



# BRITISH COLUMBIA MEDIATOR ROSTER SOCIETY STANDARDS OF CONDUCT

## 1. GENERAL

- 1.1 This code of conduct sets standards binding all mediators on the Rosters of the British Columbia Mediator Roster Society (“the Society”), and members of the Rosters agree to provide mediation services in a manner consistent with this code.
- 1.2 The objectives of these standards are to define principles to guide mediator conduct, enhance public protection and promote confidence in the mediation process.
- 1.3 This code is not to be construed as a competing code of behavior displacing other professional codes, but as additional standards for mediators on the Rosters. Where there is a conflict between this and a professional code, the professional code prevails.

## 2. DEFINITIONS

- 2.1 “*Mediation*” means a non-binding process where an impartial and independent third party, with no decision-making power (a “mediator”), attempts to facilitate a mutually acceptable settlement between disputing participants.
- 2.2 “*Family mediation*” includes mediation of issues about: reorganization of the family after separation or divorce, parenting, financial support and property matters connected to separation or divorce, child protection, family business, family property or finances, family inheritance and estates, responsibility for care of elderly parents, adoption, pre-nuptial issues, and intra-family conflicts.
- 2.3 “*Abuse*” means a pattern of behaviour or conduct in an intimate relationship that is associated with the unacceptable exercise of power and control, and adversely affects the ability of one or more participants to make free and informed decisions. Abuse may be financial, emotional, psychological, physical or sexual.

## 3. SELF-DETERMINATION

- 3.1 A mediator will provide mediation services in conformity with the principles of self-determination, including:
  - a) an agreement or consensus reached in mediation must be voluntary and uncoerced, even though entry into a mediation process need not be voluntary; and
  - b) the responsibility for the outcome of a mediation rests with the participants themselves.

#### **4. DUTY OF IMPARTIALITY AND DUTY TO AVOID CONFLICT OF INTEREST**

- 4.1 A mediator is not an advocate for any participant, but must serve all participants. A mediator must be impartial and independent in relation to the participants.
- 4.2 Where a mediator or a participant perceives that the mediator is unable to maintain a fully impartial posture, and the matter cannot be resolved in the mediation session, the mediator must disqualify himself or herself.
- 4.3 If the participants are attending mediation where the mediator was appointed by the Society under a Notice to Mediate Regulation and the issue of bias is raised and is not resolved, the mediator will refer the matter back to the Society.
- 4.4 A mediator must not have a direct or indirect monetary or personal interest in the outcome of a dispute, and must make reasonable efforts to determine and disclose any monetary, personal, professional, family, social or business relationship or affiliation which is likely to constitute, or reasonably be perceived to constitute, a conflict of interest.
- 4.5 When a mediator is in a conflict of interest position, the mediator must disqualify himself or herself.
- 4.6 These standards do recognize that in certain limited, cultural circumstances it may be appropriate for the mediator to be in a personal, family or social relationship with one or more of the participants.

#### **5. COMPETENCY, QUALITY AND INTEGRITY**

- 5.1 A mediator must acquire and maintain knowledge, skills and abilities sufficient to provide competent mediation services, and provide services only for cases where he or she is qualified by experience or training.
- 5.2 Without limiting the generality of paragraph 5.1, a family mediator must ensure that he or she has specialized knowledge and procedural skills sufficient to properly identify and manage cases involving vulnerable participants, abuse, or a power imbalance between participants.
- 5.3 A mediator must ensure that all participants understand the nature of the mediation process, the procedures to be followed, the role of the mediator and the relationship of the participants to the mediator.
- 5.4 A mediator must conduct mediation in a way which provides all participants with an opportunity to fully participate in the process and which encourages respect and civility among the participants.
- 5.5 A mediator must ensure, to the extent that such matters are within the mediator's control, that the mediation process is conducted with integrity and must maintain procedural fairness throughout the mediation.

- 5.6 A mediator must not act in a way that raises legitimate questions about the integrity of the mediation process. Mediators are obliged to be honest and diligent, to act in good faith and to put the interests of participants above their own.

## **6. SAFETY AND APPROPRIATENESS OF MEDIATION**

- 6.1 A mediator must make every reasonable effort to identify threats to the safety of any participant, and either make the mediation process safe or end it.
- 6.2 A family mediator must assess or be satisfied that the participants have been assessed for the appropriateness for mediation by screening and individual interviews, and be satisfied that:
- a) there is not now nor has there been any abuse;
  - b) if there has been abuse, a fair and safe mediation is still possible;
  - c) if there has been abuse, any vulnerable participant can be protected in the mediation process and all of the necessary safety measures to do this are put in place for the mediation.
- 6.3 If a family mediator ends a mediation because of safety concerns, he or she must refer the mediation participants to appropriate professionals.

## **7. CONFIDENTIALITY**

- 7.1 A mediator must not disclose to anyone not a participant to the mediation any oral or written information received pursuant to the mediation from the time he or she is retained, except:
- a) as required by law, including reporting a child in need of protection as defined by the *Child, Family and Community Service Act*;
  - b) when the information discloses an actual or potential threat to human life or safety;
  - c) with the written consent of all participants;
  - d) for research, statistical, accreditation or educational purposes, provided the information does not directly or indirectly disclose the identity of any participant; or
  - e) for any certificate or report that the mediator is required to prepare.
- 7.2 Section 7.1 does not apply to any mediation information that is sought or offered to prove or disprove a claim or complaint of professional misconduct, negligence, or breach of the Society's Standards of Conduct against a mediator.
- 7.3 In providing information under section 7.2, a mediator may disclose only such information as is necessary to respond to the claim or complaint.
- 7.4 Prior to holding a private session with a participant, other than a pre-mediation interview, the mediator must ensure that each participant agrees whether or not information disclosed in the private session is confidential.

7.5 A mediator must resist disclosure of confidential information in an adjudicative process to the extent permitted by law, unless the participants have consented to disclosure.

## **8. INDEPENDENT ADVICE**

- 8.1 A mediator must not give legal advice to mediating participants unless licensed to practice law.
- 8.2 A mediator must be alert to the need to recommend independent legal advice, particularly to unrepresented participants, and to the need to make the participants aware of the value of consulting other professionals in order to make fully informed decisions.
- 8.3 In family mediations, the mediator shall not witness the signing of any agreement or memorandum of agreement prepared with the assistance of the mediator, except where required by a court-annexed or court-affiliated program.

## **9. ENDING MEDIATION**

- 9.1 A mediator must ensure that the participants are aware of their rights respecting withdrawal from mediation.
- 9.2 A mediator has a duty not to withdraw his or her services except for good cause and upon reasonable notice to the participants.
- 9.3 A mediator must end the mediation if he or she concludes that:
- a) the process is likely to harm or prejudice one of the participants;
  - b) a participant is acting in bad faith, which includes but is not limited to attempts to intimidate, harass or control; or delay to develop a status quo with respect to custody of children; or to dissipate or conceal assets;
  - c) one participant is unable to participate effectively; or
  - d) the agreement proposed by the participants is unconscionable.
- 9.4 A mediator must communicate clearly and promptly to the participants that mediation has ended.
- 9.5 Prior to ending mediation, a mediator must, if possible, discuss with the participants their procedural options and, where appropriate or necessary, advise them to seek independent legal advice.
- 9.6 When mediation ends in circumstances of potential harm to a participant, the mediator must take whatever steps are reasonably possible to ensure the safety of all participants.

## **10. LIMITS ON ADVERTISING**

- 10.1 A mediator must not make any false, misleading, or exaggerated claims about the mediation process, its costs and benefits, or about his or her skills or qualifications.
- 10.2 A mediator may state that he or she is a member of the B.C. Mediator Roster, but must not state or imply that such membership implies a particular level of skill or ability.

## **11. WRITTEN AGREEMENT TO MEDIATE**

- 11.1 Mediators must enter into a written agreement to mediate with the participants to a mediation, which includes the following terms:
- a) oral and written information disclosed in the mediation process is confidential as provided in paragraph 7;
  - b) the mediator is not a compellable witness in any legal proceeding by any of the participants to the mediation, unless all the participants to the mediation agree otherwise;
  - c) there will be full or sufficient disclosure of all information relevant to the dispute;
  - d) the mediator's rate of remuneration and the particulars of any fees, disbursements or expenses for which the mediator will seek reimbursement; and
  - e) the method of payment.

## **12. BREACH**

- 12.1 Persons may report a breach of this code to the board of directors of the Society or such body as the directors may designate.
- 12.2 A member of the Roster is accountable to the board of directors of the Society, or to such body as the directors may designate, to answer for a report made under paragraph 12.1.
- 12.3 An alleged breach of this code will be reviewed by the board of directors of the Society, or by such body as the directors may designate, and may result in suspension or termination of the mediator's membership on the Roster or in such other remedial requirement as the directors or their designate may direct.