

CODE OF CONDUCT FOR MEDIATORS

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 professional 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.

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