

## **Excalibur's Professional Standards for Mediators**

Excalibur is a member of the ADR Institute of Ontario and the ADR Institute of Canada and adheres to the professional standards set by both institutes. Our professional standards (outlined below) are:

- ADR Institute of Ontario's Code of Ethics  
and
- ADR Institute of Canada, Inc.'s Model Code of Conduct for Mediators

### **ADR INSTITUTE OF ONTARIO'S CODE OF ETHICS**

This code is applicable to all members of the Institute in their capacity as arbitrators and mediators generally and in their undertaking of an arbitration or mediation appointment specifically.

1. A Member shall uphold and abide by the Rules of Conduct, regulations and other professional requirements adopted by the Institute.
2. A Member shall not carry on any activity or conduct which could reasonably be considered as conduct unbecoming of a member of the Institute.
3. A Member shall uphold the integrity and fairness of the arbitration and mediation processes.
4. A Member shall ensure that the parties involved in an arbitration or mediation are fairly informed and have an adequate understanding of the procedural aspects of the process and of their obligations to pay for services rendered.
5. A Member shall satisfy him/herself that he/she is qualified to undertake and complete an appointment in a professional manner.
6. A Member shall disclose any interest or relationship likely to affect impartiality or which might create an appearance of partiality or bias.
7. A Member, in communicating with the parties, shall avoid impropriety or the appearance of impropriety.
8. A Member shall conduct all proceedings fairly and diligently, exhibiting independence and impartiality.

9. A Member shall be faithful to the relationship of trust and confidentiality inherent in the office of arbitrator or mediator.
10. A Member shall conduct all proceedings related to the resolution of a dispute in accordance with applicable law.

**ADR INSTITUTE OF CANADA, INC.  
MODEL CODE OF CONDUCT FOR  
MEDIATORS**

The Model 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 who accepts appointments from the Institute. 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 to the individual, but is a conditional privilege that may be revoked for breaches of the Code.

The Institute, or any of its Regional Affiliates, is empowered to investigate alleged breaches, including temporarily suspending any Mediator from any of its rosters or 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 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 will be the objective to ensure that complaints are investigated fairly, and that no Mediator is arbitrarily suspended or removed.

## **I. OBJECTIVES FOR MODEL CODE OF CONDUCT FOR MEDIATORS**

The main objectives of the Code for Mediators are as follows:

- (a) to provide guiding principles for the Mediator's conduct;
- (b) to provide a means of protection for the public; and
- (c) to promote confidence in Mediation as a process for resolving disputes.

## **II. DEFINITIONS**

In the Code:

"Mediation" means the use of an impartial third Party to assist the parties to resolve a dispute, but does not include an arbitration.

"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.

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“impartial” means being and being seen as unbiased toward parties to a dispute, toward their interests and toward the options they present for settlement.

### **III. PRINCIPLE OF SELF-DETERMINATION**

1. Self-determination is the right of parties in a Mediation to make their own voluntary and non-coerced decisions regarding the possible resolution of any issue in dispute. It is a fundamental principle of Mediation which every Mediator shall respect and encourage.
2. The Mediator shall provide information about his or her role in the Mediation before Mediation commences, including the fact that authority for decisionmaking rests with the parties, not the Mediator.
3. The Mediator shall not provide legal or professional advice to the parties.
4. The Mediator has the responsibility to advise unrepresented parties to obtain independent legal advice, where appropriate. The Mediator also has the responsibility where appropriate to advise parties of the need to consult other professionals to help parties make informed decisions.

### **IV. INDEPENDENCE AND IMPARTIALITY**

1. Unless otherwise agreed by the parties, a Mediator shall be and remain, at all times, wholly independent.
2. The Mediator shall be and remain wholly impartial and shall not act as an advocate to any party to the Mediation.
3. The Mediator shall not establish a professional relationship with or act for any of the parties individually in relation to the particular dispute that is the subject matter of the Mediation in any capacity, unless all parties consent after full disclosure.
4. If the Mediator becomes aware of his or her lack of impartiality, he or she shall immediately disclose to the parties that he or she can no longer remain impartial and shall withdraw from the Mediation.

### **V. CONFLICT OF INTEREST**

1. The Mediator has a responsibility to disclose as soon as possible to the parties in dispute any personal interest, conflict of interest, bias, or circumstances likely to give rise to a reasonable apprehension or presumption of bias that are known to the Mediator, or which becomes known after his or her appointment.  
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2. Any Mediator who has made a disclosure pursuant to V.1 shall withdraw as Mediator, unless the parties consent to retain the Mediator.
3. The Mediator's commitment is to the parties and the process and he or she shall not allow pressure or influence from third parties (including, without limitation, persons, service providers, Mediation facilities, organizations, or agencies) to compromise the independence of the Mediator.

### **VI. CONFIDENTIALITY**

1. The Mediator shall inform the parties of the confidential nature of Mediation.
2. The Mediator shall not disclose to anyone who is not a party to the Mediation any information or documents that are exchanged for or during the Mediation process except:
  - (a) with the mediating 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) any report or summary that is required to be prepared by the Mediator; or

(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.

3. If the Mediator holds private sessions (breakout meetings, caucuses) with a party, he or she shall discuss the nature of such sessions with all parties prior to commencing such sessions. In particular, the Mediator shall inform parties of any limits to confidentiality applicable to information disclosed during private sessions.

4. The Mediator shall maintain confidentiality in the storage and disposal of Mediation notes, records and files.

## **VII. QUALITY OF THE PROCESS**

1. The Mediator shall make reasonable efforts to ensure the parties understand the Mediation process before Mediation commences.

2. The Mediator has a duty to ensure that he or she conducts a process which provides parties with the opportunity to participate in the Mediation and which encourages respect among the parties.

3. All Mediators have an obligation to acquire and maintain professional skills and abilities required to uphold the quality of the Mediation process.

4. The Mediator shall conduct himself or herself professionally at all times, and shall not engage in behaviour that will bring disrepute on the Mediator or the Institute.

## **VIII. ADVERTISING**

In advertising or offering services to clients or potential clients:

1. The Mediator shall refrain from guaranteeing settlement or promising specific results.

2. The Mediator shall provide accurate information about his or her education, background, Mediation training and experience, in any representation, biographical or promotional material and in any oral explanation of same.

## **IX. FEES**

1. The Mediator shall provide parties with the fee structure, likely expenses and any payment retainer requirements before Mediation commences.

2. The Mediator shall not base his or her fees on the outcome of Mediation, whether there is a settlement, what the settlement is, or the amount of the settlement.

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.

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## **X. AGREEMENT TO MEDIATE**

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 National Mediation Rules of the Institute which the parties agree shall not apply to the Mediation; and

(c) any additional rules which the parties agree shall apply to the Mediation.  
Should the parties be unable to agree on a Mediation Agreement, the Institute's Standard Form Agreement to Mediate shall be used.

#### **XI. TERMINATION OR SUSPENSION OF MEDIATION**

1. The Mediator shall withdraw from the Mediation for the reason referred to in paragraph IV.3.
2. The Mediator may suspend or terminate the Mediation if requested, in writing, by one or more of the parties.
3. The Mediator may suspend or terminate the Mediation with a written declaration by the Mediator that further efforts at mediation would not be useful.

#### **XII. OTHER CONDUCT OBLIGATIONS**

Nothing in the Code replaces or supersedes ethical standards and codes which may be additionally imposed upon any Mediator by virtue of the Mediator's professional calling. Where there are conflicting codes of conduct, the Mediator shall be bound by the stricter of the codes.