



## Complaint Process

*Mediate BC Society (the “Society”) provides a process by which complaints received by the Society concerning practitioners on its rosters may be resolved informally or by means of a more formal hearing process.*

### Part 1 – Definitions

#### 1.1 DEFINITIONS

In this complaint process, unless the context otherwise requires:

**“board”** means the board of directors of the Society;

**“complainant”** means a person who delivers a complaint to the Society, and may include a member of the board, the Roster Committee, the complaints committee or a person designated by the complaints committee;

**“complaint”** means a written allegation of misconduct or breach of the Society’s Standards of Conduct by a practitioner on any of the Society’s mediator rosters or against a practitioner on our Med-Arb Roster relating to the mediation portion of the Med-Arb process;

**“complaint representative”** means the person appointed by the complaints committee to present a complaint to the discipline committee (the complaint representative is not the complainant’s legal representative and does not provide legal advice);

**“complaints committee”** means the committee appointed by the board to oversee the investigation, management, and potential resolution of complaints, and where appropriate, the presentation of complaints to the discipline committee;

**“discipline committee”** means the committee appointed by the board of directors to which the complaints committee may refer complaints for determination under Parts 5 and 6;

**“Executive Director”** means the Executive Director of the Society;

**“Mediator Roster Manager”** means the Society employee with responsibility for managing the Roster Program;

**“practitioner”** means a mediator on a Society mediator roster or a practitioner on our Med-Arb Roster;

**“Society”** means Mediate BC Society.

### Part 2 – Guiding Principles

#### 2.1 GUIDING PRINCIPLES

The complaint process is guided by the following principles:

- (a) *Timeliness*: Complaints will be dealt within reasonable timeframes;
- (b) *Opportunity to be heard*: Both the complainant and the practitioner against whom a complaint is made must be accorded an opportunity to be heard;
- (c) *Public interest*: The paramount consideration in decision-making under this complaint process is the public interest;
- (d) *Informality*: An informal resolution of complaints is to be preferred where possible;
- (e) *Remediation*: Remediation is to be preferred over punitive action;
- (f) *Confidentiality*: Subject to Parts 6 and 7, the process will respect the right to privacy of the complainant and the practitioner;
- (g) *Exclusivity*: The practice of mediation is not exclusive to practitioners on the Society's rosters.

## 2.2 TIME LIMITS

The complaints or discipline committees may waive any time limit provided in this complaint process if it is considered appropriate in order to comply with the guiding principles in paragraph 2.1.

## Part 3 – Receipt and Preliminary Handling of Complaints

### 3.1 RECEIPT OF COMPLAINTS

A complaint must be sent to the Society's offices and must identify the complainant and provide contact information, including a mailing address. The Mediator Roster Manager must promptly review each complaint.

### 3.2 REJECTION OF COMPLAINT

Where the Mediator Roster Manager decides that a complaint does not concern alleged misconduct or breach of the Society's Standards of Conduct by a practitioner, or is manifestly without merit, or the complainant is without standing, the Mediator Roster Manager must promptly so advise the complainant in writing and indicate that he or she does not intend to take further action with respect to the complaint.

### 3.3 APPEAL OF REJECTION

Within 14 days of being so advised, the complainant may appeal the Mediator Roster Manager's decision to take no further action by delivering written notice of appeal to the Mediator Roster Manager at the office of the Society. If the complainant does so:

- (a) The Mediator Roster Manager must promptly refer the notice of appeal and the complaint to the complaints committee.
- (b) Within 30 days of receipt of the notice of appeal the complaints committee must decide whether to proceed with the complaint. If it declines to do so, it must provide written reasons to the complainant.
- (c) There is no right of appeal from a decision under subparagraph (b).

### 3.4 PROCEEDING WITH THE COMPLAINT

If the Mediator Roster Manager declines to reject the complaint under paragraph 3.2, he or she must promptly respond to the complainant in writing acknowledging receipt of the

complaint and advising of the complaint process; must forward a copy of the complaint to the practitioner against whom the complaint is directed; and must provide copies of all relevant materials to the complaints committee.

### 3.5 WITHDRAWAL OF COMPLAINT

A complaint received under paragraph 3.1, may be referred to the complaints committee notwithstanding that the complainant subsequently indicates that he or she wishes to withdraw the complaint.

### 3.6 RESPONSE TO COMPLAINTS BY PRACTITIONERS

Subject to paragraph 3.2, as soon as possible, the practitioner must respond to the complaint to the Mediator Roster Manager and must respond in writing, if requested. The practitioner must send his or her response to the Mediator Roster Manager who must in turn forward it to the complaints committee or its designated representatives.

### 3.7 MEDIATOR ROSTER MANAGER'S INITIATIVE

The Mediator Roster Manager must refer a matter to the Board of Directors on his or her own initiative:

- (a) if the Mediator Roster Manager becomes aware of circumstances giving rise to a possible complaint that is of a serious nature and it appears that it may be in the public interest that it be dealt with promptly; or
- (b) if the Mediator Roster Manager is of the opinion that he or she is in a conflict of interest in connection with a complaint.

### 3.8 ROLE OF CHAIR OF BOARD OF DIRECTORS

In the event that the Chair of the Board of Directors receives a referral under paragraph 3.7, he or she may lodge a complaint, or may assume or delegate the role of the Mediator Roster Manager under Part 3, as needed.

## **Part 4 – Action by the Complaints Committee**

### 4.1 INFORMAL RESOLUTION

The complaints committee, or a person or persons authorized on their behalf, must take such steps as it deems fit to investigate (including whether any discussions will be confidential or “without prejudice”), and to seek to informally resolve any complaint referred to it to the satisfaction of the complainant, the practitioner and the Society.

### 4.2 REFERRAL TO DISCIPLINE COMMITTEE

The complaints committee may, at any time, refer a complaint to the discipline committee if the complaints committee considers that it is in the public interest to do so. Further, if the complaints committee considers it necessary in the public interest, it may suspend a practitioner by removal from the roster pending the disposition of the complaint by the discipline committee.

### 4.3 NO RIGHT OF APPEAL

There is no right of appeal from a decision of the complaints committee under paragraph 4.2.

## **Part 5 – Conduct of Hearings**

### **APPOINTMENT OF COMPLAINT REPRESENTATIVE**

5.1 Upon referring a complaint to the discipline committee under paragraph 4.2, the complaints committee must appoint a representative who will be designated as the complaint representative for the purposes of this Part, and must advise the discipline committee and the practitioner of that appointment. The complaint representative will then present the complaint to the discipline committee, and make submissions, as he or she deems appropriate.

### **5.2 PROCEEDINGS**

The proceedings of the discipline committee may be conducted by receipt of written submissions or by oral hearing, or by a combination of oral and written submissions, as the discipline committee may in its discretion determine consistent with the guiding principles in paragraph 2.1.

### **5.3 DECISION OF DISCIPLINE COMMITTEE**

Within 30 days after the conclusion of the proceedings, the discipline committee must determine whether the alleged misconduct or breach of the Society's Standards of Conduct has been established, and must provide the complaint representative and the practitioner with reasons for its decision.

### **5.4 DISMISSAL OF COMPLAINT**

If the discipline committee finds that the alleged misconduct or breach of the Society's Standards of Conduct was not established, it must dismiss the complaint.

### **5.5 DISPOSITION IF NOT DISMISSED**

If the discipline committee finds that the alleged misconduct or breach of the Society's Standards of Conduct was established, then the committee must also render a decision on the outcome, and provide reasons for the decision to the complaint representative and the practitioner.

### **5.6 ADDITIONAL PROCEEDINGS ON OUTCOME**

Consistent with the guiding principles in paragraph 2.1, the discipline committee may, in its discretion, permit further proceedings as to outcome, including an opportunity for the practitioner and the complaint representative to reach agreement on an appropriate outcome pursuant to paragraph 6.1. If there is no such agreement, then the discipline committee must render a decision on outcome, and provide reasons, within 30 days after the conclusion of those further proceedings.

## **Part 6 – Authority of the Discipline Committee where Misconduct or Breach of the Society's Standards of Conduct is Established and Record of Outcomes**

## 6.1 OUTCOMES

Where misconduct or breach of the Society's Standards of Conduct by the practitioner is established, the discipline committee may impose any one or more of the following outcomes upon the practitioner:

- (a) a reprimand;
- (b) a requirement for remedial work, training or education which the practitioner must undertake;
- (c) restrictions or conditions on the practitioner's practice;
- (d) suspension of appointment to any or all of the Society's rosters;
- (e) termination of appointment to any or all of the Society's rosters;
- (f) a fine not exceeding \$1,000.00;
- (g) costs of the complaint process; or
- (h) publication of the outcome in such manner as the discipline committee directs.

## 6.2 ACTION IN DEFAULT

In default of the practitioner complying with any outcomes imposed under subparagraphs 6.1(b), (c), (f) or (g), the discipline committee may suspend or terminate the practitioner's appointment to any or all of the Society's rosters.

## 6.4 RECORD OF OUTCOMES

Unless otherwise determined by the discipline committee, any outcome imposed under paragraph 6.1 will be placed on the record of the practitioner.

## 6.4 NO RIGHT OF APPEAL FROM DECISIONS OF THE DISCIPLINE COMMITTEE

There is no right of appeal from decisions or actions of the discipline committee under Part 5 or Part 6.

## **Part 7 – Access to Complaint-related Files**

### 7.1 ACCESS TO FILES

Any file relating to a complaint against a Roster member is available to:

- (a) the Mediator Roster Manager and Executive Director;
- (b) the Board of Directors for the purpose of admission to the Society's rosters;
- (c) the complaints committee for the purpose of disposition of a complaint;
- (d) the complaint representative for the purpose of presenting the complaint; and
- (e) the discipline committee for the purpose of determining outcome in a complaint.