



National Mediation Rules & Code of Conduct for Mediators

As amended
August 3, 2012



National Mediation Rules

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MODEL DISPUTE RESOLUTION CLAUSE

Parties who agree to mediate under the National Mediation Rules may use the following clause in their agreement:

All disputes arising out of or in connection with this agreement, or in respect of any legal relationship associated with or derived from this agreement, shall be mediated pursuant to the National Mediation Rules of the ADR Institute of Canada, Inc. The place of mediation shall be [specify City and Province of Canada]. The language of the mediation shall be [English or French: specify language].



**ADR INSTITUTE OF CANADA, INC.
NATIONAL MEDIATION RULES**

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CODE OF CONDUCT FOR MEDIATORS**

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**ADR INSTITUTE OF CANADA, INC.
NATIONAL MEDIATION RULES**

1. INTERPRETATION

1.1 In the Rules, unless the context otherwise requires:

- (a) “day” means a full 24-hour day but does not include Saturday, Sunday, or a holiday as defined in the relevant Provincial legislation;
- (b) “Institute” means the ADR Institute of Canada, Inc., one of its Regional Affiliates, a predecessor of the Institute, or one of its affiliates (such as Canadian Foundation for Dispute Resolution, Arbitration Institute of Canada, or Arbitration and Mediation Institute of Canada);
- (c) “Mediation” means the use of an impartial third party to assist the parties to resolve a dispute, but does not include an arbitration;
- (d) “Mediation Agreement” means a written agreement between the parties and the Mediator containing specific provisions for submitting a dispute to Mediation;
- (e) “Mediator” means the impartial person or persons engaged to assist the parties to resolve a dispute, but does not include an arbitrator unless the arbitrator is acting as a mediator by consent of the parties;
- (f) “Regional Affiliate” means a regionally based alternative dispute resolution (“ADR”) organization designated by the Institute to provide ADR services in a specific region as requested by the Institute; and
- (g) “Rules” means the National Mediation Rules of the Institute.

2. APPLICATION

2.1 The Rules shall apply where:

- (a) the parties have agreed that the Rules apply;



(b) the parties have agreed to mediate in accordance with the Model Mediation Procedure of The Canadian Foundation for Dispute Resolution, Inc.; or

(c) the parties have agreed to a Mediation to be administered by the Institute or The Canadian Foundation for Dispute Resolution, Inc. with or without reference to the rules of either body.

2.2 If the parties have by contract or by mutual agreement provided for the Mediation of their dispute(s) in accordance with the Rules, they shall be deemed to have incorporated the Rules into their Mediation Agreement.

2.3 If the Rules are amended by the Institute, the Rules applicable to any dispute shall be the Rules, as amended, as of the date the Mediation is initiated.

2.4 To the extent that the Rules conflict with legislation of any Province of Canada or any Territory of Canada or of any legislation of Canada or any rules or orders pursuant to any such legislation, the Rules shall apply except to the extent that the parties may not lawfully contract out of the provisions of any such legislation, rules, or orders.

2.5 A failure to comply with the Rules is an irregularity and does not render the Mediation or a step, document, or settlement agreement a nullity.

3. VARIATION OF RULES

3.1 The Rules, including the Schedules hereto, may be varied by agreement of the parties.

4. INITIATING MEDIATION

4.1 A dispute to which the Rules apply may be submitted to Mediation by any party to the dispute.

4.2 If one or more of the parties to a dispute wish to submit that dispute to Mediation under the Rules, the Mediation shall be initiated by one or more parties to the dispute serving a written request for Mediation on every other party to the dispute.



5. APPOINTMENT OF MEDIATOR

5.1 A Mediator shall be appointed only by a process that is:

- (a) in accordance with any nomination to which the parties have agreed;
- (b) in accordance with any appointment procedure to which the parties have agreed; or
- (c) in accordance with the procedure set out in Rule 5.2.

5.2 If the parties have not agreed to any nomination or appointment procedure:

- (a) the parties shall
 - (i) pay the Institute the fee prescribed by Schedule “A” to these Rules; and
 - (ii) provide the Institute with a written statement of general information concerning the nature and extent of the dispute, including (without limitation) the type of dispute, the amount in dispute, and type of issues in dispute;
- (b) within 2 weeks of receipt of the fee and materials identified in Rule 5.2(a), the Institute shall provide the parties with the resumes of three nominees;
- (c) the selection of a Mediator shall be:
 - (i) by agreement of the parties, who shall inform the Institute of their selection; or
 - (ii) if the parties cannot agree on a Mediator, by each party ranking the nominees (3-highest; 1-lowest) and the Institute selecting the nominee with the highest composite ranking (or, if the rankings from the parties are equal, by the Institute making a selection from among the highest-ranked nominees);
- (d) the Institute shall forthwith inform the Mediator selected under Rule 5.2(c) of his or her selection and shall:
 - (i) forthwith appoint that Mediator; or



- (ii) if that Mediator is unable or unwilling to be appointed, repeat forthwith the procedure set out in Rules 5.2(b) and 5.2(c) above.

6. INDEPENDENCE AND IMPARTIALITY

6.1 Unless otherwise agreed by the parties after full disclosure, the Mediator shall not act as an advocate for any party to the Mediation and shall be and shall remain at all times during the Mediation:

- (a) wholly independent;
- (b) wholly impartial; and
- (c) free of any personal interest or other conflict of interest in respect of the Mediation.

6.2 The parties agree that the Mediator is not providing legal or professional advice to any of the parties. The parties agree that the Mediator may express views or opinions on the matters at issue, and may identify evaluative approaches, and where the Mediator does so it shall not be construed as either advocacy on behalf of a party or as legal or professional advice to a party. The parties shall at all times rely exclusively on their own advisors for legal and professional advice. The parties agree that:

- (a) the Institute is not an agent of, or acting in any capacity for, any of the parties; and
- (b) the Mediator is acting as an independent contractor and is not an agent or employee of the Institute.

7. DISCLOSURE OF POTENTIAL DISQUALIFICATION

7.1 Before accepting an appointment and at all times after accepting an appointment, a Mediator shall disclose to the Institute and the parties in writing any circumstance that could potentially give rise to a reasonable apprehension of a lack of independence or impartiality or conflict of interest in the Mediation of a dispute. Should any such circumstance be so disclosed, the Institute shall immediately notify the parties of it. If any party objects, in



writing, to the Mediator based on any such disclosure, the Mediator shall immediately withdraw from the Mediation and another Mediator shall be appointed in accordance with Rule 5.

8. WAIVER OF POTENTIAL DISQUALIFICATION

8.1 A Mediator who makes disclosure of any circumstance under Rule 7 shall continue to serve as Mediator if all parties to the dispute waive, in writing, the right to object to any reasonable apprehension of a lack of independence or impartiality or conflict of interest that arises as a consequence of that disclosure.

8.2 Any party that:

(a) knows, or reasonably ought to know, of any circumstance that could give rise to a reasonable apprehension of a lack of independence or impartiality or conflict of interest on the part of a Mediator (whether or not that circumstance is disclosed under Rule 7); and

(b) proceeds with the Mediation without promptly stating an objection to that circumstance in writing

shall be deemed to have waived the right to object to any reasonable apprehension of a lack of independence or impartiality or conflict of interest that arises as a consequence of that circumstance and to have complied with the requirements of Rule 8.1.

9. PRE-MEDIATION SESSION

9.1 Unless otherwise agreed by the parties, the Mediator shall, expeditiously after being appointed, arrange a session or conference call with the appropriate representative or lawyer of all parties to discuss the matters set out in these Rules and all arrangements relating to the Mediation, including, without limitation:

(a) the return of written material provided to the Mediator;

(b) disclosure of offers or counter-offers made in the course of the Mediation; and



- (c) whether or not any settlement agreement is required to be in writing and executed by the parties before it is binding on the parties.

10. MEDIATION AGREEMENT

10.1 The Mediator, together with the parties, shall prepare and execute a Mediation Agreement setting out:

- (a) the terms and conditions under which the parties are engaging the Mediator;
- (b) any of the Rules that the parties agree shall not apply to the Mediation or are amended as agreed by the parties; and
- (c) any additional rules that the parties agree shall apply to the Mediation.

10.2 If the parties are unable to agree on a Mediation Agreement, the Institute's Standard Form Agreement to Mediate set out in Schedule "B" shall be used with such modifications as the parties may agree.

11. TIME AND PLACE

11.1 The Mediator shall, following consultation with the parties, fix the time of each Mediation session. All sessions shall be held at either:

- (a) a location in the City and Province stipulated in the model clause, if relevant; or
- (b) a location agreed upon by the parties and the Mediator.

12. AUTHORITY OF THE MEDIATOR

12.1 The Mediator shall attempt to assist the parties to reach a satisfactory resolution of their dispute but has no authority to impose a settlement. The Mediator is authorized to conduct joint and separate sessions with the parties at the discretion of the Mediator.

12.2 If the parties are unable to reach a settlement in the Mediation process, and if all parties and the Mediator agree, the Mediator may produce for the parties a non-binding recommendation for terms of settlement. This recommendation shall be the Mediator's reasonable attempt to find acceptable settlement terms.



12.3 The Mediator may retain experts or consultants if the parties so agree and the parties agree to pay for the expenses of such experts or consultants, in equal amounts unless otherwise agreed by the parties.

13. REPRESENTATION

13.1 Each party must attend the Mediation. The name and address of any lawyer or agent who intends to attend the Mediation must be communicated, in writing, to the Mediator and to other parties at least three days before the first Mediation session. If any party intends to have any other individuals, such as experts, advisors, or any other persons, attend the Mediation, the name(s) and capacity of such individuals must be communicated to the Mediator and the other parties at least three days before the first Mediation session.

13.2 Parties who attend the Mediation must have authority to settle the dispute.

14. PRIVACY

14.1 The Mediation shall be held in private. Only those persons authorized by Rule 13 may attend, unless otherwise agreed by the parties.

15. CONFIDENTIALITY AND DISCLOSURE

15.1 The parties and the Mediator shall agree on the extent of documentary disclosure required for an effective Mediation, but the Mediator shall not have the power to compel the disclosure of any document.

15.2 The Mediator shall inform the parties of the confidential nature of Mediation.

15.3 The Mediator, the parties, their experts and advisors, and any other persons who accompany the parties to the Mediation shall keep confidential and shall not disclose to any non-party all information, documents, and communications that are created, disclosed, received, or made available in connection with the Mediation except:

- (a) with the parties' written consent;
- (b) when ordered to do so by a court of competent jurisdiction or otherwise required to do so by law;



- (c) when the information or documents disclose an actual or potential threat to human life;
 - (d) in respect of any report or summary that is required to be prepared by the Mediator;
 - (e) where the data about the Mediation is for research and education purposes, and where the parties and the dispute are not, and may not reasonably be anticipated to be, identified by any such disclosure; or
 - (f) where the information is, or the documents are, otherwise available to the public.
- 15.4 Within 30 days after the Mediation's conclusion, the Mediator shall destroy all information, documents, and communications created by, disclosed to, received by, or made available to the Mediator in connection with the Mediation unless otherwise agreed by the parties.
- 15.5 The Mediator shall obtain, in writing, from all experts and consultants engaged by the Mediator and any other person who accompanies the parties, commitments to similar obligations of confidentiality as are provided for in this Rule.
- 15.6 The Mediator shall maintain confidentiality in the storage and disposal of Mediation notes, records, files, information, documents, and communications.
- 15.7 If the Mediator holds private sessions (including breakout sessions and caucuses) with one or more parties, he or she shall discuss the nature of such sessions with all parties before commencing such sessions. In particular, the Mediator shall inform the parties of any limits to confidentiality applicable to information disclosed during private sessions.
- 15.8 The parties agree that Mediation sessions are without prejudice settlement negotiations and disclosures are inadmissible in any further litigation or arbitration except to the extent required by law. The parties agree not to sub-



poena or otherwise require the Mediator to testify or produce records or notes in any future proceedings. No transcripts shall be kept of the proceedings.

15.9 The parties agree that they shall not rely on or introduce as evidence in subsequent arbitral or judicial proceedings any of the following, with the exception of information otherwise produced through the discovery process:

- (a) any views expressed, suggestions made, or offers made to or received from any other party in respect of the possible settlement of the dispute;
- (b) any admissions made by any other party in the course of the Mediation;
- (c) the fact that any other party had indicated a willingness to accept a proposal or recommendation for settlement made by the Mediator; or
- (d) proposals made or views expressed by the Mediator.

16. SUSPENSION OR TERMINATION OF MEDIATION

16.1 The Mediator may suspend the Mediation:

- (a) upon written request by one or more of the parties; or
- (b) by issuing a written declaration that further efforts at Mediation would not be useful at this time and that the Mediation is suspended.

16.2 The Mediation is terminated:

- (a) by the execution of a settlement agreement by the parties;
- (b) by the issuance of a written declaration of one or more parties that the Mediation is terminated; or
- (c) by the issuance of a written declaration by the Mediator that further efforts at Mediation would not be useful at this time and that the Mediation is terminated.

17. EXCLUSION OF LIABILITY

17.1 The Institute is not liable to any party for any



act or omission in connection with a Mediation conducted under the Rules. In any event, the Institute is not responsible for any loss or damage incurred by any party or any other person arising from negligence or any other cause whatsoever.

18. FEES AND EXPENSES

- 18.1 The parties shall bear equally and pay the Mediator's fee and all expenses, including travel and the rental of premises, and the costs and expenses of any expert or consultant engaged by the Mediator in accordance with Rule 12.3, unless otherwise agreed by the parties. Such fees shall be paid directly to the Mediator in accordance with the agreement to mediate signed by the parties.
- 18.2 The parties shall pay to the Institute the fees provided in Schedule "A".
- 18.3 The Mediator may require the parties to pay an initial deposit and further deposit or deposits, including proportionate shares of the costs of the Mediation.
- 18.4 Each party shall bear its own costs and expenses for participating in the Mediation, unless otherwise agreed by the parties.

19. EDUCATIONAL PURPOSES

- 19.1 The Mediator and the Institute may disclose information and data about the Mediation for research and educational purposes only if the parties and the dispute are not, nor may reasonably be anticipated to be, identified by such disclosure.



SCHEDULE "A"

MEDIATION ADMINISTRATIVE FEE SCHEDULE

Please call your Regional Affiliate for fees charged with respect to selecting a mediator under Rule 5.2(a)(i)

SCHEDULE "B"

**ADR INSTITUTE OF CANADA, INC.
STANDARD FORM AGREEMENT TO MEDIATE**

THE PARTIES

Party 1:Address, Phone, Fax, and E-mail:

Party 2:Address, Phone, Fax, and E-mail:

Party 3:Address, Phone, Fax, and E-mail:

Party 4:Address, Phone, Fax, and E-mail:

Mediator: Address, Phone, Fax, and E-mail:

THE DISPUTE

BRIEF DESCRIPTION OF THE DISPUTE:

MEDIATION

The parties shall attempt to settle the dispute by Mediation, following the provisions of this Standard Form Agreement and the National Mediation Rules of the Institute (the "Rules"), which are incorporated as part of this Agreement to Mediate. Variations to the Rules are noted below:



THE MEDIATOR

The Mediator shall be bound by the Institute’s Code of Conduct for Mediators.

The Mediator shall discuss and arrange for the implementation of the exchange of information and briefs at least 2 weeks before the date of Mediation, unless otherwise agreed by the parties.

FEES AND EXPENSES

All parties shall bear their own costs for the Mediation process, and shall bear equally and pay the expenses of the Mediation and the Mediator’s fees inclusive of all deposits requested by the Mediator, unless otherwise agreed by the parties.

The Mediator’s fees are as follows:

CANCELLATION OR DELAY

It is agreed that any party causing either cancellation of the Mediation or a postponement within 30 business days preceding the Mediation shall be responsible for all costs incurred by the Mediator, along with any cancellation fees.

Date: _____

Signed: _____

Party 1

Party 2

Party 3

Party 4

Mediator



Code of Conduct for Mediators

As amended
April 15, 2011

This Code of Conduct for Mediators (the “Code”) applies in its entirety to every Mediator who is a member of the ADR Institute of Canada, Inc. (the “Institute”) or any of its Regional Affiliates, or who accepts from the Institute an appointment as Mediator. While Mediators come from varied professional backgrounds and disciplines, every Mediator must adhere to the Code as a minimum. Being appointed as a Mediator confers no permanent rights on the individual, but is a conditional privilege that may be revoked for breaches of the Code.

The Institute and its Regional Affiliates are empowered to investigate alleged breaches of the Code, and may temporarily suspend any Mediator from any of its rosters or from membership in the Institute pending the outcome of an investigation. The Institute is empowered to cancel membership in the Institute or remove any Mediator from any of its rosters if the Mediator is determined by the Institute, either on its own behalf or upon the recommendation of any of its Regional Affiliates, to be in breach of the Code. It is the objective of the Institute to ensure that complaints are investigated fairly.



1. CODE'S OBJECTIVES

1.1 The Code's main objectives are:

- (a) to provide guiding principles for the conduct of Mediators;
- (b) to promote confidence in Mediation as a process for resolving disputes; and
- (c) to provide protection for members of the public who use Mediators who are members of the Institute.

2. DEFINITIONS

2.1 In the Code:

- (a) "Mediation" means the use of an impartial third party to assist the parties to resolve a dispute, but does not include an arbitration; and
- (b) "Mediator" means an impartial person who is a member of the Institute or accepts from the Institute an appointment as Mediator and who is engaged to assist the parties to resolve a dispute, but does not include an arbitrator unless the arbitrator is acting as a Mediator by consent of the parties.
- (c) "Regional Affiliate" means a regionally based alternative dispute resolution ("ADR") organization designated by the Institute to provide ADR services in a specific region as requested by the Institute.

3. PRINCIPLE OF SELF-DETERMINATION

3.1 It is the right of parties to a Mediation to make their own voluntary and non-coerced decisions regarding the possible resolution of any issue in dispute. Every Mediator shall respect and encourage this fundamental principle of Mediation.

3.2 The Mediator shall provide the parties at or before the first Mediation session with information about the Mediator's role in the Mediation. The Mediator shall discuss the fact that authority for decision-making rests with the parties, not the Mediator.

3.3 The Mediator shall not provide legal or pro-



fessional advice to the parties. The Mediator may express views or opinions on the matters at issue, and may identify evaluative approaches, and where the Mediator does so it shall not be construed as either advocacy on behalf of a party or as legal or professional advice to a party.

- 3.4 The Mediator shall, where appropriate, advise unrepresented parties to obtain independent legal advice. The Mediator shall also, where appropriate, advise parties of the need to consult with other professionals to help parties make informed decisions.

4. INDEPENDENCE AND IMPARTIALITY

4.1 Unless otherwise agreed by the parties after full disclosure, a Mediator shall not act as an advocate for any party to the Mediation and shall be and shall remain at all times during the Mediation:

- (a) wholly independent; and
- (b) wholly impartial; and
- (c) free of any personal interest or other conflict of interest in respect of the Mediation.

5. POTENTIAL DISQUALIFICATION

5.1 Before accepting an appointment as Mediator and at all times after accepting such an appointment, a Mediator shall disclose in writing any circumstance that could potentially give rise to a reasonable apprehension of a lack of independence or impartiality in the Mediation of a dispute.

5.2 Any Mediator who makes a disclosure of any circumstance under section 5.1 shall continue to serve as Mediator if all parties to the dispute waive, in writing, the right to object to any reasonable apprehension of a lack of independence or impartiality or conflict of interest that arises as a consequence of that disclosure.

6. CONFIDENTIALITY

6.1 The Mediator shall inform the parties and any experts, advisors, and any other persons who accompany a party to a Mediation session of



the confidential nature of Mediation.

6.2 The Mediator, the parties, their experts and advisors, and any other persons who accompany a party to a Mediation session shall keep confidential and shall not disclose to any non-party all information, documents, and communications that are created, disclosed, received, or made available in connection with the Mediation except:

- (a) with the parties' written consent;
- (b) when ordered to do so by a court or otherwise required to do so by law;
- (c) when the information/documentation discloses an actual or potential threat to human life;
- (d) in respect of any report or summary that is required to be prepared by the Mediator;
- (e) where the data about the Mediation is for research and education purposes, and where the parties and the dispute are not, nor may reasonably be anticipated to be, identified by such disclosure; or
- (f) where the information is, or the documents are, otherwise available to the public.

6.3 If the Mediator holds private sessions (including breakout meetings and caucuses) with one or more parties, he or she shall discuss the nature of such sessions with all parties before commencing such sessions. In particular, the Mediator shall inform the parties of any limits to confidentiality that may apply to information disclosed during private sessions.

6.4 The Mediator shall maintain confidentiality in the storage and disposal of Mediation notes, records, files, information, documents and communications.

7. QUALITY OF THE PROCESS

7.1 The Mediator shall make reasonable efforts before Mediation is initiated or at the start of the Mediation to ensure that the parties understand the Mediation process.



- 7.2 The Mediator shall conduct Mediations in a manner that permits the parties to participate effectively in the Mediation and that encourages respect among the parties.
- 7.3 The Mediator shall acquire and maintain professional skills and abilities required to uphold the quality of the Mediation process.
- 7.4 The Mediator shall act professionally at all times, and the Mediator shall not engage in behaviour that will bring the Mediator or the Institute into disrepute.
- 7.5 A Mediator who considers that a Mediation in which he or she is involved may raise ethical concerns (including, without limitation, the furtherance of a crime or a deliberate deception) may take appropriate action, which may include adjourning or terminating the process."

8. ADVERTISING

- 8.1 In advertising or offering services to clients or potential clients, the Mediator shall:
 - (a) refrain from guaranteeing settlement or promising specific results; and
 - (b) provide accurate information about his or her education, background, mediation training and experience, in any oral or written representation or biographical or promotional material.

9. FEES

- 9.1 The Mediator shall give the parties as soon as practicable after his or her appointment a written statement of a fee structure, likely expenses, and any payment retainer requirements.
- 9.2 The Mediator's fees shall not be based on the outcome of Mediation, or on whether there was a settlement, or (if there was a settlement) on the terms of settlement.
- 9.3 The Mediator may charge a cancellation or a late/delay fee within the Mediator's discretion, provided the Mediator advises the parties in advance of this practice and the amount of the fee.



10. AGREEMENT TO MEDIATE

10.1 The Mediator and the parties shall prepare and execute a mediation agreement setting out:

- (a) the terms and conditions under which the parties are engaging the Mediator;
- (b) if the National Mediation Rules of the Institute apply to the Mediation, any of the Rules that the parties agree shall not apply to the Mediation; and
- (c) any additional rules that the parties agree shall apply to the Mediation.

11. TERMINATION OR SUSPENSION OF MEDIATION

11.1 The Mediator may suspend or terminate the Mediation if requested, in writing, by one or more of the parties.

11.2 The Mediator may suspend or terminate the Mediation with a written declaration by the Mediator that further efforts at mediation would not be useful at this time.

12. OTHER CONDUCT OBLIGATIONS

12.1 Nothing in the Code replaces or supersedes any other ethical standard or code that may govern the Mediator. Where there are multiple such standards or codes, the Mediator shall be bound by the stricter or strictest of them.



ADR Institute of Canada, Inc.

Suite 405, 234 Eglinton

Avenue East

Toronto, Ontario M4P 1K5

Toll-free: 1-877-475-4353

Tel: 416-487-4733

Fax: 416-487-4429

Email: admin@adrcanada.ca

Internet: www.adrcanada.ca

