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## FMC FAMILY MEDIATOR CERTIFICATION

### SUBSTANTIVE KNOWLEDGE FOR FMC EXAMS

The following list comprises the subject matter that is covered in the substantive knowledge exam for those applying to become FMC Comprehensive Mediators.

Candidates who are applying to become FMC Family Relations Mediators should study the areas outlined in the *Family Mediation Canada Practice, Certification and Training Standards*.

#### CONFLICT RESOLUTION AND MEDIATION THEORY

- a) What mediation is and what a mediator does;
- b) Role and responsibilities of mediators;
- c) Criteria for assessing the appropriateness of mediation;
- d) Strengths and limitations of various conflict resolution processes;
- e) Mediation and conflict resolution theories;
- f) Negotiation and conflict resolution research;
- g) Styles of negotiation and how these impact on mediation processes;
- h) Indicators of conflict escalation;
- i) Public concerns regarding mediation;
- j) Factors associated with assessment of readiness to mediate;
- k) Processes and skills are used in mediation to deal with emotion;
- l) Assisting the parties in surfacing and framing the topics to be discussed in mediation;
- m) Knowledge of conflict management skills;
- n) How to deal with power imbalances;
- o) Techniques for overcoming impasses;
- p) Indicators of danger – for participants, children and possibly mediators;
- q) How to manage high levels of conflict;
- r) Mediation confidentiality;
- s) Concepts of mediator influence and neutrality;
- t) Essential components of an Agreement to Mediate;
- u) How to conclude the mediation;
- v) Recognize when the assistance of other professionals might be helpful to the mediation process and to facilitate this discussion with the parties;
- w) Professional, academic, community and educational resources for referral or use in addition to the mediation process.



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### **CULTURE**

- a) Cultural factors that can affect outcome in family mediation processes;
- b) Possible implications of gender in mediation;
- c) How cultural affects communication patterns and body language in mediation processes;
- d) Patterns of linear and non-linear expression and argument;
- e) Collectivist as opposed to individualistic understandings of fairness and justice;
- f) Culturally appropriate conflict resolution methodologies;
- g) Actual and perceived power imbalances produced by perceptions of cultural or socio-economic status and power;
- h) Indicators of cultural misinterpretations between or among participants;
- i) Potential for misinterpretation of verbal expression and body language by the mediator;
- j) Identification of factors that indicate referral to another mediator;
- k) Cultural matters that may affect the mediation process, including assumptions that the mediator may hold about the “culture” of either participant; and
- l) Methods of developing a dispute resolution process that is sensitive to culture.

### **ETHICAL DILEMMAS**

- a) Understanding the importance of self reflection;
- b) Dealing with conflict of interest;
- c) Defining impartiality;
- d) Explaining confidentiality;
- e) Ensuring full disclosure;
- f) Concluding mediation;
- g) Maintaining inter-professional relations;
- h) Working within areas of competence;
- i) Adhering to FMC Code of Professional Conduct;
- j) Ensuring fair negotiations;
- k) Demonstrating personal mediator integrity;
- l) Dealing with bias and client complaints about perceived bias;
- m) Distinguishing legal information and legal advice;
- n) Understanding the boundaries re. the Practice of Law ;
- o) Ability to recognize when professional assistance might be helpful to the mediation process;
- p) Proceeding when there are indications that a child is in need of protection; and
- p) Proceeding when one of the parties is in imminent danger.



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### **EFFECTS OF SEPARATION AND DIVORCE ON FAMILY DYNAMICS**

- a) Research re. best interests of children post separation;
- b) The economic realities of separation and divorce;
- c) The effects of separation and divorce on parents, children and extended families;
- d) The normal growth and development patterns of children by developmental stage;
- e) Common mistakes that separated and divorced parents make;
- f) Emotional stages of grief and healing due to separation and divorce
  - for each adult
  - for children;
- g) Appropriate custody, access and visitation arrangements by culture, age and maturity of the child; and
- h) Child development issues as those relate to the specifics of family re-organization and parenting plans in the context of culture - what do children need from each parent;
- i) Parental responsibility vs. parental rights;
- j) How children react to divorce depending upon their age, gender, and level of conflict of the parents;
- k) Attachment theory;
- l) Impact on a child of losing contact with a parent;
- m) Factors that need to be considered in helping parents plan for living arrangements after the divorce;
- n) Provisions in parenting plans that enhance the safety of the family;
- o) Risks to children as a consequence of acrimony between parents before or after separation;
- p) Safe exchanges of children; and
- q) Programs, reading and community resources for parents and children.

### **SPOUSAL VIOLENCE AND ABUSE**

- a) Definition of spousal abuse
- b) The dynamics and effects of abuse, coercion and control in families;
- c) Theoretical explanations for physical violence and abusive behaviour;
- d) Best practices for detecting the presence of abuse. Why and how to screen;
- e) Characteristics of abusers;
- f) Characteristics of survivors;
- g) The dynamics and effects of abuse on adults and children;
- h) Research about consequences for children, by age, of witnessing abuse;
- i) Research about parenting deficits of perpetrators of partner-abuse;
- j) Indicators of child abuse;
- k) How to assess for readiness to mediate – by the abuser and by the survivor;
- l) Assessing the risk of child abduction and safety precautions that can be taken;
- m) How to design safe mediations - processes and methods that can be utilized;
- n) Cultural factors that affect disclosure and options in abuse cases;



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### **SPOUSAL VIOLENCE AND ABUSE** (continued)

- o) Criminal and civil procedures and “protection orders”. Including
  - the strengths and limitations of each
  - what orders are available
  - what these orders mean
  - what the implications of such orders are in terms of parenting arrangements
  - what must be done if there is a civil or criminal “no contact” order in place before mediation commences.
- p) Protection registries;
- q) Ethical standards of practice for mediators in abuse cases;
- r) Special provisions for use in parenting plans in high conflict and abuse cases;
- s) Safety planning and safe referral techniques; and
- t) Sources of help for members of violent or abusive families.
- r) Identification of factors indicating that continuing contact is not in the best interests of children;
- s) Identification of factors that indicate risk of continuing abuse;
- t) Identification of lethality indicators; and
- u) Elder abuse –
  - what is it
  - what to look for
  - what safety measures to consider
  - what other processes might be appropriate.

### **CHILD SUPPORT GUIDELINES**

- a) Define types of custody arrangements;
- b) How is child defined in the Guidelines;
- c) Connection between custody arrangements and extent of support;
- d) How support is calculated;
- e) Define annual income;
- f) How income is calculated for self-employed individuals or for persons with controlling interests in corporations;
- g) Annual review;
- h) What happens if parental income changes;
- i) List and define special or extraordinary expenses;
- j) Define undue hardship and indicate how it is ascertained;
- k) Forms of payment;
- l) Payments to third parties
- m) Under what circumstances can support be varied;
- n) Failure to comply;
- o) How child support is enforced;
- p) What is negotiable under the Child Support Guidelines;
- q) When the obligation to pay child support ends;
- r) What is the obligation to adult children who are not supporting themselves by reason of incapacity or student status
- s) Income tax considerations for special expenses;
- t) Who receives the benefit of tax credits for child care or for tuition; and
- u) The scope for negotiating agreements that are different from the table amounts.



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### DOCUMENTING THE AGREEMENT

- a) Memorandum of Understanding
  - purpose
  - legal advice
- b) Difference between a memorandum, a separation agreement and a court order;
- c) Procedure by which agreements may become court orders.

### LAW

- a) Definition of marriage
  - rights that flow from marriage
  - obligations that flow from marriage;
- b) Definition of "legal separation";
- c) Bars to divorce;
- d) Grounds for divorce;
- e) Jurisdiction to deal with family matters;
- f) Effect of reconciliation on divorce process;
- g) Interim or "without prejudice" agreements;
- h) Joint Petition or claim for divorce;
- i) Common Law marriages
  - what constitutes a common law marriage – various criteria by different statutes
  - rights and obligations – to property, children, support;
- j) Custody
  - definition by provincial & federal legislation
  - what constitutes "best interests"
  - types
  - limitations, if any, on travel and movement
  - parental rights and obligations
  - rights of children
  - rights of grandparents;
- k) Access
  - definition
  - rights to information
  - special provisions to protect children
  - special provisions in spousal abuse situations
  - special provisions if abduction is of concern;
- m) Relocation
  - what are the notice requirements
  - what are the child's rights
  - what are the parent's rights and obligations
  - what do Canadian courts consider
  - what strategies will help children cope with changes as a consequence of relocation
  - what are strategies that can enhance access challenges due to distance;



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### LAW (continued)

#### m) Parenting Plans

- what needs to be included in a parenting plan
- how does a child's age impact a parenting plan
- how are parenting plans varied
- why is "40%" of time so important
- what are strategies to consider when "40%" is in dispute;

#### n) Guardianship

- definition
- relationship to custody and access;

#### o) Child Support – see CHILD SUPPORT GUIDELINES;

#### l) Definitions of parent in provincial and federal legislation;

#### m) Definition of child;

#### n) Best interests of child – federal and provincial criteria;

#### o) Child protection

- name of the legislation in relevant province
- provincial, agency and court powers under the relevant child protection legislation
- mediator's obligation to report versus confidentiality
- mediator duties in the face of child abuse
- indicators of child abuse
- impact of child protection agreements or orders on parents' rights to negotiate custody and access
- role of child's culture in planning and decision making ;

#### p) Child Abduction

- mediator's obligations when child abduction is a risk
- mediator's obligations when child abduction is a risk versus confidentiality
- international conventions – strengths and weaknesses
- Canadian civil laws
- Canadian criminal laws
- provisions to address the risk of abduction;

#### p) Right to receive child tax credits and other benefits

- what benefits and programs are available
- how are they accessed
- who has the right to receive child tax credits and other benefits
- how do these credits and benefits impact spousal support; and

#### r) Disputed Paternity

- what are the issues
- what medical tests are available and what do they disclose
- what are the legal presumptions
- what are the obligations, and
- what children are entitled to.



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### LAW – COMPREHENSIVE

- a) Pre-nuptial Agreements
  - prerequisites for lawful agreement
  - typical clauses
  - unenforceable provisions - those that would be contrary to the public interest;
- b) Separation Agreements
  - prerequisites for lawful agreement
  - typical clauses
  - unenforceable provisions - those that would be contrary to the public interest;
- c) Spousal Support
  - definition of spouse by provincial and federal legislation
  - application to same-sex partners
  - what is relevant in determining entitlement
  - how enforced
  - how secured
  - method of payment
  - payment to third parties
  - what is relevant in determining amount
  - what is the connection to property settlements
  - annual review
  - under what circumstances would support be varied
  - impact of retirement
  - income tax considerations;
- d) What is the legal obligation to support parents;
- e) Sources of income
  - child tax credit
  - old age security, etc.
- f) Family law and persons residing in Canada who are not Canadian citizens.



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### FAMILY ASSETS AND DEBTS

- a) Applicable statute;
- b) Define family assets in your jurisdiction;
- c) Joint ownership v. ownership as tenants-in-common and consequences;
- c) Liability for family debts and ending it;
- d) Date assets are divided at
  - how the date is determined at law
  - the consequences of a date;
- e) Provisions relating to the family home;
- f) Division of Pensions
  - federal/provincial pension plans
  - valuation methods and the consequences of valuing pensions in different ways
  - types of pensions
  - how pensions can be divided
  - how pension interests are protected
  - who values pensions and how are they accessed
  - costs of registering an interest;
- g) Canada Pension Plan;
- h) Factors that indicate a variation from 50% division or a delayed division of assets;
- i) Transferring property;
- j) Valuing property
  - valuing income producing real property and non income-producing real property
  - various approaches to valuing corporations
  - valuing RRSPs
  - valuing household assets
  - valuing cars
  - what questions to ask and who to call upon for the appropriate valuation information/expertise;
- m) What lawyers can do when there are concerns about assets being disposed of during the mediation;
- n) Methods of obtaining full disclosure of assets and debts for the mediation;
- o) Role of Financial Planner in giving advice about future impact of debt and asset division and the future impact of disparate incomes over time;
- p) What lawyers can do regarding assets in other jurisdictions;
- q) Life insurance
  - different types
  - when used as security for support;
- r) Exemptions to property division; and
- s) First Nations property
  - the inability to charge and bind reserve land and in some cases personal property
  - impact when real and personal property is located on reserve.



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### INCOME TAX

- a) Income tax law with respect to the division of family assets
  - RRSP, RIF
  - Roll-overs
  - imputed income
  - the use of land can result in different tax treatment
  - Pensions;
- b) Tax law and child expenses; and
- c) Tax law and spousal support
  - Deductibility of support
  - Income
  - Deductibility of legal expenses.

### BUSINESS AND PARTNERSHIP PROPERTY

- a) Definition and types of Companies;
- b) Definition and types of Partnership;
- c) Disclosure requirements - what documents are needed to value businesses, partnerships or corporations;
- d) Valuing businesses - nature of the various valuation methods, strengths and limitations;
- e) Methods of property valuation;
- f) Debt allocation; and
- g) Business valuations.

### TRUSTS AND ESTATES

- a) Inheritance
  - Rights of spouses upon death
  - Consequences of separation and divorce;
- b) Whether support obligations continue after death;
- c) How to document an agreement to provide spousal or child support after death; and
- d) Types of trusts and how these may relate to specific assets.