



## Standards of Practice and Code of Ethics

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### A. Introduction

1. The following Standards of Practice are intended to govern the conduct of Accredited Mediators (“mediators”), which includes family, child protection, and intergenerational, and their relationship with their clients, professional colleagues, and the general public.
2. For the purpose of these Standards of Practice, mediation is defined as a voluntary, non-adversarial process in which a qualified and independent third party (the mediator) assists participants to resolve their disputes.

3. These standards do not apply to mediation-arbitration and parenting coordination.
4. Mediators will recognize, acknowledge and promote principles of equality, diversity, accessibility and inclusion consistent with the requirements under human rights legislation.
5. These standards are not to be construed as a competing code of behaviour displacing other professional codes, but as additional standards for mediators. Where there is a conflict between these standards and a mediator's professional code, the professional code prevails. However, a mediator should make every effort to comply with the spirit and intent of these standards in resolving such conflicts. This effort should include honouring all remaining standards not in conflict with the other codes.

## B. Competence

6. Mediators must ensure that they are fully qualified to deal with the specific issues involved in a mediation, recognizing limitations in their ability to handle a matter outside the limits of their qualifications, education, and experience.
7. When a client's needs fall outside of the scope of the mediator's expertise, the member must inform the clients where their needs exceed the mediator's competency. The mediator will give the option to modify the process through securing additional resources and/or including professionals that would allow the mediation to proceed competently. If the mediation cannot be continued, the mediator will make appropriate referrals for the family.
8. Mediators shall communicate with clients during their mediation process in a conscientious, timely and effective manner. Effective communication includes the drafting of documents in accordance with the paragraph outlining drafting in these Standards.
9. Mediators are required to create an inclusive environment taking into consideration Indigenous heritage, race, ancestry, place of origin, colour, ethnic origin, citizenship, family diversity, disability, creed, religion, sex, sexual orientation, gender identity and gender expression and capacity in order to design and maintain a meaningful process.
10. Mediators shall engage in a minimum of ten (10) hours of annual continuing education to ensure that their knowledge and skills are current, to include a minimum of five (5) hours on the subject of screening for and understanding Intimate Partner and Family Violence and Power Imbalances.

### C. Confidentiality

11. The mediator shall not voluntarily disclose to anyone who is not a party to the mediation any electronic, written or verbal information prepared, provided, disclosed, or exchanged during or for the purpose of the mediation process except:
  - a. upon the written consent of all participants to the mediation, including a child over the age of 12 who was a participant to the mediation;
  - b. when ordered by the court or required by law;
  - c. when providing non-identifying information for research or education purposes;
  - d. when the information discloses an actual or potential threat to human life or safety;
  - e. to make a report to child protection services where there are reasonable grounds to suspect that a child may be in need of protection; or
  - f. where there is a disclosure about intergenerational abuse.
12. The mediator shall ensure that there is a signed Agreement to Mediate setting out this confidentiality, signed by the mediator and the participants, in accordance with Section E.
13. The mediator shall inform the participants of any limits to confidentiality in relation to the process, including information received in intake, caucuses and break-out meetings.
14. The mediator shall maintain confidentiality in the storage, file retention, and dispersal of mediation notes, records and files, both paper and electronic, in accordance with all privacy legislation applicable to the mediator, Limitations Act, 2002, <https://www.ontario.ca/laws/statute/02l24> and to the information being stored in accordance with any other professional governance applicable to the mediator.

### D. Impartiality and Procedural Fairness

15. The mediator has a duty to be impartial between the participants and neutral with respect to the outcomes and, when that is compromised, to withdraw from further mediation services.

16. The mediator shall encourage the participants to make informed decisions, recognizing that client self-determination is a fundamental principle of mediation.
17. Notwithstanding impartiality, the mediator has the duty to promote the best interests of children and vulnerable persons, including older persons and persons with a disability.
18. In the event that any participant expresses dissatisfaction with the impartiality of the mediator, then it is the duty of the mediator to advise the participants of their right to terminate the process.
19. The mediator shall refrain from assisting the participants in a dual role that compromises mediator neutrality, during and after the mediation process in any other capacity without the express written consent of the participants.
20. The mediator shall avoid conflicts of interest which would have the potential of undermining the mediation process and shall disclose all actual or perceived conflicts of interest as soon as they come to the mediator's attention without providing compromising information. Mediation may only proceed following such disclosure with the express written or verbally confirmed and documented, consent of all the participants.

#### E. Agreement to Mediate

21. The mediator has a duty to explain the mediation process clearly to the participants and to ensure that this is captured in a signed Agreement to Mediate. The mediator shall not proceed to mediate without a signed Agreement to Mediate. In cases where signing an Agreement to Mediate is not possible, verbal or email confirmation of the parties consent to participate in place of a signed Agreement to Mediate. Mediators should clearly document this in their file.
22. As a minimum, the Agreement to Mediate shall:
  - a. outline the confidentiality, of the mediation process in accordance with Section C;
  - b. clarify whether statements made, or documents produced in mediation can be disclosed or provided to others;
  - c. define whether the mediation is open or closed;
  - d. include the right for any participant, including the mediator, to suspend or terminate the process at any time;

- e. confirm that the mediator does not provide independent legal advice and advise the participants to seek independent legal advice, as set out in Section F;
- f. confirm that the Mediation Report or Memorandum of Understanding is not a final or legally binding agreement, as set out in Section F;
- g. reinforce the importance of full financial disclosure, where applicable, including a requirement that the participants shall provide confirmation of their financial information;
- h. where applicable, outline the fees associated with the mediation services; and,
- i. highlight the mediator's specific procedures and practices, including the right of any participant to request an individual, joint or shuttle process.
- j. note that there are limits to confidentiality and specify in their Agreements to Mediate that all communications, mediator's notes, emails or records and conversations are to be kept confidential in accordance with the type of mediation. For further clarity, the intention of this statement is to prevent the courts from using the common law exception to settlement privilege. Settlement privilege prevents the production or disclosure of without prejudice communications to prove a settlement.
- k. ensure that the Agreement to Mediate and all work product makes clear that a Mediation Summary Report, the mediators' notes, and any other documents arising from the mediation are not to be produced in a court, used in any legal process, and cannot be relied on as evidence of a settlement without them being signed and witnessed.
- l. ensure that both parties agree not to subpoena the mediator's notes, or records and the mediator, mediation service provider, intern, or observer will not be called as a witness by either party in any legal proceeding with respect to any of the issues being mediated.
- m. the Mediator and the Parties shall keep confidential all written and verbal information prepared, provided, disclosed, or exchanged during or for the purpose of the mediation.
- n. the Mediator may, at their sole discretion, disclose information about the mediation: to communicate with the Parties, their lawyers, or other legal representatives, and third parties retained by a Party, their lawyer, or other legal representative.

## F. Information and Independent Legal Advice

23. It is the duty of a mediator to encourage the participants to make decisions based upon sufficient information, knowledge and advice.
24. Mediators have an ongoing obligation throughout the mediation process to advise the participants of the importance and availability of independent legal advice. While neutral legal information may be made available to the participants by the mediator, each participant should be expressly encouraged to obtain independent legal advice.
25. The mediator must not sign as a witness for any participant on any settlement document prepared as a result of the mediation.
26. Any Memorandum of Understanding or Mediation Report prepared by the mediator shall expressly indicate that the participants should obtain independent legal advice and specifically, when drafting, follow the guidance set out in Section P.

## G. Termination of Mediation

27. A mediator should ensure that the participants are aware of their rights respecting termination of the mediation.
28. A mediator must not withdraw the mediator's services except for good cause and upon reasonable notice to the participants, as assessed by the mediator.
29. A mediator must terminate the mediation when the mediator concludes that:
  - a. continuation of the mediation is likely to harm or prejudice a participant or mediator;
  - b. a participant is acting in bad faith (which includes but is not limited to attempts to intimidate, harass, control or unduly delay) to the extent that a mutually acceptable settlement is highly unlikely;
  - c. a participant is unable to participate effectively;
  - d. the proposed resolution does not comply with these Standards; or
  - e. the agreement proposed by the participants is unconscionable.
30. A mediator must communicate clearly and promptly to the participants that mediation has terminated.

31. Prior to terminating a mediation, a mediator should discuss with the participants their procedural options and, where appropriate or necessary, advise them to seek independent legal advice.
32. When a mediation terminates in circumstances of potential harm to a participant, the mediator must take whatever steps are reasonable to ensure the safety of all participants.

#### H. Screening for Intimate Partner Violence, Power Imbalances and Appropriateness

33. Prior to every mediation and throughout the mediation process, each mediator shall individually screen each participant to identify capacity, intimate partner violence and power imbalances in accordance with the Ontario Association for Family Mediation *Policy on Intimate Partner Violence and Power Imbalances*.
34. Mediators must always comply with *the Policy on Intimate Partner Violence and Power Imbalances* and therefore:
  - a. assess whether mediation is appropriate by screening in individual intake interviews;
  - b. if identifying the existence or risk of family violence, assess whether a fair and safe mediation is still possible; and
  - c. if the mediation continues, ensure that any vulnerable participant is protected appropriately in the mediation.

#### I. Duty to Minimize Harm or Prejudice to Participants

35. It is the obligation of the mediator to suspend or terminate mediation whenever continuation of the process would harm or prejudice one or more of the participants.
36. The mediator shall safely suspend or terminate mediation where one of the participants is unwilling or unable to effectively participate in the process.
37. The mediator shall safely suspend or terminate mediation when its usefulness is exhausted.
38. If the mediator has suspended or terminated the process, they may suggest that the participants obtain appropriate professional services.

39. If the mediator, in good conscience, cannot support the agreement reached by the parties because of issues related to the application of these Standards, they will raise those concerns with the parties, educating them on the potential for harm or hardship that may result to them, and terminate the process if necessary.

## J. Online Dispute Resolution

40. When conducting mediations using an online platform (ODR) to facilitate the process, mediators must also ensure that:
  - a. clients have been expressly advised as to the risks and limitations of their privacy and must acknowledge in writing in their Agreement to Mediate or an addendum to same prior to proceeding;
  - b. clients must be asked to confirm who is present in the room during the mediation session and that they and their device cannot be overheard or observed. They must also confirm that children are not present and/or are not able to overhear or observe them;
  - c. clients are advised that neither the mediator nor the client may record any mediation session or portion thereof, take screenshots, nor transmit a live or deferred video or audio relay of the online mediation sessions to third parties; and
  - d. they are making their best efforts to use a secure videoconferencing platform and wi-fi connection.

## K. Child Inclusive Mediation

41. In consideration of the vulnerability of children, mediation must be child centered and mediators must provide education, awareness and understanding of the needs and best interests of children experiencing the conflict of others.
42. Mediators must educate the parents on the importance of the voice of children in family conflict and consider whether and how they could have their voices heard in a safe, supportive way while also providing education about the importance of not causing children undue pressure to have an opinion or become a decision maker.
43. Participation of the child must be voluntary, and no child should ever be pressured into talking with a mediator or professional, recognizing that not all children will wish to take the opportunity to have a voice their voice heard.



44. Mediators have a wide range of options to bring in the voice of children, directly or indirectly. If there is a lawyer or clinical investigator appointed by the Office of the Children's Lawyer, the mediator should always attempt to speak with that person first. Other options may include:
- a. a co-mediation model where one mediator speaks with the child;
  - b. interviewing a therapist, social worker or psychologist involved with the child or family;
  - c. utilizing a Voice of the Child report or similar report on the views and preferences of the child(ren); or
  - d. offering the child an opportunity to participate in a conversation verbally, in person, in writing, over the telephone or by play or storytelling.
45. Mediators should utilize the least intrusive method of bringing in the child's voice, considering their age, maturity and other relevant circumstances.
46. Mediators meeting children directly should have competency and experience doing so, and shall follow best practices for working with children, such as:
- a. ensuring the mediation process is "closed";
  - b. ensuring that parents/guardians and children over the age of 12 sign consents;
  - c. meeting with the children more than one time;
  - d. ensuring children understand that they are there to give input and to be heard, but not to make decisions ("voice not choice") and never directly asking them to choose between their parents or caregivers;
  - e. ensuring that children understand the mediation process and their role in it;
  - f. ensuring children understand that information related to safety cannot be kept confidential;
  - g. ensuring that each participant to the mediation has an opportunity to bring the child for a meeting;
  - h. seeing siblings in separate meetings;

- i. clarifying with the child what information the child wishes shared and which is confidential.
- 47. Mediators should encourage parents to share the parenting plan with the children, where appropriate, emphasizing that their voice was heard and considered and how to continue to gain their input on future issues in an appropriate way.

## L. Vulnerable Persons

- 48. In consideration of the potential vulnerability of older persons and persons with a disability, mediators must provide education, awareness and understanding of the needs and best interests of those persons in the centre of disputes involving them.
- 49. Mediators must educate the participants on the importance of the voice of these vulnerable persons and consider whether and how they could have their voices heard in a safe, supportive way.
- 50. Participation must be voluntary, and no vulnerable person should ever be pressured into talking with a mediator or professional, recognizing that they may not choose to take the opportunity to have a voice.
- 51. Mediators should consider the cognitive ability and other relevant circumstances of the vulnerable persons and use the least intrusive method to consider their voice, including but not limited to:
  - a. having the vulnerable person attend in person, or alternatively offering an opportunity to participate in writing, or over the telephone;
  - b. obtaining and reviewing a copy of any Powers of Attorney or Court Orders related to decision making;
  - c. with the consent of the parties, speaking with:
    - i. any Guardians;
    - ii. any advocates or support persons;
    - iii. any therapist, social worker or psychologist involved with the vulnerable person.
- 52. Mediators interviewing vulnerable persons directly should have competency and experience to do so and shall:
  - a. ensure that any Guardians or support persons have signed consents;

- b. meet with the vulnerable person more than one time;
- c. ensure the vulnerable person and/or their advocate understands the purpose of the meeting;
- d. ensure the vulnerable person and/or their advocate understands that information related to safety cannot be kept confidential; and
- e. clarify with the vulnerable person and/or their advocate what information they wish shared and which is confidential, in keeping with these Standards of Practice.

### M. Marketing and Advertising

- 53. Advertising is intended to inform and educate the public about available mediation services. Mediators must ensure that advertisements are compatible with the standards and ethics of the profession.
- 54. A mediator must not make any false, misleading, or exaggerated claims including claims about the mediation process, its costs and benefits, or about the mediator's skills or qualifications.
- 55. Only OAFM Accredited Members may advertise their mediation services using the OAFM trademarked logo.
- 56. Mediators may represent themselves as specialists in certain areas of practice only if they can provide evidence of specialized training, extensive experience or education.
- 57. A mediator must not solicit in a manner that gives an appearance of partiality for or against a party or otherwise undermines the integrity of the mediation process.
- 58. A mediator must not communicate to others in promotional materials or other forms of communication the names of participants served without their written consent.

### N. Breach of Standards

- 59. Members of the public may report a breach of these Standards to the Executive Director who will follow the Complaints Policy of the Ontario Association for Family Mediation.

60. Mediators are accountable to this organization and understand they are subject to discipline if they do breach any of the terms of these Standards, including:
- a. remedial action;
  - b. suspension or revocation of their ability to use the designation of Accredited Family, Child Protection, or Intergenerational Mediator.

## O. Ethics

### 61. Responsibilities to Colleagues and to the Profession

Mediators build positive relationships with colleagues by demonstrating respect, trust and integrity. They support, mentor and collaborate with colleagues, including students and associate members aspiring to the profession.

Mediators value lifelong learning and reflective practice and engage in Continuous Professional Development. Through their practice and leadership, Mediators support the advancement of the profession in their workplaces and in the wider community. They recognize that their conduct as professionals contributes to the public's trust in the profession.

In the event of a finding by a court or by a regulatory or professional body of dishonesty, lack of candor and integrity or behaviour which in the opinion of the Board of Directors, may undermine the responsibilities of the Member, that impacts their ability to uphold the Standards of Practice and Code of Ethics, OAFM may take any necessary steps in accordance with our By-Laws and Complaint Policy.

Mediators will disclose:

- (a) any findings of guilt in relation to an indictable offence under the *Criminal Code* or other federal statute,
  - (b) any findings of guilt of any offence in the last two years, under the *Criminal Code* or other federal statute, or
  - (c) or any discipline finding by a professional licencing or regulatory body,
- within sixty (60) days of the finding of guilt or discipline, that have not been previously disclosed, to OAFM.

### 62. Responsibilities to the Community and to the Public

Mediators provide and promote high quality services to support children and their families. They build connections and collaborate with community partners to enhance programs and promote the integration of services. Mediators

communicate the value and importance of all family member's needs, with special consideration for children and vulnerable persons.

63. If a mediator loses their accreditation as a result of disciplinary action, the Member gives consent for the removal of their accreditation to be shared with other mediation accrediting and certifying bodies/organizations.
64. A mediator *may* cease to meet the criteria for membership as established by the Board as set out in the By-Laws, specifically if the member;
  - a. fails to pay all applicable dues within the time period prescribed;
  - b. is found by the Member's professional licensing body to have engaged in professional misconduct, including dishonesty, lack of candor or integrity or behaviour which may undermine confidence in the Member as mediator or in the reputation of OAFM; and/or,
  - c. is convicted of an offence under the Criminal Code or other federal statute.

#### P. Drafting

65. When drafting terms of a mediated agreement, irrespective of the name given to the document, Mediators must draft documents according to the following guidelines:
  - a. sufficient clarity and detail;
  - b. a clear message that the document is drafted in accordance with the Agreement to Mediate signed (or confirmed, in accordance with the Agreement to Mediate paragraph in these Standards) at the commencement of the process;
  - c. that it clearly sets out the mediators understanding of what the parties have agreed to;
  - d. to provide a mechanism for the parties to move forward in a manner designed to reduce future conflict and include a dispute resolution clause, unless the parties decide otherwise;
  - e. when mediating financial matters, the mediator will provide the information relied upon, either by document inclusion, listing of documents, or explanation of documents reviewed that allowed a consensus to be reached;
  - f. be aware of any potential limits to the confidentiality of the mediation process and that in some instances, courts can order the information in the mediator's file to be released.

- g. that results in a document that clearly identifies when clients have reached a settlement that differs from the legal model and provides an explanation for the agreement reached, and
- h. that clearly sets out next steps to be taken and responsibility of the individuals to complete the tasks of the understanding.

66. Mediators must ensure that;

- a. they follow Part F of these Standards of Practice and particularly, that they fully appreciate their ongoing obligation throughout the mediation process to advise the participants of the importance and availability of independent legal advice;
- b. their insurance carriers will support them to defend a claim citing a document that is formatted in their usual business practice;
- c. they do not exceed their role as mediator, specifically, they should not give a legal opinion, (or clinical opinion) and restrict themselves to offering only information and relying, when possible, on public government information sites, such as, Steps to Justice <https://stepstojustice.ca/legal-topic/family-law/> ;
- d. stay up to date on recommended wording to assist clients to achieve a durable document they can rely on now and in the future; and,
- e. take any self-identified professional development study to assist them to maintain and improve in their drafting abilities.

67. Best Practices for drafting include;

- a. naming the document, Progress Notes, Mediation Report, or Memorandum of Understanding; and if, the mediator is inclined to draft Minutes of Settlement, or a Separation Agreement, they must clearly indicate to the clients that it is in their best interest to obtain independent legal advice.
- b. not signing or witnessing a signature on any final documents,
- c. when drafting a Parenting Plan, ensure that the same Standards are applied.