



STANDARDS OF CONDUCT¹

1. GENERAL

- 1.1 These standards are to be read and construed in their entirety. There is no priority significance attached to the sequence in which the standards appear.
- 1.2 These standards are binding on all mediators on the Rosters of the Mediate BC Society (“the Society”), and members of the Rosters agree to provide mediation services in a manner consistent with these standards.
- 1.3 The objectives of these standards are to define principles to guide mediator conduct, enhance public protection and promote confidence in the mediation process.
- 1.4 The use of the term “must” indicates that a mediator is obliged to follow the practice described. The use of the term “should” indicates that the practice described is highly desirable, but not required, and is to be departed from only after careful use of judgment and discretion.
- 1.5 These standards are not to be construed as a competing code of behaviour displacing other professional codes, but as additional standards for mediators on the Rosters.
- 1.6 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.

2. DEFINITIONS

- 2.1 “*Abuse*” means a pattern of behaviour or conduct that is associated with an unacceptable exercise of power and control, and adversely affects the ability of one or more parties to make free and informed decisions. Abuse may be direct or indirect, and may be financial, emotional, psychological, physical or sexual.
- 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 property or finances, adoption, pre-nuptial issues, and intra-family conflicts.
- 2.3 “*Mediation*” means a process where an impartial and independent third party, with no decision-making power (a “mediator”), attempts to facilitate a settlement between disputing parties and

¹ These standards have been developed by Mediate BC and are based, in part, upon the *Model Standards of Conduct for Mediators* prepared in 1994 by the American Arbitration Association, the American Bar Association’s Section of Dispute Resolution and the Association for Conflict Resolution, and revised and approved by their successor organizations in 2005.

STANDARDS OF CONDUCT

includes any preparation, orientation and screening sessions with a party or parties. The term “mediator” applies to co-mediation models.

- 2.4 “*Participants*” means all persons in attendance at a mediation, including the parties.
- 2.5 “*Parties*” means those persons who are a party to the dispute which is the subject matter of a mediation.

3. SELF-DETERMINATION

- 3.1 A mediator must conduct a mediation based on the principle of party self-determination even though entry into a mediation process may not be voluntary. Self-determination is the act of coming to a voluntary, non-coerced decision in which each party makes free and informed choices, particularly with respect to outcomes.
- 3.2 Although party self-determination for process design is a principle of mediation practice, a mediator may need to balance such party self-determination with a mediator’s duty to conduct a quality process in accordance with these standards.
- 3.3 A mediator cannot personally ensure that each party has made free and informed choices to reach particular decisions, and, where appropriate, a mediator should make the parties aware of the importance of consulting other professionals to help them make informed choices.
- 3.4 A mediator must not undermine party self-determination for reasons such as higher settlement rates, personal satisfaction, increased fees, or outside pressures from court personnel, program administrators, provider organizations, the media or others.

4. DUTY OF IMPARTIALITY

- 4.1 Except as required by law, a mediator must conduct a mediation in an impartial manner and avoid conduct that gives the appearance of partiality. Impartiality means freedom from favoritism, bias or prejudice.
- 4.2 If at any time a mediator is unable to conduct a mediation in an impartial manner, the mediator must withdraw, and if appointed by the Society, must notify the Society.
- 4.3 If at any time a participant perceives that the mediator is unable to maintain a fully impartial posture, and the matter cannot be resolved in the mediation process, the mediator must withdraw, and if appointed by the Society, must notify the Society.
- 4.4 A mediator should neither give nor accept a gift, favour, loan or anything of value that raises a question as to the mediator’s actual or perceived impartiality.
- 4.5 A mediator may accept or give *de minimis* gifts or incidental items or services that are provided to facilitate a mediation or respect cultural norms so long as such practices do not raise questions as to a mediator’s actual or perceived impartiality.

STANDARDS OF CONDUCT

5. DUTY TO AVOID CONFLICT OF INTEREST

- 5.1 A mediator 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.
- 5.2 A mediator must not have a direct or indirect monetary or personal interest in the outcome of a dispute unless otherwise acknowledged and agreed to by the parties.
- 5.3 A mediator must disclose, as soon as practicable, all actual and potential conflicts of interest that are reasonably known to the mediator and could reasonably be seen as raising a question about the mediator's impartiality. After disclosure, if all parties agree, the mediator may proceed with the mediation, but otherwise must withdraw.

6. MEDIATOR COMPETENCY

- 6.1 A mediator must acquire and maintain knowledge, skills and abilities sufficient to provide competent mediation services.
- 6.2 A mediator must engage in sufficient continuing education to ensure that the mediator's knowledge, skills and abilities are current and effective.
- 6.3 A mediator must provide services only for cases where he or she is qualified by experience or training.²
- 6.4 A mediator should ensure that he or she has knowledge and procedural skills sufficient to properly identify and manage cases involving vulnerable participants, abuse, or the inappropriate use of power by any participant.
- 6.5 If a mediator, during the course of a mediation, determines that the mediator cannot conduct the mediation competently, the mediator must discuss that determination with the parties as soon as practicable and take appropriate steps to address the situation, including, but not limited to, withdrawing or requesting appropriate assistance.
- 6.6 If a mediator's ability to conduct a mediation is impaired by drugs, alcohol, medication or otherwise, the mediator must not conduct the mediation.

7. MEDIATOR INTEGRITY

- 7.1 A mediator must be honest and diligent, act in good faith and put the interests of participants above those of the mediator.
- 7.2 A mediator must not act in a way that raises legitimate questions about the integrity of the mediation process.

² For example, and without limiting the generality of the foregoing, a mediator must not conduct family mediations involving division of property and pensions unless qualified to do so. Similarly, special skills may be required for multi-party mediations or mediations involving complex subject matter.

STANDARDS OF CONDUCT

8. DUAL ROLES

- 8.1 A mediator must remain aware of the need to distinguish between the role of a mediator and other professional roles, such as arbitrator, lawyer, counsellor or therapist, because the mixing of those roles is potentially problematic.
- 8.2 A mediator may recommend, when appropriate, that parties consider resolving their dispute through arbitration, counseling, neutral evaluation or other processes.
- 8.3 A mediator must not undertake an additional dispute resolution role, such as arbitrator or neutral evaluator, unless at the time of the proposed change in role the mediator informs the parties of the implications of the change, including the potential use of any information provided in caucus, and obtains their consent to the change which should be in writing. A mediator who undertakes such a role assumes different duties and responsibilities which may be governed by other standards.³

9. MEDIATION QUALITY

- 9.1 A mediator should 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.
- 9.2 A mediator should make information relevant to the mediator's training, education, experience and approach to conducting a mediation available to the parties.
- 9.3 A mediator must conduct a mediation in a way which provides the parties with an opportunity to fully participate in the process and which encourages respect and civility among the participants.
- 9.4 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.
- 9.5 If a party appears to have difficulty comprehending the process, issues or settlement options, or difficulty participating in a mediation, the mediator should explore the circumstances and potential accommodations, modifications or adjustments that may increase the party's capacity to comprehend, participate and exercise self-determination.
- 9.6 If a mediator believes that participant conduct, including that of the mediator, jeopardizes conducting a mediation consistent with these standards, a mediator must take appropriate steps including, if necessary, postponing, withdrawing from or terminating the mediation.

10. SAFETY AND APPROPRIATENESS OF MEDIATION

- 10.1 A mediator must make reasonable efforts to identify risk factors which may affect the safety of any participant, and must make the mediation process safe or end it.

³ This section does not apply to a mediator involved in a mediation to set the terms of a collective agreement or to resolve a labour grievance or similar matter provided that the mediator is satisfied that the parties to the mediation understand the essential elements of mediation and arbitration, and the significance of switching from one process to the other, and that the mediator ensures that in appropriate cases the parties have confirmed their understanding in writing.

STANDARDS OF CONDUCT

- 10.2 A mediator conducting a family mediation⁴ must:
- a) assess whether mediation is appropriate for the parties by screening for family violence⁵ by way of individual interviews by the mediator;
 - b) if the mediator identifies the existence or risk of family violence, the mediator must assess whether a fair and safe mediation is still possible; and
 - c) if the mediation continues, the mediator must manage the mediation using current best practices so that any vulnerable participant is protected appropriately in the mediation.
- 10.3 If a mediator terminates a mediation because of safety concerns, he or she must consider whether to refer the participants to appropriate resources and professionals.

11. CONFIDENTIALITY

- 11.1 A mediator must ensure that each participant agrees whether or not information disclosed in a private session is confidential.
- 11.2 A mediator must not disclose to anyone who is 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) with the consent of all participants;
 - b) when the information discloses an actual or potential threat to human life or safety;
 - c) as required by law, including reporting a child in need of protection as defined by the *Child, Family and Community Service Act*;
 - 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.
- 11.3 Section 11.2 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.
- 11.4 In providing information under section 11.3, a mediator may disclose only such information as is necessary to respond to the claim or complaint.
- 11.5 A mediator who participates in teaching, research or evaluation of mediation must protect the anonymity of the parties and abide by their reasonable expectations regarding confidentiality.
- 11.6 A mediator must resist disclosure of confidential information in an adjudicative process to the extent permitted by law, unless the parties have consented to disclosure. Notwithstanding such consent, the mediator may still resist disclosure.

⁴ A mediator should also consider these practices in mediations involving family businesses, family inheritance and estates, responsibility for care of elderly parents, or other similar disputes.

⁵ As defined in the [Family Law Act](http://www.ag.gov.bc.ca/legislation/family-law/) (<http://www.ag.gov.bc.ca/legislation/family-law/>).

STANDARDS OF CONDUCT

12. INDEPENDENT ADVICE

- 12.1 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.
- 12.2 The mediator must not sign as a witness to the execution of any settlement agreement or memorandum of agreement, except where required by a court-annexed or court-affiliated program.

13. TERMINATING MEDIATION

- 13.1 A mediator should ensure that the participants are aware of their rights respecting termination of the mediation.
- 13.2 A mediator must not withdraw the mediator's services except for good cause and upon reasonable notice to the participants.
- 13.3 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 party is unable to participate effectively; or
 - d) the agreement proposed by the parties is unconscionable.
- 13.4 A mediator must communicate clearly and promptly to the participants that mediation has terminated.
- 13.5 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.
- 13.6 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.

14. LIMITS ON ADVERTISING AND PROMOTION

- 14.1 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.
- 14.2 A mediator may state that he or she is a member of a Roster of the Society, but must not state or imply that such membership implies a particular level of skill or ability.
- 14.3 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.
- 14.4 A mediator must not communicate to others in promotional materials or other forms of communication the names of participants served without their written consent.

STANDARDS OF CONDUCT

15. RETAINER, AGREEMENT TO MEDIATE AND BILLING

- 15.1 Upon being retained a mediator must advise the parties in writing about the following:
- a) the scope of the mediator's services, and the rate of remuneration for those services;
 - b) the particulars of any disbursements or expenses for which the mediator will seek reimbursement;
 - c) who is responsible for payment and,
 - d) if appropriate, the method of payment and the requirement, if any, for a deposit of funds.
- 15.2 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 part 11 of these standards;
 - b) the mediator is not a compellable witness in any legal proceeding by any of the participants to the mediation, unless all the parties to the mediation and the mediator agree otherwise;
 - c) in family mediations there will be full and true disclosure of all information relevant to the dispute.
- 15.3 A mediator must bill for the mediator's services by delivering a written statement of account to the participant or participants responsible to make payment.
- 15.4 The account must clearly and separately detail the amounts charged as fees and disbursements, any funds received or applied to the account, and any balance due.
- 15.5 A mediator should be ready to explain the basis of the fees and disbursements charged, and should, if requested, provide further particulars of the same.

16. BREACH

- 16.1 Persons may report a breach of these standards to the board of directors of the Society or such body as the directors may designate.
- 16.2 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 this part.
- 16.3 An alleged breach of these standards 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.

17. ADVANCEMENT OF MEDIATION PRACTICE

- 17.1 A mediator should act in a manner that advances the practice of mediation by engaging in some or all of the following:
- a) fostering a diversity of approaches within the field of mediation;

STANDARDS OF CONDUCT

- b) striving to make mediation accessible to those who elect to use it, including providing services at a reduced rate or on a pro bono basis as appropriate;
 - c) participating in research when given the opportunity, including obtaining participant feedback when appropriate;
 - d) participating in outreach and education efforts to assist the public in developing an improved understanding of and appreciation for mediation;
 - e) assisting newer mediators through training, mentoring and networking.
- 17.2 A mediator should demonstrate respect for differing points of view within the field, seek to learn from other mediators, and work together with other mediators to improve the practice of mediation and better serve people in conflict.