



Standards of Practice Code of Professional Conduct

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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 elder, 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. Mediators shall communicate with clients during their mediation process in a conscientious, timely and effective manner.
8. 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.
9. 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

10. 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 elder abuse.
11. 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.
 12. 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.
 13. The mediator shall maintain confidentiality in the storage and dispersal of mediation notes, records and files, both paper and electronic, and other provisions of the Privacy Act.

D. Impartiality and Procedural Fairness

14. The mediator has a duty to be impartial between the participants and neutral with respect to the outcomes and, where that becomes challenged, to withdraw from further mediation services.
15. The mediator shall encourage the participants to make informed decisions, recognizing that client self-determination is a fundamental principle of mediation.
16. 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.
17. 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.
18. The mediator has a duty to ensure procedural fairness.

19. The mediator shall refrain from assisting the participants 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 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.
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, including a requirement that the participants shall provide confirmation of their financial information;
 - h. 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.

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 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.

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.
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;
 - 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. Voice of the Child

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 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.

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 family;
 - c. utilizing a Voice of the Child report; 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 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. A mediator may only advertise their mediation services in areas in which they are accredited.
- 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 Elder Mediator.