

# Family Mediation Canada

## Members Code of Professional Conduct

### ***Article 1: Application and Enforcement***

1. Membership in Family Mediation Canada requires explicit agreement to abide by:
  - (a) this Code of Professional Conduct; and
  - (b) the disciplinary procedures and sanctions adopted from time to time by the Standards and Ethics Committee and the Board of Directors of Family Mediation Canada.
2. The following rules are intended to govern the relations of family mediators with their clients, their professional colleagues, and the general public so that all will benefit from high standards of practice in family mediation. Members of Family Mediation Canada will observe the spirit as well as the letter of the provisions of this Code.
3. It is the obligation of family mediators to report and to encourage their clients to report, in writing, observed breaches of this Code by members of Family Mediation Canada forthwith to the Chairperson of the Ethics Committee or President of Family Mediation Canada.
4. Any breach of this Code of Professional Conduct may result in the suspension or termination of membership in Family Mediation Canada and/or revocation of Family Mediation Canada's certification.

### ***Article 2: Definition***

1. For the purpose of this Code, "family mediation" is defined as a cooperative, problem solving process in which a qualified and impartial third party neutral, the mediator, assists mediation participants to resolve their disputes by mutual agreement. The resolution is to be voluntary and based upon sufficient information and advice for each person involved in the dispute.
2. In keeping with the expanded objects of Family Mediation Canada, "family mediation" focuses upon a broad range of areas in which families experience conflict including intra or inter family conflict, as well as conflict between families and other agencies or organizations. For example, divorce and separation, post divorce, parents/child, inter generational, elder care, pre-nuptial, child welfare, adoption, wills, family business, schools, and neighborhood conflicts and other interpersonal disputes.

### ***Article 3: Goal of Process and Roles***

1. The goal of family mediation is a fair and workable agreement that meets the participants'

mutual needs and interests, not a settlement at any cost.

2. The primary responsibility for the resolution of a dispute rests with the participants. At no time should a mediator coerce participants into an agreement or make a substantive decision for any participant.
3. The mediator's role is that of a facilitator, i.e., to assist the participants to reach an informed and voluntary agreement that meets their mutual needs, interests and concerns, and those of other persons affected by the dispute.
4. The mediator has a responsibility to promote the participants' awareness of the interests of others affected by the dispute and by the proposed agreement and to assist the participants to consider the separate and individual needs of such other persons.

### ***Article 4: Integrity***

1. Mediators must avoid any activity that could create a conflict of interest. They must not become involved in relationships with the clients which might impair their professional judgment or in any way increase the risk of exploiting clients. Except where culturally appropriate, mediators must be cautious about mediating disputes involving close friends, relatives, colleagues/supervisors or students.
2. It is a violation of this Code to engage in sexual intimacies with a participant in the mediation process.

### ***Article 5: Competence***

1. Family mediators must perform their services in a conscientious, diligent and efficient manner in accordance with this Code.
2. It is the obligation of a member acting as a family mediator to ensure that he or she is qualified to deal with the specific issues involved. Mediators shall have acquired substantive knowledge and procedural skills as defined by the Standards and Certification Committee and adopted by the Board of Directors of Family Mediation Canada.
3. While family mediators may have a diversity of education and training, a family mediator must refrain from rendering services outside the limits of his or her qualifications and competence.
4. Family mediators must engage in continuing education to ensure that their mediation skills are current and effective.

### ***Article 6: Inter-Professional Relations***

1. A mediator must respect the complementary relationships among mediation, legal, mental health

and other social services. The mediator should promote cooperation with other professionals and encourage clients to use other professional resources when appropriate.

2. Co-mediation - when more than one mediator is participating in a particular case, each has the responsibility to keep the other(s) informed of developments in the co-mediation process, essential to a cooperative effort.

### ***Article 7: Confidentiality***

1. A mediator shall not voluntarily disclose to anyone who is not a party to the mediation any information obtained through the mediation process except:

- (a) non-identifying information for research or educational purposes; or
- (b) with the written consent of the participants to the mediation contract; or
- (c) when ordered to do so by a judicial authority with jurisdiction to compel such disclosure, or required to do so by legislation or other law; or
- (d) when the information discloses an actual or potential threat to human life or safety.

2. Any information so divulged shall be limited to what is absolutely necessary to accomplish such purposes.

3. While confidential mediation imposes the intention and duty of non-disclosure on a mediator, it may not confer privilege. The mediator shall inform the participants at the outset of mediation of the limitations to confidentiality and the fact that confidentiality cannot be guaranteed.

4. Lawyer/mediators must advise their clients that no solicitor/client privilege exists between the lawyer/mediator and the participants in mediation.

5. The mediator must clarify with the participants that confidentiality extends not only to the information disclosed during a mediation, but also to documents prepared specifically for or resulting from mediation.

6. The mediator must discuss the rules governing the confidentiality of individual meetings with participants during the course of the mediation, in advance of such meetings.

7. With the participants' consent, the mediator may discuss the mediation with the participants' lawyers and other expert advisors.

8. Where the participants reach an agreement in mediation, the substance of the proposed agreement may be disclosed to their respective representatives.

9. The mediator must maintain confidentiality in the storage and disposal of client records and must ensure that office staff do so as well.

### ***Article 8: Impartiality***

1. A mediator has a duty to act with impartiality in relation to the participants. Impartiality means freedom from favoritism or bias either in word or in action, or the appearance of such favoritism or bias.

2. Notwithstanding the above, a mediator has a duty to assist participants to reflect upon and to consider how their proposed arrangements realistically meet the needs and best interests of other affected persons, especially vulnerable persons.

3. The perception by one or both of the participants that the mediator is partial does not in itself require the mediator to withdraw, but in such circumstances, the mediator must remind both parties of their right to terminate the mediation.

4. A mediator must disclose to the participants any biases he or she has relating to the issues to be mediated and any circumstances which might constitute or cause a conflict of interest, real or perceived, to arise. Such disclosure must be made as soon as the mediator recognizes the potential for any bias becoming operative or any conflict of interest arising.

5. A mediator must disclose any prior or current professional or personal involvement between the mediator, or any associate of the mediator, with one or more of the participants. The mediator must refrain from mediating unless every participant expressly consents to the mediation after there has been full disclosure. In this case, the role of the mediator should be carefully distinguished from the prior relationship.

6. Mediators must not provide any professional services to only one participant during mediation.

### ***Article 9: Ensuring Fair Negotiations***

1. A mediator must endeavor to ensure that the participants reach agreement freely, voluntarily, without undue influence, and on the basis of informed consent.

2. The mediator has a duty to ensure procedural fairness, i.e., that each participant has an opportunity to speak and to be heard in mediation, and to articulate his or her own needs, interests and concerns.

3. A mediator must explore whether the participants are capable of engaging in the mediation process. If a mediator believes that the participants are unable or unwilling to participate meaningfully in the process, the mediator may suspend or terminate mediation and should encourage the participants to seek appropriate professional help.

4. The mediator has a duty to ensure balanced negotiations and must not permit manipulative or intimidating negotiating tactics. While mediators must be impartial towards the participants, impartiality does not imply neutrality on the issue of procedural fairness.

5. A mediator must ensure that each party has had an opportunity to understand the implications and ramifications of available options. In the event that a party needs either additional information or assistance in order for the negotiations to proceed in a fair and orderly manner or for an agreement to be

reached, the mediator must refer the individual to appropriate resources.

6. It is a fundamental principle of mediation that competent and informed participants can reach an agreement which may not correspond to legal guidelines contained in the relevant statutes or case law or that does not correspond with general community expectations and standards. The mediator however, has a duty to assist the participants to assess the feasibility and practicality of any proposed agreement in both the long and short term, in accordance with the participant's own subjective criteria of fairness, taking cultural differences into account.

### ***Article 10: Information, Disclosure and Advice***

1. It is the duty of a mediator to actively encourage the participants to make decisions based upon sufficient information, knowledge and advice.
2. Where financial or property issues are involved, the mediator must obtain an undertaking from the participants to disclose their financial and related circumstances.
3. Every family mediator has an ongoing obligation to advise participants of the desirability and availability of independent legal advice. While neutral legal information may be made available to the participants, each should be encouraged, and in appropriate circumstances, may be required, to obtain independent legal advice.

### ***Article 11: Agreement to Mediate***

1. The mediator must explain the mediation process clearly to the participants before agreeing to mediate their dispute. In particular, the mediator should at the outset:
  - (a) define and explain mediation and distinguish it from reconciliation counseling, conciliation, therapy, assessment, advocacy, adjudication and arbitration
  - (b) discuss the appropriateness of mediation for the participant in light of their particular circumstances, the benefits and risks of mediation, and the other alternatives open to the participants;
  - (c) discuss the confidentiality of mediation and any limitations on such confidentiality;
  - (d) advise the participants that either of them or the mediator has the right to suspend or terminate the process at any time;
  - (e) make explicit the costs of mediation and reach an agreement with the participants regarding payment of these costs;
  - (f) advise the participants of the role of legal advice in accordance with Article 10 of the Code. If the mediator is also a lawyer, he or she shall inform the participants that he or she cannot represent either or both of them in any related legal action;

(g) discuss with the participants the mediator's specific procedures and practices, such as :

- (i) when separate sessions may be held, including any rules relating to the confidentiality of such sessions.
- (ii) when there are to be separate communications with the participants and their counsel; and
- (iii) when other persons are to be involved in the mediation.

2. Wherever possible the entire agreement to mediate should be in writing and signed by the participants and the mediator. Any agreement with respect to the confidentiality of the mediation sessions or any waiver of such confidentiality must be acknowledged in writing by all participants.

### ***Article 12: Written Summary***

1. Any written summary of draft proposed proceedings or agreement/resolutions prepared by the mediator shall not be signed by the participants in the mediator's presence except where required by law or court practice.
2. The mediator must inform the clients that any written summary of mediation is not intended to represent a legally binding document.

### ***Article 13: Termination of Mediation***

1. It is the duty of the mediator to suspend or terminate mediation whenever continuation of the process is likely to harm or prejudice one or more of the participants, such as when mediation is being misused:
  - (a) to develop a status quo with respect to the custody of the children;
  - (b) to dissipate or conceal assets; or
  - (c) where in the opinion of the mediator, one or both participants is acting in bad faith.
2. A mediator must suspend or terminate mediation when its usefulness has been exhausted.
3. Mediators have a duty not to withdraw their services except for good cause and upon reasonable notice to the participants.
4. The mediator may withdraw from mediation when any agreement is being reached by the participants which the mediator believes is unconscionable.
5. When a retainer has been collected before mediation services were rendered, any unearned fees should be returned promptly to the clients upon termination of mediation

### ***Article 14: Public Statements and Promotional Activities***

1. The purpose of public statements concerning family mediation should be to:
  - (a) educate the public generally about the process; and
  - (b) present the process of mediation objectively as one of several methods of dispute resolution in

order to help the public make informed judgments and choices.

2. Public communications should not mislead the public, misrepresent facts, or contain any:
  - (a) false, fraudulent, misleading or unfair statements;
  - (b) statements likely to mislead or deceive by making only a partial disclosure of relevant facts; or
  - (c) statements intended or likely to create false or unjustified expectations of favorable results.
3. When advertising professional services, mediators should restrict themselves to matters which educate and inform the public. These could include the following information to describe the mediator and the services offered: name, address, telephone and FAX number, office hours, relevant academic degree(s), relevant training and experience in mediation, appropriate professional affiliations and membership status, advantages of the mediation process, and any additional relevant or important consumer information.
4. Public communication shall not falsely imply that membership in Family Mediation Canada or a provincial or territorial family mediation association constitutes certification or endorsement as a mediator.
5. Mediators should promote the advancement of mediation by encouraging and/or participating in research, publishing and other forms of professional and public education.

### ***Article 15: Charges for Services***

1. At the outset, the mediator must explain the fees to be charged for mediation and any related costs. The mediator must also obtain agreement from the participants as to how the fees are to be shared and the method of payment.
2. No commissions, rebates or similar forms of remuneration shall be given or received for referral of clients for mediation services.
3. It is inappropriate for a mediator to base fees on the outcome of the mediation process.
4. When a retainer has been collected before mediation services were rendered, any unearned fees should be returned promptly to the clients upon termination of mediation.



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