates were 48.2% in solo mediations and 48.3% in mediations involving a practicum mediator, Chisquare (1) = 0.1, ns.

 $^{^{13}}$ Only 86 mediations were observed. Settlement rates were 53.5% in observed mediations and 48.9% in solo mediations, Chi-square (1) = 0.7, ns.

¹⁴ Chi-Square (1) = 88.1, p < .0001.

1.2. Settlement rates across CMP Registries

Settlement rates in the different CMP Registries are presented in Figure 1, below. An overall test of differences across registry locations was significant¹⁵. However, like Rule, registry only accounted for 3% of the variance in settlement, and only classified 57% of cases correctly.

Vancouver cases settled less often than those in all the other registries¹⁶. Victoria mediations settled significantly more often than all other registries except for North Vancouver¹⁷ (the difference between North Vancouver and Victoria was likely not significant because there are substantially fewer cases mediated in North Vancouver than in Victoria, specifically, 374 versus 470). Although Surrey, Nanaimo, and North Vancouver's rates differed from one another, these differences were not statistically significant¹⁸.

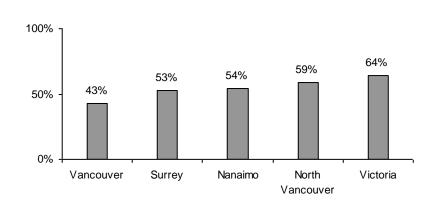


Figure 1. Settlement rates across CMP registries

1.3. Discussion

As previously noted, Rule 7.4 cases (i.e., claims from \$5,000 to \$25,000) are only mediated in the Vancouver Registry. All the other Registries mediate under Rule 7.2 (i.e., claims under \$10,000). Thus, comparing settlement rates from Vancouver to those in the other Registries is like comparing apples to oranges. As we will discuss in the "Case Characteristics" section,

 16 Chi-squares (1) = 21.5, 10.0, 31.7, and 70.5 for Victoria, Surrey, Nanaimo, and North Vancouver, respectively. All ps significant after using a Bonferroni correction to control for Type I error rates across multiple comparisons. 17 Chi-Squares (1) = 70.5, 12.9, and 10.8 for Vancouver, Surrey, and Nanaimo, respectively (all ps significant after

¹⁵ Chi-Square (4) = 100.2, p < .0001.

¹ Chi-Squares (1) = 70.5, 12.9, and 10.8 for Vancouver, Surrey, and Nanaimo, respectively (all ps significant after using a Bonferroni correction to control for Type I error rates across multiple comparisons). Chi-square (1) = 2.7, p = ns between Victoria and North Vancouver.

¹⁸ Chi-Squares (1) = .07, 2.7, and 2.7 for the differences between Surrey and Nanaimo, Surrey and North Vancouver, and Nanaimo and North Vancouver, respectively. Bonferroni corrections were used to control for Type I error rates across multiple comparisons.

below, it is most likely the higher claim amount in Vancouver/Rule 7.4 that account for lower settlement rates.

Among the Rule 7.2 Registries, claims in Victoria settle more often than those in other Rule 7.2 Registries. The reasons for the difference are not clear, but Victoria does, on average, have lower claim amounts than the other 7.2 registries (\$3,789 in Victoria compared to \$4,191 in Surrey, \$4,002 in Nanaimo, and \$4,078 in North Vancouver). However, this difference is not quite statistically significant¹⁹.

2.0. Case Characteristics

The research questions about the relationships between Case Characteristics and settlement are summarized and answered in the table below. As you read through this section, note that motor vehicle personal injury claims and claims over \$10,000 are <u>only</u> mediated in the Vancouver Registry.

Research Question	Brief Answer
1. Do settlement rates differ across different claim types?	Yes
2. Do settlement rates differ over different claim amounts?	Yes
3. Do type and amount of claim together influence settlement rates?	Yes

2.1. Differences in settlement across claim types

There were significant differences in settlement rates across different claim types²⁰. However, in terms of practical significance, the type of claim only accounted for 2% of the variance in settlement rates, and only correctly classified 55% of cases correctly²¹.

Settlement rates were highest for goods and services cases (52%), financial cases (51%), and real property cases (47%), and lowest for insurance (34%) and personal injury cases (33%). Personal property (45%) and employment (43%) cases fell in the middle. Post hoc tests indicated that the following claim types settled significantly less often than good and services cases (in order of magnitude of the difference): personal injury, insurance, employment, and personal property²². In fact, personal injury and insurance cases were half as likely to settle as goods and services cases²³.

²⁰ Chi-square (6) = 57, p < .0001.

 $^{^{19}}$ F (3, 1781) = 1.9, p = .12.

²¹ Naglekerke's R-square = .02; AUC = .55.

 $^{^{22}}$ bs = -.80 (p < .001), -.75 (p < .001), -.40 (p < .001), and -.23 (p = .01), for personal injury, insurance, employment, personal property, respectively (goods and services was the reference category). Bonferroni corrections were used to control Type I error rates.

²³ Odds ratios = .45 (95% confidence interval .33, .61) and .47 (95% confidence interval .35, .65).

2.2. Differences in settlement across amount of claim

There was a significant, but weak, inverse relationship between the amount of a claim and settlement rates, meaning that as claim amounts increase, settlement rates tend to decrease²⁴. In terms of practical significance, the amount of claim accounted for 3% of the variance in settlement rates,²⁵ and claims that settled were, on average, about \$3,000 less than those that did not settle²⁶.

To investigate where settlement rates seem to decrease the most meaningfully, we segmented amount of claim into 10 groups of equal (or as close to equal as possible) size and plotted the settlement rates in each of these groups. The results of this analysis are presented in Figure 2, below. It is evident from Figure 2 that the relationship is inverse and approximately linear (as is expected given that the correlation between amount of claim and settlement was -.18).

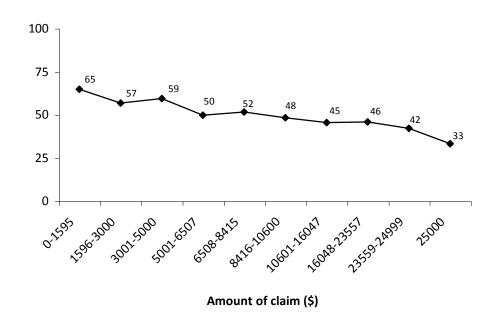


Figure 2. Settlement rates by claim amount

Even though the settlement rate in each group is different, these differences may be merely random fluctuations. To determine which of these differences are reliable, we ran a series of Pearson chi-square tests between settlement rates. Overall, there were significant differences²⁷. Post-hoc testing²⁸ indicated that settlement rates dip significantly:

²⁵ Naglekerke's R-square = .03.

 $^{^{24}}$ r = -.18, p < .001.

²⁶ The average claim amount was \$9,725 for cases that settled and \$12,771 for cases that did not settle, F(1) = 139.3, p < .0001.

²⁷ Chi-square (9) = 156.8, p < .0001.

²⁸ Using Bonferroni corrections to control Type I error rates.

- From the 59% in the \$3001-\$5000 group to the 50% rate in the \$5001-\$6507 group²⁹; and;
- From the 50% rate in the \$5001-\$6507 group to the 33% rate in the \$25,000 group³⁰.

Given these results, we think it is fair to conceptualize settlement rates as "high" (i.e., 55-65%) in claims below \$5000, "moderate" (i.e., 40-50%) in claims between \$5000 and \$24,000, and "low" (i.e., below 40%) in claims of exactly \$25,000. These groups accounted for 30%, 52%, and 18% of all CMP claims, respectively.

2.3. The joint influence of the type and amount of claim on settlement

There was no statistical interaction between claim type and amount of claim³¹. However, the way that claim amounts were distributed within each claim type (and overall) makes statistical testing inappropriate³². Specifically, there are highly disproportionate numbers of cases of exactly \$25,000 in each claim type - particularly in personal injury, employment, and insurance claims. Table 1 (below) show the disparate percentage of claims at \$25,000 over and within each claim type. In interpreting the information in Table 1, note that motor vehicle personal injury claims and claims over \$10,000 are only mediated in the Vancouver Registry.

Table 1. The proportion of claims below and exactly at \$25,000 within each claim type

	\$0 -\$24,999	Exactly \$25,000
All cases	82%	18%
Personal injury	29%	71%
Employment	57%	43%
Insurance	74%	26%
Real property	80%	20%
Personal property	82%	18%
Financial	90%	10%
Goods and services	90%	10%

-

 $^{^{29}}p = .005.$

 $^{^{30}}$ p < .0001. Note that the difference between the 50% rate in the \$5001-\$6507 group and the 42% rate in the \$23559-\$24999 group was close to significant, and likely was not significant due to the relatively low number of cases in the latter group (i.e., n = 95).

³¹ A direct logistic regression was performed entering case type, amount of claim, and case type * amount of claim as predictors. None of the case type * amount of claim interaction terms were statistically significant (although the insurance * amount of claim terms was close to significant before using Bonferroni corrections to control Type I error rates, b = 1.9, p = .06).

³² Specifically, statistical testing was counter-indicated by the extreme positive skew in the bivariate amount and type of claim distributions. Data transformations could not rectify these skews, as too many cases were tied at \$25,000.

Figure 3, below, plots the average claim amount within type of claim, and show that personal injury, employment, and insurance cases have substantially higher claims than other claim types.³³.

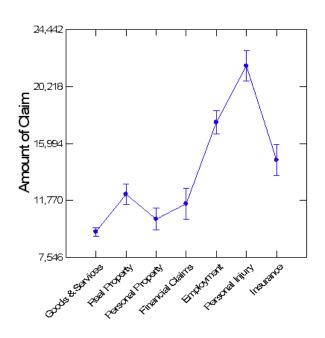


Figure 3. Average claim amounts in each type of claim

It is likely that personal injury, employment, and insurance cases have the lowest settlement rates because they have higher claim amounts in general and, in particular, a large number of claims of exactly \$25,000.

2.4. Discussion

Of all the *Case Characteristics* we studied, the amount of claim seems to be the one most strongly related to settlement, and, because of the differences between Rules 7.2 and 7.4, this affects the Vancouver Registry most. Specifically, Vancouver handles claims from \$5,000 to \$25,000, while the other Registries handle claims from \$0 to \$10,000. All of the following results from our analysis of System, Program, and Case Characteristics support this conclusion. Specifically:

- Claims mediated under Rule 7.4 settle less often than those mediated under Rule 7.2 (and Rule 7.4 cases are only mediated in Vancouver).
- Claims mediated in Vancouver settle less often than claims in the other Registries.
- Claims over \$10,000 settle less often than claims under \$10,000 (and claims over \$10,000 are only mediated in Vancouver).

³³ The vertical bars through each data point represent the degree to which claim amounts vary; the shorter these bars are, the less that claim amounts vary with that particular claim type and vice versa.

- Only 33% of claims of exactly \$25,000 settle (again, these are only mediated in Vancouver).
- Only 33% of personal injury claims settle, and personal injury cases have an inordinate percentage (71%) of claims of exactly \$25,000 (again, these cases are only mediated in Vancouver).

Thus, it is likely that qualitatively different cases are mediated in Vancouver. What is it about these cases above \$10,000 and cases of exactly \$25,000 that make them more difficult to settle under the current CMP model? It seems likely that these cases have higher stakes and are more "complex" in terms of the number and type of issues involved. This explanation is supported by the fact that more lawyers attend these mediations, as evident in Table 2, below.

Table 2. Percentage of mediations involving one or more lawyers in various claim types and claim amounts

Claim Type	% of mediations involving one or more lawyers
Goods & services	29%
Financial claims	28%
Personal property	36%
Real property	42%
Employment	64%
Insurance	89%
Personal Injury	93%
Claim Amount	
0-5K	16%
5001-10K	34%
10001-15K	47%
15001-20K	56%
20000-24999K	55%
25K	72%

Employment cases may be higher in conflict, and insurance and personal injury cases may involve more medico-legal issues and evidence which adds to case complexity. Further, given the highly disproportionate number of claims at exactly \$25,000, we think there is a strong argument that many litigants are abandoning some of their claim amounts so they can access the small claims regime. These claims may well be more complicated than those meant to be mediated by the CMP using the current model and an argument could be made that a different

approach may be more appropriate for these types of cases (including pre-mediation meetings between the mediator and the parties, for example)³⁴.

While claim type and amount are significantly related to settlement, they lack practical significance. As an illustration of this, we estimated how much settlement rates would increase if the CMP stopped taking cases over certain monetary limits. Based on the data in this study, if the CMP were to stop taking cases above \$15,000, settlement percentages would increase from the current average of 49% to 54%. Settlement percentages would increase to 53% if cases of \$20,000 or more were eliminated and to 52% if the CMP stopped taking cases of \$25,000. The gains that would be achieved if the CMP were to eliminate employment and/or insurance cases are even smaller. Specifically, settlement would remain around 49% if employment cases were eliminated, and would rise to around 51% if insurance cases were eliminated.

3.0. Interactions between System/Program and Case Characteristics

We investigated whether there were any interactions between System/Program Characteristics and Case Characteristics, i.e., whether they jointly predicted settlement. We found:

- no evidence that registry and amount of claim interacted, i.e., no evidence that any particular registry(s) had higher settlement rates at particular claim amounts (recall, however, that cases over \$10,000 are only mediated in Vancouver);³⁵
- no evidence that involvement of a practicum mediator had an effect on settlement in any particular types³⁶ or amounts³⁷ of claim;
- no evidence that "Time Pending" (i.e., the time from the claim being filed to being mediated) interacted with claim type or amount³⁸.

We could not test whether registry and type of claim interacted, i.e., whether any particular registry(s) had higher settlement rates in particular types of claims³⁹.

³⁴ We did check whether these higher-end claims were longer in duration than other cases. Although there were some differences of statistical significance, they were very small and not worth discussing. We think the 2-hour timeframe puts a cap on how effective duration can be as a proxy of case complexity.

³⁵ A direct logistic regression equation was performed regressing settlement against the registry, amount of claim, and the interaction between the two. Registry and amount of claim interacted in the Nanaimo registry only (p < .05), and this effect was of no practical significance (odds ratio = 1.0).

³⁶ A direct logistic regression regressing settlement against type of claim, the presence of a practicum mediator, and the interaction between the two indicated no practicum * type of claim effect (p = .43).

³⁷ A direct logistic regression regressing settlement against claim amount, the presence of a practicum mediator, and the interaction between the two indicated no practicum * amount of claim effect (p = .29).

³⁸ The interaction terms in direct logistic regression equations regressing settlement against: (1) Time Pending, type of claim, and Time Pending * type of claim, and (2) Time Pending, amount of claim, and amount of claim * Time Pending were both resoundingly non-significant (ps = .45 and .68, respectively).

There are not enough data to test this question properly. Specifically, there are too many low-frequency cells in the type of claim * registry matrix.

4.0. Mediator Characteristics

From amongst the cases that were mediated, 13 mediators mediated less than 1% of all the mediations included in this study. Except for the "volume of mediations" analysis, we excluded these mediators from any analyses involving mediators. The research questions regarding the relationships between Mediator Characteristics and settlement are summarized and answered in the table below.

Research	Brief Answer			
Mediator characteristics				
1.	Does it matter who the mediator is?	Yes		
2.	Does a mediator's stage, whether or not they are a member of the Law Society of British Columbia 40 , or the volume of cases they mediated during the study period matter?	No ⁴¹		
Interacti	ons between mediator and case characteristics			
3.	Does whether or not a mediator is a member of the Law Society of British Columbia interact with claim amount and/or type of claim?	No ⁴²		
4.	Do some mediators have higher settlement rates than others in particular claim types or claim amounts?	Yes		
5.	Do some mediators have higher settlement rates than others when lawyers attend mediation?	Yes		

4.1. Does it matter who the mediator is?

The identity of the mediator was the best single predictor of settlement of *any* System/Program, Case, or Mediator Characteristic analyzed in this report. That being said, it accounted for only 7% of the variance in settlement rates, and correctly classified the actual

⁴⁰ CMP's mediators come from a very wide variety of professional backgrounds. However, we only had access to one limited aspect of their background, i.e., whether or not they were a member of the Law Society of British Columbia ("LSBC"). Members of LSBC include practicing and non-practicing lawyers. Fifty-five percent of the CMP's mediators are not members of the LSBC, and 45% are.

⁴¹ Profession and stage were entered into a direct logistic regression equation. Neither term was significantly related to settlement. Settlement rates of members and non-members of LSBC were significantly different (p < .01), but not meaningfully different (i.e., settlement rates were 52% for non-members and 47% for members/law students). Settlement rates of mentors were not significantly different from those of regular Small Claims Mediators. Volume of cases and settlement rates only correlated at r = -.15, ns.

⁴² A direct logistic regression was performed entering amount of claim, profession, and amount of claim x profession. Although the model significantly predicted settlement (chi-square = 133.0, p < .0001), only the amount term was significant, indicating that the model's predictive power comes from amount of claim only. Amount of claim and profession do not interact. It may be that they do at the very high levels of amount of claim (i.e., the 15, 20, and 25K cut-offs). This will be discussed in a later section of the report.

results of only 63% of cases⁴³. Some mediators settle more cases than others⁴⁴. For mediators who had performed at least 45 mediations during the study period, individual settlement rates ranged from 28% to 73%.

4.2. Do some mediators have higher settlement rates than others in particular claim types or claim amounts?

There was not enough data to statistically compare mediators settlement rates across different claim types because mediators mediated very few claims of particular types or amounts. When we looked at this information descriptively only, some interesting patterns emerged that hinted at potential mediator specialties. Some mediators had very high settlement rates (i.e., over 65%) across most types and amounts of claims, and could be conceptualized as "generalists," while others had particularly high settlement rates in one or a few types and/or amounts of claim. Very few mediators had mediated personal injury or insurance claims, as these kinds of cases make up only a small proportion of the CMP's caseload, and no single mediator had high settlement rates in these types of cases.

Statistically it is difficult to test whether individual mediators performed differently at different claim amounts⁴⁵. However, given there are a disproportionate number of cases with claim amounts of exactly \$25,000 (i.e., 18% of all cases), and given how difficult higher amounts of claim are to settle (as discussed in Section 2.0 of this report), we analyzed whether there were any settlement rates of 50% or higher in claims over \$15,000, \$20,000, and cases at \$25,000. The results are in Table 3, below. For the sake of reliability, only mediators with at least 20 mediations in each amount of claim category were included in these analyses. There was no evidence that mediators who were members of the Law Society of British Columbia had higher settlement rates than non-members in these cases. In fact, the pattern is actually to the opposite, but there is too little data to be much more than speculative on this point.

⁻

⁴³ Mediator identity was entered into logistic regression on its own because of its redundancies with other variables. Overall, the model poor, but was still the single best predictor of settlement in this study: Nagelkerke's R-Square = .073; AUC .63.

⁴⁴ Chi-square < .0001.

 $^{^{45}}$ A direct logistic regression was performed using amount of claim, mediator, and mediator * amount of claim as predictors. Chi-square (93, N=4,051) = 380.9, p < .0001. Only one interaction term was significant (p < .01). However, as discussed previously in this report, the highly positively skewed distribution of claim amounts contraindicates statistical testing of this kind.

Table 3. Mediators who settle more than 50% of cases at higher claim amounts

Settlement Rate	Law Society of British			
	Columbia Membership			
Cases at \$15,000 or more (average CMP settlement rate = 37.6%)				
50.8	Non-member			
53.6	Non-member			
54.2	Non-member			
54.8	Member			
56.7	Non-member			
67.5	Member			
Cases at \$20,000 or more (average CMP settlement rate = 36.8%)				
52.4	Non-member			
52.4	Non-member			
58.0	Non-member			
65.6	Member			
Cases at \$25,000 (average CMP settlement rate = 35.3%)				
51.2	Non-member			
52.2	Non-member			
52.4	Non-member			
62.5	Member			

4.3. Do some mediators have higher settlement rates than others when lawyers attend mediation?

The majority (72%) of mediators settled more claims *without* lawyers at mediation, however these differences were only significant in five cases. Some mediators settled approximately as many cases when lawyers were present as when they were not (15%), while a few mediators (13%) settled *more* cases when there was at least one lawyer at mediation. However, none of these difference were statistically significant (i.e., they could have been mere random fluctuations).

CONCLUSIONS AND RECOMMENDATIONS

Using data from April 1, 2008 to August 15, 2010, we explored whether various System/Program Characteristics, Case Characteristics, and Mediator Characteristics were related to settlement at mediation. Again, "settlement" was defined very narrowly to include only cases that settled using a Form 25 Agreement executed at the end of the mediation session⁴⁶.

1.0. Key Findings

- The following System/Program, Case, and Mediator Characteristics were statistically related to settlement: the Rule (i.e., Rule 7.2 versus Rule 7.4) and Registry that claims were mediated under, the amount and type of claim, and the identity of the mediator. However, these relationships were statistically quite weak, and were of little practical significance.
- In terms of System/Program Characteristics, claims mediated in downtown Vancouver settled less often than claims in other Registries, and claims mediated under Rule 7.4 settled less often than those mediated under Rule 7.4. This is because claim amounts in Vancouver (the vast majority of which are mediated under Rule 7.4) are substantially higher than those in the other Registries (all of which mediate under Rule 7.2). Therefore comparing settlement rates between Vancouver and the other Registries is, in essence, comparing apples to oranges.
- In terms of Case Characteristics, both the type and amount of claim were related to settlement but, again, these relationships were statistically weak. The amount of claim was the Case Characteristic most related to settlement.
- The highest settlement percentages were in claims below \$5,000 (50-60%). Settlement rates gradually decreased as claim amounts increased. They were moderate (40-50%) in claims from \$5,000 \$24,999, and quite low (33%) in claims of exactly \$25,000.
- There were a disproportionate number of claims of exactly \$25,000, likely because many litigants abandoned a portion of their claim so they could access the small claims regime. These cases involved more lawyers and were likely more complex than lower cases with lower claim amounts. They settled far less often than other claims.
- personal injury, insurance, and employment cases settled least often, and were only
 about half as likely to settle as goods and services cases. This is likely because goods
 and services cases tend to have lower claim amounts, while personal injury, insurance,
 and employment cases are higher in amount and have a disproportionate number of
 claims of \$25,000.

⁴⁶ Again, because cases that settled post-mediation that were due (in whole or in part) to the mediation process are likely randomly distributed across the System/Program, Case, and Mediator variables analyzed in this study, they should not affect the statistical significance or magnitude of the relationships between these variables and settlement.

- In terms of Mediator Characteristics, the identity of the mediator was the variable most closely related to settlement. Further, it was most robust predictor of settlement of all the variables we analyzed. Again, however, it was only a weak predictor of settlement.
- There are likely both generalist and specialist mediators within CMP's mediator pool.
- The majority (72%) of mediators settled more claims without lawyers at mediation, however these differences were only significant in five cases. Some mediators settled approximately as many cases when lawyers were present as when they were not (15%), while a few mediators (13%) settled more cases when there was at least one lawyer at mediation. However, none of these difference were statistically significant

2.0. Conclusions

2.1. Implications of this study for the CMP

The CMP's mediation model was designed for claims of \$10,000 or less. The results of this study indicate that, using this model, the CMP is indeed most effective at settling cases in this monetary range. In 2007, the Vancouver registry diverted cases from \$0 to \$5,000 from mediation to a new simplified trial process and began referring motor vehicle personal injury claims and claims of \$10,000 - \$25,000 to mediation through the CMP. All of the results of this study indicate that the current CMP model does not work as effectively with these higher-amount claims. The results of this study *do not* suggest that that these higher-amount claims *cannot* be settled at mediation. Rather, they suggest that the CMP mediation model should be amended in ways that make it more effective with these types of cases.

2.2 Implications of this study for mediation research in general

The System, Program, and Case Characteristics in the study were only weakly related to settlement at mediation. Similar conclusions have been made in the field of psychotherapy, where client and therapist characteristics such as gender, socioeconomic status, waitlist times, etc., only poorly predict which clients do well in therapy. Mediation, much like psychotherapy, is a "black box" in that the actual activities and behaviors that occur during mediation sessions are not well researched by academics or measured by program administrators. However, these activities are probably strongly related to settlement. Of all the variables we analyzed in this study, the variable most closely related to settlement was the identity of the mediator. This is likely because the mediator's identity is a (albeit weak) proxy measure of many of the dynamics of mediation (e.g., the mediator's "style," etc.).

3.0. Recommendations

 Unfortunately, as previously discussed, the System/Program, Case, and Mediator Characteristics in this study were only weakly related to settlement. Therefore, changing referral criteria or case assignments on the basis of these variables will not have tremendous impact on settlement rates. That being said, the CMP could consider mediating only cases under a prescribed monetary limit. The results of this study indicate that the largest drop in settlement rates occurs in cases that are exactly \$25,000, and that eliminating these cases would raise settlement rates to approximately 52%.

- 2. There was some limited evidence that some mediators have particular strengths/specialties. The CMP could, insofar as possible given current administrative and budget constraints, assign these mediators to cases that best fit their proficiencies.
- 3. The CMP should conduct additional research on how to improve settlement rates in cases with higher-claim amounts. This research could involve one or more of the following strategies:
 - test the effectiveness of pre-mediation meetings or other pre-mediation interventions in these cases;
 - conduct best practice reviews to identify which mediator styles and strategies work best in these types of cases;
 - interview the CMP's mediators who demonstrate proficiency in particular areas to determine what works best in these cases.