

**FMC PROCESS FOR DEALING WITH
COMPLAINTS AGAINST FMC MEMBERS**
(Board of Directors approved May 2002)

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A PRINCIPLES GOVERNING THE COMPLAINT PROCESS

1. Family Mediation Canada (FMC) is committed to observing the following principles in all dispute resolution processes dealing with complaints against its members:

- 1) **Timeliness:** complaints shall be dealt with within reasonable time frames;
- 2) **Sensitivity:** dispute resolution processes shall be sensitive to the needs of the person complaining (Complainant) AND THE MEMBER;
- 3) **Fairness:** dispute resolution processes shall make best efforts to obtain accurate information and to allow all sides of the dispute to be heard;
- 4) **Transparency:** every attempt shall be made to insure the dispute resolution processes and their outcomes shall be fully disclosed to all parties;
- 5) **Positiveness:** dispute resolution processes shall, to the extent possible, focus on heightening the standard of professional conduct of THE member involved;
- 6) **Economy:** the process shall be conducted with a view to minimizing the costs to all involved.

2. Membership in FMC is voluntary, and as such, all members who administer the complaint process do so on a voluntary basis. As a voluntary association FMC does not have the financial means to engage in formal or lengthy dispute resolution processes regarding its members. It is important that the complaint process be kept within FMC and the confines of its membership. FMC does not purport that its decisions affect anything other than matters related to membership and status within FMC.

B RESPONSIBILITY FOR THE COMPLAINT PROCESS

1. FMC shall appoint a member of its Board of Directors, who is also a member of the Executive Committee, to supervise the complaint resolution process. In most cases this person shall be the President Elect of the organization, but in its discretion, the Board of Directors may appoint another member of the Executive Committee. The person appointed to this position shall be designated as the Responsible Director (RD).

C SUBJECT MATTER OF COMPLAINTS

1. FMC shall respond to all complaints regarding the professional conduct of its members that appear to involve breaches of the FMC Code of Conduct, BYLAWS, policies, rules or generally accepted standards of conduct expected of an FMC member.

D INITIATING THE COMPLAINT PROCESS

1. All complaints about a member shall be in writing, and shall identify the FMC member involved, and be signed by the complainant before being further dealt with.

2. Upon receipt of a complaint that meets the criteria in subsection (1), FMC shall determine whether the person against whom the complaint has been lodged is a current member.
 - a) If the person against whom the complaint has been lodged is not a current member of FMC, that fact shall be communicated in writing to the Complainant and no further action on the complaint shall be taken.
 - b) If the person against whom the complaint has been lodged is a current member of FMC, and if the complaint involves matters described in s. C.1, or, if the complaint, in any way deals with an issue that in the discretion of the RD reflects a matter that FMC should deal with, the matter shall be dealt with as SET OUT BELOW:
3. Upon receipt of a complaint against a current member of FMC that meets the criteria of s. D.1, or that has been deemed appropriate to be dealt with by the RD, FMC shall forward to the Complainant a copy of a Waiver (schedule A) and advise the Complainant in writing that the Waiver must be signed and returned to FMC within 30 days. If the signed Waiver is not returned to FMC within 30 days of its being sent to the Complainant, no further steps shall be taken on the complaint.
4. Upon receipt of the signed Waiver within the above time frame, FMC shall forward the complaint to the RD. The RD shall forward a copy of the complaint to the member involved within 10 days of receipt of the Waiver along with a request that the member involved respond in writing to the complaint within 60 days of receipt of the same.
5. Upon receipt of a written response to the complaint from the member, the RD shall forward a complete copy of the same to the complainant within 14 days of its receipt.
6. The complainant shall be allowed 30 days from date on which the member's response was sent to reply in writing to the member's comments. The RD shall forward a full copy of any reply to the member within **14** days of receipt of the same.
7. The member shall be allowed **30** days to respond in writing to a reply by a complainant. The RD shall forward any response by the member to the complainant within **14** days of receipt of the same.
8. During the information exchange period of the complaint process the RD shall forward to the complainant and the member any documentation that s/he believes may be relevant or helpful in resolving the dispute.
9. The complainant and member will then be given a further 90 days to resolve matters between themselves, if the exchange of information above has not affected a resolution. However, either may inform FMC in writing that s/he does not wish to make such an attempt, and wishes to proceed to the next stage, in which case the matter shall so proceed.

E THE SECOND STAGE

- 1) If the complainant and the member are not successful in resolving the dispute between themselves on the basis of the exchange of information as set out above, the RD shall review all of the correspondence between the parties, along with any other relevant documentation provided, and on the basis of the review take one or more of the following actions:
 - a) Dismiss the complaint as being frivolous or not warranting further investigation, and so advise the complainant and the member in writing;
 - b) Suggest to the parties that the dispute be resolved through an appropriate dispute resolution process, such as mediation, and suspend any further action until advised that such efforts have not proved successful in resolving the dispute;
 - c) Prepare a written report of the HIS/HER findings, and provide a copy of the same to the complainant and the member;
 - d) Appoint a panel of two members of the FMC Board of Directors and one FMC member from the province within which the complaint originated, to review the complaint and report in writing to the RD within 90 days on the merits of the complaint.
- 2) Where a report is prepared pursuant to E.1 (C) **OR** (d), the complainant and the member shall be provided with a copy of the same within 30 days of its receipt by the RD. Both the complainant and the member shall have 60 days from the date of sending the report to them to reply to it. Any replies to the report shall be provided by FMC to the other party within **14** days of receipt of the same.
- 3) In circumstances where the RD believes that the report, or a response to it, raises issues that need to be addressed by FMC, the RD shall respond in writing to those circumstances, or else refer the matter to a panel pursuant to Section E.1(d).
- 4) In deliberating on any matter the RD or a panel constituted pursuant to s. E.1(d) may consult with any person(s) they deem appropriate in determining the professional practices and standards that are applicable in the location where the complaint arose. In the event that the RD or a panel do consult on matters of professional standards or practice they shall first inquire and determine that the person(s) consulted have no personal, professional or pecuniary conflicts of interest with either the complainant or member.
- 5) Where a report is prepared, it shall be completed within 4 months of the **START OF THE SECOND STAGE**. The report shall briefly set out the facts relied on in making any findings, the findings based on those facts, as well as a statement of the reasons for relying on the facts set out.

F RESOLUTION OF COMPLAINTS

1. If a report finds that the member has breached any provision of the Code of Ethics, bylaws, rules or regulations of FMC, or has violated generally accepted standards of professional conduct expected of an FMC member, the report shall provide for one of the following sanctions:
 - a) Require the member to provide a written apology to the complainant;
 - b) Require that the member enroll in and successfully complete an appropriate training course, or supervised practice dealing with the issues raised in the complaint;
 - c) Suspend the member until s/he has complied with the requirements of the RD;

- d) Suspend the member for a specified period of time;
 - e) Revoke the membership of the member, and provide conditions for reinstatement;
 - f) Revoke the membership of the member permanently;
 - g) Require that the results of the investigation of the complaint be published in *RESOLVE*, with or without identification of the parties;
 - h) Take such other action as the RD deems to be appropriate in the circumstances.
2. The purpose of any sanction imposed on a member should be to validate the complainant's concerns about feeling wronged by the conduct of the member and to encourage the member to change his/her practices to bring them in line with FMC's standards. Suspension or revocations of membership are clearly intended to be sanctions of last resort.
3. In determining an appropriate sanction for a member the RD may consult with the panel constituted pursuant to Section E.1(d)
4. Any decision made by the RD pursuant to these provisions shall be implemented by FMC, unless an appeal is taken as set out below.

G APPEALS

- 1) Within 30 days of receiving a report from the RD, the complainant or the member shall be entitled to request an appeal panel be constituted to review the findings of the report. A request for a review panel shall be made in writing and addressed to the President of FMC. A request for review must be made in writing and specify the portions of the report the party seeking the review disagrees with along with a brief statement of the reasons supporting their position. A request for a review shall also include a statement by the person requesting the review of the conclusions that s/he believes the report should have arrived at. FMC shall forward a request for review to the other party within **14** days of receipt by FMC.
- 2) The President shall bring all requests for review before the Executive Committee promptly. The Executive Committee shall review the request and may:
 - a) Refuse to act on the request upon such reasons as it deems appropriate. A statement of the reasons for not acting on the request shall be provided to both parties within 30 days **AFTER** the date of the next regularly scheduled Executive Committee meeting.
 - b) Appoint a panel consisting of 3 members of the Board of FMC. In appointing the panel efforts shall be made to insure that one member shall be from the province where the complaint originated if possible. Panel members shall not have any personal, professional or pecuniary conflict of interest with either the complainant or the member.
 - i) The panel shall review all documentation and correspondence in the file upon which the report was based.
 - ii) The panel may, after review of the documentation,
 - (1) return the matter to the RD for further consideration and provide the RD with a time limit within which s/he shall issue an amended report;
 - (2) return the matter to the panel noted in s. E.1(d)

- (3) consult with any person(s) they deem appropriate in determining the professional practices and standards that are applicable in the location where the complaint arose. The panel shall inquire and determine that any person consulted under this section does not have a personal, professional or pecuniary conflict of interest with either the complainant or the member.
- iii) The panel shall, after it reviews the documentation, and after it takes any actions it deems appropriate under section. G.2.(b)(ii) issue a report setting out its decision and the reasons for that decision. The report shall be issued within 90 days of the panels' being constituted.
- iv) Decisions of the panel under this section are final and binding on the member.

H CERTIFICATION REVIEW PROCESS

1. The following conduct by a FMC certified mediator, without purporting to be a complete list, represents conduct sufficient to initiate the complaint and certification review process:
 - a) Failing to comply with or adhere to the FMC Code of Conduct, BYLAWS, policies, rules or generally accepted standards of conduct expected of an FMC member;
 - b) Failing to COMPLY WITH THIS COMPLAINTS PROCESS
 - c) Claiming FMC certification in the absence OF certification, OR HOLDING OUT CERTIFICATION IN ONE AREA AS COVERING ANOTHER AREA WHICH THE MEDIATOR IS PRACTICING BUT NOT CERTIFIED FOR
 - d) Continuing to practise mediation as a certified mediator while certification is suspended, lapsed, or has been revoked;
 - e) Being disciplined on ethical grounds by a professional association, or being convicted of a criminal offence, unless the mediator can establish that the disciplinary action or criminal conviction is not relevant to the professional and ethical duties expected of a mediator.
2. If, as a result of the complaint process, a Certified Mediator has his/her membership suspended or revoked, or should the conduct of the mediator have been found to have been of such a serious nature to call into question the appropriateness of the mediator being allowed to continue to hold himself or herself out as a Certified Mediator, the Executive Committee may initiate the certification review process set out below. Notice of the initiation of a certification review process shall be provided in writing to the member involved within 7 days of the decision being made.
3. Within 30 days of the Executive Committee's initiating a certification review process, the President or the President Elect shall appoint a Review Panel (Panel) to inquire into and determine whether the certified member's certification shall be revoked. The Panel shall consist of one member of the Board of Directors who is a Certified Mediator, a FMC Certifying Assessor who was not involved in the original complaint process, a FMC Certified Mediator from the province in which the complaint originally arose and who was not involved in the original complaint process. Panelists shall not have any personal, professional or pecuniary conflict of interest with the certified mediator involved. The certified

mediator involved shall be advised of the nominees to the Panel and shall have **14** days to object to the persons nominated. The reasons for any objection shall be set out in writing and the President or the President Elect shall review the objections, determine their validity and make any changes s/he thinks appropriate. The decision of the President or President Elect in this regard are final.

4. The Panel is not entitled to challenge the findings and decisions made in the complaint process but rather must base its deliberations and decisions upon them.
5. Upon the Panel being constituted, it shall:
 - a) Review the FINDINGS AND decisions from the complaint process and the information that was available during that process; AND
 - b) Invite written submissions from the certified mediator as to why s/he should not have his/her certification revoked based on the available information. The Panel may also invite submissions on the matter from any person it deems appropriate. Copies of any response received by the Panel shall be provided to the Certified Mediator. The Panel shall set reasonable time limits for responses it invites and communicate those to the parties involved.
6. The Panel shall endeavor to reach a decision within 90 days of being appointed.
7. The Panel's decisions are final and binding on the member and FMC.

I MISCELLANEOUS PROVISIONS

- 1) If a member fails to respond to a complaint forwarded to him or her by FMC, or to abide by a decision of the RD or panel that results in a sanction other than suspension or revocation of membership, the member shall be suspended until such time as he or she is in compliance with the process or the complaint process is ended. In the event that the member fails to respond to a complaint for a period of 3 months, the member's membership shall be permanently revoked.
- 2) FMC shall notify all parties to a complaint of this policy at the onset of any complaint process.
- 3) FMC shall regard complaints as matters that are private and confidential to the parties involved unless they result in a sanction that requires publication of the member's name. For the purpose of educating the FMC membership on issues of professional conduct and responsibility, FMC may publish in *RESOLVE* a summary of any complaint along with its resolution in a format that does not identify the parties involved.
- 4) Time limits in the complaint process are guidelines only and the Executive Committee may in its absolute discretion amend time limits as it deems appropriate, including retroactive amendment of time limits.
- 5) Any person appointed by the Executive Committee to act on behalf of FMC in the complaint process may be replaced by a substitute upon providing written

notice to the parties to the complaint.

The complaint process set out herein shall not be deemed to be unfair in the event that a person who is consulted under these provisions turns out to have some conflict with the member or the complainant if a) the conflict was not known to the person consulted or, b) no person without a conflict could reasonably have been found to consult.

Notwithstanding this, if the Executive Committee forms the opinion that the conflict may have tainted the conclusion reached, it may request that the RD or the panel review its findings in the light of the new information. All parties shall be notified in writing in the event that this procedure is undertaken and shall be provided with a copy of any amended report.

SCHEDULE A

WAIVER

I have made a complaint against (name) _____, a member of FMC, in the province of _____. I have asked FMC to investigate my complaint, and if my complaint is found to have merit, to take appropriate steps to encourage and support the member in adhering to appropriate professional ethics, practices and procedures and to work to avoid such problems in the future. In return for FMC undertaking to engage in this process, I unconditionally waive any right to use any document produced by FMC in any legal or other claim that I may choose to make against the member, and I will not under any circumstances summons any person appointed by FMC, or consulted by FMC during the course of this process, in any proceeding I may take against the member. I unconditionally waive any rights that I may have to make a claim against FMC relating to the conduct of the member involved, or anyone appointed or consulted by FMC on the matter relating to FMC's investigation of the complaint; relating to FMC's recommendations; or relating to anything that FMC does or does not do arising out of the investigation of my complaint. I understand that FMC is a voluntary organization and that it has no power to discipline a member for misconduct or inappropriate procedures apart for dealing with and ultimately revoking the person's membership in FMC. I acknowledge having received a copy of the FMC complaint process and that I have read it and understand it and agree to abide by its terms.

Dated at: _____, on _____

Complainant

Witness